

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of JANUARY 31, 2018

The following activity, as more fully described in the attached litigation report, has occurred since the report dated January 3, 2018 was circulated. New matters/proceedings since the last Report are preceded by an asterisk '*'. Page numbers precede the matter description.

I. Complaints/Section 206 Proceedings 

2	Calpine/LS Power Delayed Resource Complaint (EL18-53)	Jan 4	NEPOOL, Clear River oppose Complaint; Cogentrix, NEPGA, PSEG support Complaint
		Jan 4-8	Brookfield, Dynegy, Emera Energy Services, Energy New England, FirstLight, MMWEC, VPPSA intervene
		Jan 9	Calpine/LS Power answer ISO-NE, NEPOOL, Clear River protests
2	Clear River Schedule 11 O&M Complaint (EL18-31)	Jan 11	PTO AC answers Clear River's Dec 22 answer
		Jan 23	Clear River withdraws Complaint
4	Base ROE Complaint IV (2016) (EL16-64)	Jan 19	FERC denies TOs and EEI requests for rehearing of Sep 2016 order; EMCOS, Complainant-Aligned Parties, TOs, FERC Trial Staff submit initial post-hearing briefs; Parties submit joint procedural history
5	206 Proceeding: RNS/LNS Rates and Rate Protocols (EL16-19)	Jan 10	Settlement Judge Dring schedules 11th settlement conf. for Feb 1

II. Rate, ICR, FCA, Cost Recovery Filings 

7	ICR-Related Values and HQICCs – Annual Reconfiguration Auctions (ER18-371)	Jan 4	FERC accepts ARA Values, eff. Jan 30, 2018
7	FCA12 Qualification Informational Filing (ER18-264)	Jan 19	FERC accepts filing without change or condition
8	Emera MPD OATT Attachment J Revision (ER18-210)	Jan 9	MCG answers Emera Maine Dec 19 answer and request to lift stay
		Jan 18	Emera Maine answers MCG Jan 9 answer

III. Market Rule and Information Policy Changes, Interpretations and Waiver Requests 

*	9	CSO Termination: Blue Sky West (ER18-704)	Jan 23	ISO-NE files to terminate CSO for Resource 15509 held by Blue Sky West; comment date Feb 13
			Jan 29	Blue Sky West files emergency motion to immediately reinstate the portion of its CSO involuntarily terminated by ISO-NE pending resolution of this CSO Termination Filing
			Jan 31	ISO-NE answers Emergency Motion
*	9	Waiver Request: Timing of Canal-MA-GHG-Rule-Related Addl. Cost Recovery Filing (GenOn) (ER18-623)	Jan 8	GenOn requests waiver of Market Rule 1 Appendix A Section III.A.15 to allow for the submission of an additional cost recovery filing relating to potential purchases of carbon dioxide emissions allowances required under MA's GHG Rule
			Jan 9-16	NEPOOL, ISO-NE, Direct Energy, ENE intervene
			Jan 19	Public Citizen protests waiver request
			Jan 24	GenOn answers Public Citizen Jan 19 protest

* 9	Updated Dynamic De-List Bid Threshold (ER18-620)	Jan 8 Jan 12-29 Jan 23 Jan 29	ISO-NE and NEPOOL jointly file changes to reduce the FCM Dynamic De-List Bid Threshold, beginning with FCA13, to \$4.30/kW-mo.; comment date Jan 29 Calpine, Cogentrix, ConEd, ENE, Dominion, ENE, Eversource, FirstLight, NGrid, NESCOE, NextEra, NRG, Public Citizen intervene ISO-NE files supplemental information NEPGA, PSEG protest filing
* 10	CASPR (ER18-619)	Jan 8 Jan 8-30 Jan 19 Jan 29-30	ISO-NE files CASPR Proposal Entities not submitting comments/protests intervene, including: Avangrid, AWEA, Champlain VT, ConEd, CT PURA, Direct Energy, Dynegy, EEI, Emera, ENE, EPSA, Eversource, HQUS, LS Power, National Grid, NRECA, PSEG NEPOOL submits comments Comments and/or protests submitted by: Calpine, CPV Towantic, Dominion, Exelon, FirstLight, NECOS, NEPGA, NextEra, NRG, Public Systems, Verso, CT PURA/DEEP/OCC, MA AG, MA DPU, MPUC, NHPUC, NESCOE, AEMA, APPA, Clean Energy Advocates, NGSA, Public Citizen, RESA, EMM
10	ART Market Rule Changes (ER18-455)	Jan 5-11 Jan 10 Jan 25 Jan 29	Eversource, PSEG (out-of-time) intervene FirstLight, Indicated Generators protest Changes NEPOOL, ISO-NE answer Jan 10 protests FirstLight answers ISO-NE Jan 25 answer
11	CPower Waiver Request: DR Auditing Requirements (ER18-185)	Jan 25	FERC denies wavier requested

IV. OATT Amendments / TOAs / Coordination Agreements	
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No Activity to Report

V. Financial Assurance/Billing Policy Amendments	
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No Activity to Report

VI. Schedule 20/21/22/23 Changes	
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12	Schedule 20A-GMP: Brookfield Complaint (EL18-52)	Jan 5 Jan 8 Jan 8 Jan 19	IRH protests Brookfield Complaint GMP, ENE, MAG Energy Solutions, Unutil/Fitchburg answer and/or protest Brookfield Complaint Eversource, National Grid, Ontario Power intervene Brookfield withdraws Complaint
* 12	Schedule 21-ES: PSNH/VEC LSA (ER18-745)	Jan 30	ISO-NE and Eversource file agreement; comment date Feb 20
* 15	Schedule 21-VEC: VEC/PSNH LSA (NJ18-10)	Jan 30	ISO-NE and VEC file agreement; comment date Feb 20
13	Schedule 22: Clear River LGIA (ER18-349)	Jan 4 Jan 26	ISO-NE, National Grid answer Clear River's Dec 20 protest FERC accepts unexecuted LGIA, eff. Jan 29
13	Schedule 21-NEP: National Grid/Granite Reliable Power RFA (ER18-346)	Jan 24	FERC accepts RFA, eff. Nov 1, 2017

13	Schedule 21-EM: Recovery of Bangor Hydro/Maine Pub. Service Merger-Related Costs (ER15-1434 et al.)	Jan 18	Judge Dring issues status report recommending that settlement procedures (which are on-going) be continued
15	Schedule 21-GMP: Annual Forecast Informational Filing (ER12-2304)	Jan 16	GMP submits its annual forecast informational filing; this filing will not be noticed for public comment

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

* 15	LFTR Implementation: 37 th Quarterly Status Report (ER07-476)	Jan 16	ISO-NE files its 37th quarterly report
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IX. Membership Filings

* 16	February 2018 Membership Filing (ER18-767)	Jan 31	Terminations: Emera Energy Services Subsidiaries Nos. 10, 13 and 14; Epico USA; Shipley Choice; and WMECO; comment date Feb 21
16	January 2018 Membership Filing (ER18-539)	Jan 5	Requested effective date for termination of Participant Status of Constellation Energy Services changed to Feb 1
16	December 2017 Membership Filing (ER18-353)	Jan 4	FERC accepts (i) the memberships of Fusion Solar Center and Josco Energy MA; and (ii) the name change of Supplier Sector member Summer Energy Northeast (f/k/a REP Energy)
16	Suspension Notice – AmericaWide Energy (not docketed)	Jan 17	ISO-NE files notice of suspension of AmericaWide Energy from New England Markets

X. Misc. - ERO Rules, Filings; Reliability Standards

17	NOPR: Cyber Security Incident Reporting Rel. Standards (RM18-2)	Jan 12	J. Applebaum submits comments
17	NOPR: Revised Supply Chain Risk Manag. Rel. Standards: CIP-005-6, CIP-010-3, CIP-013-1 (RM17-13)	Jan 18	FERC issues NOPR proposing to approve revised Supply Chain Risk Management CIP Standards to further mitigate cybersecurity risks associated with the supply chain for BES Cyber Systems; comment date Mar 26
17	Order 840: Rev. Rel. Standards: EOP-004-4, EOP-005-3, EOP-006-3, EOP-008-2 (RM17-12)	Jan 18	FERC approves EOP Changes, eff. Mar 26, 2018
18	NOPR: New Rel. Standards: PRC-027-1 and PER-006-1 (RM16-22)	Jan 29	Over 12 parties submit comments, including NERC, APPA, EEI, Entergy, ITC, Large Public Power Assoc., NRECA

XI. Misc. - of Regional Interest

19	203 Application: Dynegy/Vistra (EC18-23)	Jan 18 Jan 22	IL AG’s Office intervenes Public Citizen protests application
20	203 Application: PSNH/Granite Shore (EC18-12)	Jan 10 Jan 12	Transaction consummated PSNH/Granite Shore submit transaction consummation notice
20	203 Application: MATEP (EC18-10)	Jan 23	FERC authorizes MATEP sale to Engie/Axium US indirect subsidiaries
21	NSTAR/WMECO Succession Proceedings (ER18-749/751)	Jan 30	Eversource submits pair of filings (succession and cancellation notices) to reflect WMECO/NSTAR merger; comment date Mar 20

21	REMVEC II and REMVEC SAS Terminations (ER18-716)	Jan 26	New England Power files to cancel REMVEC II and REMVEC SAS Agreements; comment date Feb 20
22	Third Supplement to Lease Agreement: UI/CT DOT (ER18-454)	Jan 30	FERC accepts 3rd Supplement, eff. Dec 15, 2017
22	IA: NSTAR/Covanta SEMASS (ER18-424)	Jan 29	FERC accepts IA, eff. Dec 1, 2017
23	D&E Agreement Cancellation: NSTAR/Essential Power Newington (ER18-330)	Jan 8	FERC accepts notice of cancellation, eff. Nov 27, 2017
23	IA: CL&P/Woods Hill Solar (ER18-316)	Jan 18	FERC accepts IA, eff. Nov 30, 2017

XII. Misc. - Administrative & Rulemaking Proceedings ▼

23	Grid Resilience in RTO/ISOs; DOE NOPR (AD18-7; RM18-1)	Jan 8	FERC terminates DOE NOPR rulemaking proceeding (RM18-1) and initiates a new Grid Resilience in RTO/ISOs proceeding (AD18-7); RTO submissions due Mar 9; reply comments, Apr 9
24	NOI: FERC's Policy for Income Tax Cost Recovery & ROE Policies (PL17-1)	Jan 18	R. Gordon Gooch files second motion for partial summary judgment
* 25	Order 839: Civil Monetary Penalty Inflation Adjustments (RM18-4)	Jan 8	FERC issues final rule increasing maximum civil monetary penalties it may assess; market manipulation penalties increased to \$1,238,271 per violation, per day; eff. Jan 11, 2018

XIII. Natural Gas Proceedings ▼

30	New England Pipeline Proceedings • Constitution Pipeline (CP18-5)	Jan 11	FERC denies Constitution’s Petition requesting finding that NY DEC waived its authority under section 401 of the Clean Water Act to deny it a permit by failing to act within a “reasonable period of time”
29	Natural Gas-Related Enforcement Actions: BP (IN13-15)	Jan 25	FERC Staff responds to BP’s Dec 11 motion

XIV. State Proceedings & Federal Legislative Proceedings ▼

No Activity to Report

XV. Federal Courts ▼

35	Demand Curve Changes (17-1110**)	Jan 11 Jan 25	Petitioners’ file Reply Brief Petitioners file Deferred Appendix
36	FCA10 Results (16-1408) and FCA9 Results (16-1068)	Jan 8	Oral argument, scheduled for Feb 9, 2018, will be held before Judges Rogers, Millett and Pillard
36	NEPGA PER Complaint and FCM Jump Ball and Compliance Proceedings (16-1023/1024)	Jan 19	Court dismisses for lack of jurisdiction the petition for review in 16-1023 (the appeal of the FCM Jump Ball and Compliance Proceedings) and denies on the merits the petition for review in 16-1024 (the NEPGA PER Complaint appeal)
37	California Public Utilities Commission v. FERC (16-70481, 9th Cir.)	Jan 8	Court holds that the FERC acted arbitrarily and capriciously, and erred, by granting a transmission owner an incentive adder for its participation in an RTO where such participation was not voluntary

M E M O R A N D U M

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: January 31, 2018

RE: Status Report on Current Regional Wholesale Power and Transmission Arrangements Pending Before the Regulators, Legislatures, and Courts

We have summarized below the status of key ongoing proceedings relating to NEPOOL matters before the Federal Energy Regulatory Commission (“FERC”),¹ state regulatory commissions, and the Federal Courts and legislatures through January 3, 2018. If you have questions, please contact us.

I. Complaints/Section 206 Proceedings
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- **Calpine/LS Power Delayed Resource Complaint (EL18-53)**

On December 21, 2017, Calpine Corporation (“Calpine”) and LS Power Associates (“LS Power”, and together with Calpine, “Complainants”) filed a complaint (“Delayed Resource Complaint”) asking the FERC to adopt an interim change to the Tariff, to be effective for FCA12, “to ensure that a resource that is not reasonably expected to be operational during the 2021-22 Capacity Commitment Period is not permitted to interfere with efficient price formation and artificially suppress prices in FCA 12 by entering a zero dollar offer for its capacity” and to “require ISO-NE to work with its stakeholders to file Tariff modifications in time for [FCA13] addressing the requirements for a Delayed Resource to participate in future FCAs, resume receiving its Lock-In Price, and extend its Lock-In Period.” Complainants also asked for Fast Track Processing and a shortened comment period.

As previously reported, ISO-NE answered the Delayed Resource Complaint on January 2 (urging the FERC to deny the Complaint). NEPOOL and Clear River opposed the Complaint on January 4. Also on January 4, Cogentrix, NEPGA, and PSEG submitted comments supporting the Complaint. Doc-less interventions were filed by Brookfield, ConEd, Direct, Dominion, Dynege, Emera Energy Services, Energy New England, EPSA, Eversource, Exelon, FirstLight, MMWEC, National Grid, NESCOE, NextEra, NRG, and VPPSA. On January 9, Complainants answered the oppositions filed by ISO-NE, NEPOOL and Clear River. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com), Jamie Blackburn (202-218-3905; jblackburn@daypitney.com), or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Clear River Schedule 11 O&M Complaint (EL18-31)**

On January 23, 2018, Clear River withdrew this Complaint. As previously reported, Clear River Energy Center LLC (“Clear River”)² originally filed this Complaint against ISO-NE, National Grid and the TOs (together, “Respondents”) on November 17, 2017 requesting that the FERC direct ISO-NE to modify Tariff Schedule 11 (and

¹ Capitalized terms used but not defined in this filing are intended to have the meanings given to such terms in the Second Restated New England Power Pool Agreement (the “Second Restated NEPOOL Agreement”), the Participants Agreement, or the ISO New England Inc. (“ISO” or “ISO-NE”) Transmission, Markets and Services Tariff (the “Tariff”).

² Clear River is an indirect, wholly-owned subsidiary of Invenergy Thermal Development LLC and thereby a Related Person to Generation Sector member Invenergy Energy Management LLC (collectively, “Invenergy”). Clear River is developing a 1,080 MW natural gas generation facility to be located in Burrillville, Rhode Island (the “Clear River Project”). The Project will interconnect to transmission facilities owned by National Grid and operated by ISO-NE. To provide service, National Grid will construct certain new network facilities, upgrade others and relocate an existing 345 kV network facility (collectively, the “NGrid Network Upgrades”) at an estimated cost of about \$60 million.

all other Tariff provisions that implement the Operating and Maintenance Cost (“O&M Costs”) recovery provisions of Schedule 11) under which interconnection customers are or could be required to pay O&M Costs associated with the construction of Large Generator Interconnection Agreement (“LGIA”)-required network upgrades, and to direct National Grid to modify its Schedule 21-NEP to conform with the changes made to Schedule 11. Clear River claimed that National Grid’s Direct Assignment Facilities Charge to Clear River of all costs associated with the Network Upgrades that National Grid will build to accommodate interconnection of the Clear River Project was inconsistent with Order 2003 and the charge, as well as the provisions of the ISO-NE Tariff that authorize such a charge, are unjust and unreasonable.

ISO-NE asked the FERC to dismiss ISO-NE as a party to the Clear River Complaint proceeding, explaining that the Tariff provisions at issue are among those which the Participating Transmission Owners (“PTOs”), rather than ISO-NE, have the right to establish and modify under section 205 of the Federal Power Act (“FPA”), and that, with no financial interest in the matter, ISO-NE is not a necessary party. Alternatively, ISO-NE answered the Clear River Complaint (should the FERC decline to dismiss ISO-NE from the proceeding), taking no position on either the merits of Clear River’s claims or on “the propriety of any relief Clear River requests”. Clear River challenged ISO-NE’s November 29 motion to be dismissed as a party to the Complaint and ISO-NE answered that protest on December 29.

In addition to pleadings addressing ISO-NE’s status as a party to the Complaint, NEPOOL filed comments and a protest on December 6 requesting that the FERC deny the Clear River Complaint on its merits or, to the extent the FERC grants any part of the Clear River Complaint, send consideration of any necessary Tariff changes through the NEPOOL process for appropriate stakeholder input before they are filed. New England Power and the PTO AC also answered the Complaint. NESCOE protested the Complaint. Doc-less interventions were filed by Calpine, CMEEC, CT AG, CT OCC, CPV Towantic, Dominion, Green Mountain Power (“GMP”), MA DPU, MMWEC, MPUC, NESCOE, NextEra, NHEC, NRG, VPPSA, and NEPGA (out-of-time). On December 22, Clear River also protested the responses by NEPOOL, NESCOE and National Grid. Answers to Clear River’s December 22 answer were filed by NEPOOL on January 2 and by the PTO AC on January 11.

With the Complaint withdrawn, this proceeding is now concluded. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **NEPGA PER Adjustment Complaint Settlement Agreement (ER17-2153)**

The PER Settlement remains pending before the FERC. As previously reported, the Settling Parties³ submitted, filed July 28, 2017,⁴ an Offer of Settlement and settlement materials (“PER Settlement”) to resolve the issue set for hearing and settlement judge procedures by the Commission in this proceeding.⁵ Under the

³ PER “Settling Parties” are: NEPGA, NESCOE, the Retail Energy Supply Association (“RESA”), NEPOOL, Exelon, H.Q. Energy Services (U.S.) (“HQUS”), Eversource, Dominion, Entergy, NRG, and Cogentrix. Intervenors in the proceeding not opposing the Settlement (“Non-Opposing Intervenors”) are: ISO-NE, PSEG, Consolidated Edison Energy, Inc. (“ConEd”), Verso Corp., GenOn Energy Management LLC, National Grid, NextEra, the New Hampshire Electric Coop. (“NHEC”), and Calpine.

⁴ The Settlement was initially filed on July 26 under different eTariff codes and subsequently withdrawn in favor of the July 28 filing. The Docket Number (ER17-2153) remained the same. The withdrawal of the July 26 filing was accepted on August 31.

⁵ See *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 158 FERC ¶ 61,034 (Jan. 19, 2017), *reh’g requested (“PER Complaint Order”)*. The *PER Complaint Order* (i) granted in part NEPGA’s complaint and (ii) set in part for hearing and settlement judge procedures the question of the appropriate method of calculating the PER Strike Price under Market Rule 1 Section III.13.7.2.7.1.1.1. The FERC found that “for the period at issue in NEPGA’s complaint (September 30, 2016 – May 31, 2018), the PER mechanism has become unjust and unreasonable as a result of the interaction between the PER mechanism and the higher Reserve Constraint Penalty Factors.” Accordingly, the FERC required the ISO to revise the method by which it calculates the PER Strike Price as set forth in Tariff section III.13.7.2.7.1.1.1. But, finding NEPGA’s request that the PER Strike Price be increased by \$250 per MWh “raises issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing and settlement judge procedures”, the FERC set the question of for hearing and settlement judge procedures under section 206 of the FPA. The FERC established a refund effective date of September 30, 2016 (the date of the complaint). In establishing a September 30, 2016 effective date, the FERC

PER Settlement, the ISO will calculate Adjusted Hourly Strike Price as the sum of the daily Strike Price (as calculated under the existing Tariff) and a newly-defined Hourly PER Adjustment. The Hourly PER Adjustment will be equal to the average over each hour of a newly-defined Five-Minute PER Strike Price Adjustment. The Five-Minute Strike Price Adjustment⁶ will be equal to any positive difference between a five-minute Thirty Minute Operating Reserves Clearing Price or Ten-Minute Non-Spinning Reserves Clearing Price that exceeds the maximum allowable reserves clearing prices for those reserves products (i.e., the Reserve Constraint Penalty Factors) in effect before December 2014. The PER Settlement does not resolve the issues of the applicability of the Strike Price methodology to FCA9, which will be subject to comment in response to the PER Settlement Agreement.⁷ The term sheet that formed the basis for the PER Settlement was supported by the Participants Committee at the June 27 session of the Summer Meeting. All parties in EL16-120 “are deemed to have intervened in Docket No. ER17-2153-000”.⁸

In comments filed August 16, the ISO neither supported nor objected to the proposed PER strike price methodology and requested that the Commission resolve how the Average Monthly PER will be calculated on and after June 1, 2018. NEPOOL, NEPGA, NESCOE, and Eversource filed comments supporting the PER Settlement. Comments by FERC Trial Staff indicated that it did not oppose the PER Settlement. In reply comments, NESCOE asked the FERC to reject the position advocated by NEPGA that the agreed-upon Adjusted Hourly Strike Price as defined in the Settlement should extend beyond May 31, 2018). NEPGA, NRG, HQUS, Dominion, and Verso jointly asked the FERC to approve the Settlement and order the ISO to make a compliance filing, but decline to address NESCOE’s request until some later date. Settlement Judge Young certified the uncontested settlement to the FERC on August 31, which remains pending before the FERC. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com), Jamie Blackburn (202-218-3905; jblackburn@daypitney.com), or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Base ROE Complaint IV (2016) (EL16-64)**

Hearings in this matter were held December 11-15, 2017. Transcripts of the hearings are posted on the FERC’s eLibrary. Corrections to the transcripts, jointly filed by the hearing participants, were accepted by Judge Glazer on January 2, 2018. On January 16, 2018, EMCOS, Complainant-Aligned Parties, TOs, and FERC Trial Staff submitted their initial post-hearing briefs. The Parties also submitted on January 16 a joint procedural history. At the request of the parties, Judge Glazer scheduled post-hearing briefs’ oral argument for February 22, 2018. EMCOS, CAPS, TOs and FERC Trial Staff will each be allotted 30 minutes for argument. An initial decision is expected to be issued on or before March 27, 2018.

clarified that “any changes to the calculation of the PER Strike Price under ISO-NE Tariff section III.13.7.2.7.1.1.1 would be prospective only from September 30, 2016, as required by FPA section 206, and would not impact the application of any PER Adjustment occurring before September 30, 2016.” On February 15, NEPGA requested clarification of the PER Complaint Order with respect to the PER Adjustment payments charged to NEPGA’s members on capacity invoices issued after the refund effective date. Specifically, NEPGA asked for clarification that when the FERC “determines refunds, it will direct the ISO to refund to capacity suppliers the difference between: (i) the PER Adjustment payments charged to capacity suppliers after the September 30, 2016 refund effective date, and (ii) the PER Adjustment payments that would have been charged to capacity suppliers if the PER Adjustment were calculated using a just and reasonable PER Strike Price.” On Mar. 3, NESCOE and RESA answered NEPGA’s rehearing request. NEPGA answered those answers on Mar. 17. The FERC issued a tolling order on Mar. 16, 2017, affording it additional time to consider NEPGA’s request for rehearing, which remains pending.

⁶ Five-Minute PER Strike Price Adjustment will be calculated according to the following formula: Five-Minute PER Strike Price Adjustment = MAX (Thirty Minute Operating Reserves Clearing Price - \$500/MWh, 0) + MAX (Ten Minute Non-Spinning Reserves Clearing Price – Thirty Minute Operating Reserves Clearing Price - \$850/MWh, 0).

⁷ In its *PER Complaint Rehearing Order*, the FERC clarified that it “intended for ISO-NE to use the difference between the former strike price and the LMP for event hours that occurred prior to September 30, 2016, and for ISO-NE to use the new strike price only for event hours that occur after September 30, 2016 ... [t]he Commission’s order is clear in that it addresses a change to the calculation of the PER strike price as set forth in section 111.13.7.2.7.1.1.1 and such change is prospective only.”

⁸ Prior to Chief Judge Cintron’s order, the following parties filed doc-less interventions in ER17-2153: Calpine, ConEd, Entergy, Eversource, Exelon, HQUS, NEPGA, NESCOE, NRG/GenOn, and RESA.

As previously reported, the FERC, on September 20, 2016, established hearing and settlement judge procedures (and set a refund effective date of April 29, 2016) for the 4th ROE Complaint filed by EMCOS on April 29, 2016.⁹ The 4th ROE Complaint asked the FERC to reduce the TOs' current 10.57% return on equity ("Base ROE") to 8.93% and to determine that the upper end of the zone of reasonableness (which sets the incentives cap) is no higher than 11.24%. EMCOS identified three main considerations requiring submission of this 4th ROE Complaint: (1) the continuing decline of the market cost of equity capital, which makes TOs' currently authorized ROE "excessive, unjust and unreasonable, and therefore ripe for adjustment under FPA Section 206"; (2) "divergent rulings concerning the persistence of the "anomalous" capital market conditions"; and (3) "the extent to which the Commission's anomalous conditions rationale in Opinion No. 531 is intended to reflect changes in its long-standing reliance on the discounted cash flow ("DCF") methodology, and particularly the DCF midpoint, for determining ROE remains unclear." Both the TOs and EEI requested rehearing of the *Base ROE Complaint IV Order*. The FERC denied the requests for rehearing on January 16, 2018.¹⁰

If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com) or Jamie Blackburn (202-218-3905; jblackburn@daypitney.com).

- **Base ROE Complaints I-IV: TOs' Motion to Dismiss or Consolidate Complaints I-IV (EL16-64; EL14-86; EL13-33; EL11-66)**

The TOs' October 5, 2017 motion to dismiss of all four ROE complaints (captioned above) in light of the *Emera Maine*¹¹ decision remains pending. The October 5 motion alternatively requested that the FERC consolidate the four ROE complaints for decision and use expedited procedures to resolve them. The TOs stated that this motion was motivated in part by *Emera Maine*, but also by what they describe as the "enormous investment uncertainty" resulting from the various litigation proceedings. On October 20, Complainant-Aligned Parties and EMCOS submitted answers opposing TOs' requests. The TOs' motion and the motions filed in response are pending before the FERC.

- **206 Proceeding: RNS/LNS Rates and Rate Protocols (EL16-19)**

Settlement discussions in this proceeding are on-going. As previously reported, the FERC instituted this Section 206 proceeding on December 28, 2015, finding that the ISO Tariff is unjust, unreasonable, and unduly discriminatory or preferential because the Tariff "lacks adequate transparency and challenge procedures with regard to the formula rates" for Regional Network Service ("RNS") and Local Network Service ("LNS").¹² The FERC also found that the RNS and LNS rates themselves "appear to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful" because (i) "the formula rates appear to lack sufficient detail in order to determine how certain costs are derived and recovered in the formula rates" and "could result in an over-recovery of costs" due to the "the timing and synchronization of the RNS and LNS rates".¹³ Accordingly, the FERC established hearing and settlement judge procedures to develop just and reasonable formula rate protocols to be included in the ISO-NE Tariff and to examine the justness and reasonableness of the RNS and LNS rates. The FERC

⁹ *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 156 FERC ¶ 61,198 (Sep. 20, 2016) ("*Base ROE Complaint IV Order*"), *reh'g denied*, 162 FERC ¶ 61,035 (Jan. 18, 2018).

¹⁰ *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 162 FERC ¶ 61,035 (Jan. 18, 2018) ("*Base ROE Complaint IV Rehearing Order*").

¹¹ *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*"). *Emera Maine* vacated the FERC's prior orders in the Base ROE Complaint I proceeding, and remanded the case for further proceedings consistent with its order. The Court agreed with both the TOs (that the FERC did not meet the Section 206 obligation to first find the existing rate unlawful before setting the new rate) and "Customers" (that the 10.57% ROE was not based on reasoned decision-making, and was a departure from past precedent of setting the ROE at the midpoint of the zone of reasonableness).

¹² *ISO New England Inc. Participating Transmission Owners Admin. Comm.*, 153 FERC ¶ 61,343 (Dec. 28, 2015), *reh'g denied*, 154 FERC ¶ 61,230 (Mar. 22, 2016).

¹³ *Id.* at P 8.

encouraged the parties to make every effort to settle this matter before hearing procedures are commenced.¹⁴ Hearings continue to be held in abeyance pending the outcome of settlement judge procedures underway.¹⁵ The FERC-established refund date is January 4, 2016.¹⁶

Settlement Judge Procedures. As previously reported, John P. Dring was designated the Settlement Judge in these proceedings. Five settlement conferences were held in 2016: January 19, March 24, April 28, August 30, and November 18 (telephonically); four settlement conferences were held in 2017: April 5, May 9, July 7, and November 13, 2017; and one settlement conference, on January 9, thus far in 2018. An eleventh settlement conference has been scheduled for February 1, 2018. Judge Dring's most recent status report was issued on December 5, noting that the proceeding is taking longer than expected but that the parties are making progress toward settlement. Accordingly, he recommended that the settlement procedures be continued. The Transmission Committee is being kept apprised, as appropriate, of settlement efforts. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Base ROE Complaints II & III (2012 & 2014) (EL13-33 and EL14-86) (consolidated)**

Judge Sterner's findings and Initial Decision, and pleadings in response thereto, remain pending before the FERC. As previously reported, the FERC, in response to second (EL13-33)¹⁷ and third (EL14-86)¹⁸ complaints regarding the TOs' 11.14% Base ROE, issued orders establishing trial-type, evidentiary hearings and separate refund periods. The first, in EL13-33, was issued on June 19, 2014 and established a 15-month refund period of December 27, 2012 through March 27, 2014;¹⁹ the second, in EL14-86, was issued on November 24, 2014, established a 15-month refund period beginning July 31, 2014,²⁰ and, because of "common issues of law and fact", consolidated the two proceedings for purposes of hearing and decision, with the FERC finding it "appropriate for the parties to litigate a separate ROE for each refund period."²¹ The TOs requested rehearing of both orders. On May 14, 2015, the FERC denied rehearing of both orders.²² On July 13, 2015, the TOs appealed those orders to the DC Circuit Court of Appeals (see Section XIV below), and that appeal remains pending.

Hearings and Trial Judge Initial Decision. Initial hearings on these matters were completed on July 2, 2015. In mid-December 2015, Judge Sterner reopened the record for the limited purpose of having the DCF calculations re-run in accordance with the FERC's preferred approach and re-submitted. A limited hearing on

¹⁴ *Id.* at P 11.

¹⁵ *Id.*

¹⁶ The notice of this proceeding was published in the *Fed. Reg.* on Jan. 4, 2016 (Vol. 81, No. 1) p. 89.

¹⁷ The 2012 Base ROE Complaint, filed by Environment Northeast (now known as Acadia Center), Greater Boston Real Estate Board, National Consumer Law Center, and the NEPOOL Industrial Customer Coalition ("NICC", and together, the "2012 Complainants"), challenged the TOs' 11.14% return on equity, and seeks a reduction of the Base ROE to 8.7%.

¹⁸ The 2014 Base ROE Complaint, filed July 31, 2014 by the Massachusetts Attorney General ("MA AG"), together with a group of State Advocates, Publicly Owned Entities, End Users, and End User Organizations (together, the "2014 ROE Complainants"), seeks to reduce the current 11.14% Base ROE to 8.84% (but in any case no more than 9.44%) and to cap the Combined ROE for all rate base components at 12.54%. 2014 ROE Complainants state that they submitted this Complaint seeking refund protection against payments based on a pre-incentives Base ROE of 11.14%, and a reduction in the Combined ROE, relief as yet not afforded through the prior ROE proceedings.

¹⁹ *Environment Northeast v. Bangor Hydro-Elec. Co.*, 147 FERC ¶ 61,235 (June 19, 2014) ("2012 Base ROE Initial Order"), *reh'g denied*, 151 FERC ¶ 61,125 (May 14, 2015).

²⁰ *Mass. Att'y Gen. v. Bangor Hydro*, 149 FERC ¶ 61,156 (Nov. 24, 2014), *reh'g denied*, 151 FERC ¶ 61,125 (May 14, 2015).

²¹ *Id.* at P 27 (for the refund period covered by EL13-33 (i.e., Dec. 27, 2012 through Mar. 27, 2014), the ROE for that particular 15-month refund period should be based on the last six months of that period; the refund period in EL14-86 and for the prospective period, on the most recent financial data in the record).

²² *Environment Northeast, et al. v. Bangor Hydro-Elec. Co., et al. and Mass. Att'y Gen. et al. -v- Bangor Hydro et al.*, 151 FERC ¶ 61,125 (May 14, 2015).

that supplemental information was held on February 1, 2016. On March 22, 2016, Judge Sterner issued his 939-paragraph, 371-page Initial Decision, which lowered the base ROEs for the EL13-33 and EL14-86 refund periods from 11.14% to 9.59% and 10.90%, respectively.²³ The Decision also lowered the ROE ceilings. Judge Sterner's decision, if upheld by the FERC, would result in refunds totaling as much as \$100 million, largely concentrated in the EL13-33 refund period. Briefs on exceptions were filed by the TOs, Complainant-Aligned Parties ("CAPs"), EMCOS, and FERC Trial Staff on April 21, 2016; briefs opposing exceptions, on May 20, 2016. Judge Sterner's findings and Initial Decision, and pleadings in response thereto, remain pending, and will be subject to challenge, before the FERC. The *2012/14 ROE Initial Decision* and its findings can be approved or rejected, in whole or in part.

If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

II. Rate, ICR, FCA, Cost Recovery Filings

- **ICR-Related Values and HQICCs – Annual Reconfiguration Auctions (ER18-371)**

On January 4, the FERC accepted the materials jointly filed by ISO-NE and NEPOOL identifying the Installed Capacity Requirement ("ICR"), Local Sourcing Requirements ("LSR"), Maximum Capacity Limits ("MCL"), Hydro Quebec Interconnection Capability Credits ("HQICCs"), and capacity requirement values for the System-Wide and Marginal Reliability Impact Capacity Demand Curves (collectively, the "ARA Values") for the third Annual Reconfiguration Auction ("ARA") for the 2018-19 Capability Year to be held March 1, 2018, the second ARA for the 2019-20 Capability Year to be held August 1, 2018, and the first ARA for the 2020-21 Capability Year to be held June 1, 2018. The ARA Values were accepted effective as of January 30, 2018, as requested. Unless the January 4 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **FCA12 Qualification Informational Filing (ER18-264)**

On January 19, 2018, the FERC accepted ISO-NE's informational filing for qualification in FCA12 (the "FCA12 Informational Filing").²⁴ As previously reported, FCA12 is scheduled to begin February 5, 2018 and the Informational Filing contained ISO-NE's determinations that the same three Capacity Zones that were modelled for FCA11 will be modelled for FCA12 -- Southeastern New England ("SENE"), Northern New England ("NNE") and Rest of Pool. SENE will again be modeled as import-constrained; NNE will be modeled as export-constrained. The Informational Filing also reported that there will be 35,007 MW of existing capacity in FCA12 competing with 5,605 MW of new capacity under a Net ICR of 33,725 MW (ICR minus HQICCs). ISO-NE reported that there were a total of 2,309 MW of Static, Export, and Administrative Export De-list bids. A summary of the De-list bids accepted and those rejected for reliability purposes was included in a privileged Attachment E to the FCA12 Informational Filing.

In accepting the FCA12 Informational Filing, the FERC rejected the protest by Efficiency Maine Trust and the joint protest by Enerwise Global Technologies, Inc., d/b/a CPower and Tesla, Inc. (together, "CPower"). With respect to the Efficiency Maine Trust protest, the FERC agreed with ISO-NE that Efficiency Maine's "loss with respect to its FCA12 qualification is the result of its business decisions", "Efficiency Maine should have sought to qualify any additional capacity prior to [] additional measures being in service," and "it would be inappropriate ... to require ISO-NE to use Efficiency Maine's proposed methodology for the Efficiency Maine Projects while still using the current Demand Response Methodology for all other energy efficiency resources with expiring measures."²⁵ As for the CPower protest, the FERC rejected the assertion that ISO-NE

²³ *Environment Northeast v. Bangor Hydro-Elec. Co. and Mass. Att'y Gen. v. Bangor Hydro-Elec. Co.*, 154 FERC ¶ 63,024 (Mar. 22, 2016) ("*2012/14 ROE Initial Decision*").

²⁴ *ISO New England Inc.*, 162 FERC ¶ 61,052 (Jan. 19, 2018) ("*FCA12 Info Filing Order*").

²⁵ *Id.* at PP 34-36.

improperly refused to grant CPower's resources RTR designation. Rather, the FERC found that "CPower failed to comply with the Tariff's requirements to obtain RTR designation."²⁶ Unless the *FCA12 Info Filing Order* is challenged, with any challenges due on or before February 19, 2018, this proceeding will be concluded. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Emera MPD OATT Attachment J Revision (ER18-210)**

As previously reported, Emera filed changes on November 1 to Attachment J of the MPD OATT to permit adjustments to formula rate inputs (historical load, revenue, sales data) to reflect "known and measurable" anticipated changes, subject to a true-up. Emera stated that, absent an ability to adjust its formula rate calculations to account for material losses of load, like that of Houlton Water Company expected to occur early next year, Emera Maine will suffer a significant under-recovery in its transmission revenue requirement. A protest was filed by the Maine Customer Group ("MCG"),²⁷ which identified a number of reasons why the asserted that the changes should be rejected, with the principal objection being the fact that "Emera already has a true-up mechanism in place under the MPD OATT to accommodate loss of Houlton load". On December 8, Emera Maine requested that the FERC stay action on its November 1 tariff filing pending Emera Maine's filing of an Answer to the MCG protest.²⁸

On December 19, Emera Maine submitted its answer to the MCG protest and lifted the stay on the filing. In so doing, Emera Maine stated that action on the filing is not needed before January 31, 2018. On January 9, the MCG answered Emera Maine's December 19 answer and request to lift stay. Emera Maine answered MCG's January 9 answer on January 18, 2018. This matter is pending before the FERC. If there are any questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **TOs' Opinion 531-A Compliance Filing Undo (ER15-414)**

Rehearing remains pending of the FERC's October 6, 2017 order rejecting the TOs' June 5, 2017 filing in this proceeding.²⁹ As previously reported, the June 5 filing was designed to reinstate TOs' transmission rates to those in place prior to the FERC's orders later vacated by the DC Circuit's *Emera Maine*³⁰ decision. In its *Order Rejecting Filing*, the FERC required the TOs to continue collecting their ROEs currently on file, subject to a future FERC order.³¹ The FERC explained that it will "order such refunds or surcharges as necessary to replace the rates set in the now-vacated order with the rates that the Commission ultimately determines to be just and reasonable in its order on remand" so as to "put the parties in the position that they would have been in but for [its] error." For the time being, so as not to "significantly complicate the process of putting into effect whatever ROEs the Commission establishes on remand" or create "unnecessary and detrimental variability in rates," the FERC has temporarily left in place the ROEs set in *Opinion 531-A*, pending an order on remand.³² On November 6, the TOs requested rehearing of the *Order Rejecting Filing*. On December 4, 2017, the FERC issued a tolling order providing it additional time to consider the TOs' request for rehearing of the *Order Rejecting Filing*, which remains pending. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

²⁶ *Id.* at PP 58-60.

²⁷ MCG consists of consists of: Maine's Office of the Public Advocate ("MOPA"), Houlton Water Company ("Houlton"), Van Buren Light and Power District ("Van Buren"), and Eastern Maine Electric Cooperative, Inc. ("EMEC").

²⁸ On December 12, Emera Maine re-filed its request with the correct eFiling filing code.

²⁹ *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) ("*Order Rejecting Filing*"), *reh'g requested*.

³⁰ *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*").

³¹ *Order Rejecting Filing* at P 1.

³² *Id.* at P 36.

III. Market Rule and Information Policy Changes, Interpretations and Waiver Requests

- **Waiver Request: Timing of Canal-MA-GHG-Rule-Related Addl. Cost Recovery Filing (GenOn) (ER18-623)**

On January 8, GenOn requested a waiver of certain timing requirements set forth in Market Rule 1 Appendix A Section 15 related to the timing of filings for additional cost recovery that may be made under Section 205 of the FPA if a Market Participant “believes that it will not recover the fuel and variable operating and maintenance costs of the Resource” (“GenOn Request”). Pursuant to Section III.A.15, “a Market Participant may make such a Section 205 filing “within **60 days** of the receipt of the first Invoice issued containing credits or charges for the applicable Operating Day.” GenOn requested waiver of the 60-day and associated deadlines in order to allow for the purchase of MA GHG Allowances associated with the Canal unit for which it is the lead Participant, up to the March 1, 2019 compliance deadline under the MA GHG Rule, and the submission of an additional cost recovery filing as late as (but no later than) April 30, 2019. GenOn stated that ISO-NE and the Internal Market Monitor (“IMM”) support the requested waiver, with the understandings and limitations set forth in its request. GenOn requested expedited action on its request, issuance of an order granting its request on or before February 2, 2018, and a shortened comment period. Comments on the GenOn Request were due on or before January 19. Public Citizen protested GenOn’s Request on January 19. GenOn answered the Public Citizen protest on January 24. Doc-less interventions were filed by ISO-NE, NEPOOL and Direct Energy, and Energy New England (“ENE”). This matter is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CSO Termination: Blue Sky West (ER18-704)**

Pursuant to Market Rule 1 § 13.3.4(c), ISO-NE filed on January 23 to terminate a portion of the CSO held by Project Sponsor Blue Sky West (“BSW”) for Resource No. 37105, BSW’s Bingham, ME wind generation facility. ISO-NE explained that the involuntary termination was for the portion of the CSO that had not achieved commercial operation and had not been covered by BSW. ISO-NE terminated the portion of the CSO for the FCA8 through FCA11 Capacity Commitment Periods concurrently with the termination filing. ISO-NE indicated that, upon FERC acceptance of the filing, it will draw down the amount of financial assurance provided by BSW with respect to the portion of the CSO to be terminated. Comments on this filing are due on or before February 13. On January 29, BSW filed an emergency motion asking the FERC to immediately reinstate the portion of BSW’s CSO involuntarily terminated by ISO-NE on Jan 23 pending resolution of this CSO Termination Filing (which BSW plans to protest). The Emergency Motion presents a threshold issue of first impression, namely whether the involuntary termination of all or a portion of a CSO may become effective upon ISO-NE submission of an involuntary termination filing with the FERC (as ISO-NE asserts) or upon resolution of the involuntary termination filing (as Blue Sky West asserts). The distinction impacts the MWs with which Blue Sky West will be eligible to participate in FCA12. ISO-NE answered the Emergency Motion on January 31. Any further answers to the Emergency Motion are due at or before 10am on February 1. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Updated Dynamic De-List Bid Threshold (ER18-620)**

On January 8, ISO-NE and NEPOOL jointly filed changes to reduce the FCM Dynamic De-List Bid Threshold (“DDBT”),³³ beginning with FCA13, to \$4.30/kW-mo. ISO-NE and NEPOOL requested that lower DDBT become

³³ The FCM Dynamic De-List Bid Threshold is an IMM-established value below which existing resources that have chosen to be price takers in an Forward Capacity Auction (“FCA”) can opt to leave the auction without further review by the IMM. The Dynamic De-List Bid Threshold is designed to prevent the exercise of market power by maximizing the likelihood that the IMM reviews the pricing competitiveness of all bids from existing resources in a position to increase the clearing price (exercise market power) by leaving the FCA. The Tariff requires that the threshold price be re-set no less than once every three years. In the January 8 filing, ISO-NE committed to recalculate the Dynamic De-List Bid Threshold for FCA15 to reflect the change in the Capacity Performance Payment Rate scheduled to be in place for FCA15.

effective March 9, 2018 (coincident with the start of the FCA13 qualification period). The updated DDBT was supported by the Participants Committee at the November 3 meeting (Agenda Item #6). On January 23, ISO-NE submitted supplemental information to clarify the “impact of potential capacity retirements for its argument that recent capacity surpluses warrant a reduction in the DDBT.” Comments on this filing were due on or before January 29, 2018. Protests were filed by NEPGA and PSEG. Doc-less interventions were filed by Calpine, Cogentrix, ConEd, ENE, Dominion, ENE, Eversource, FirstLight, National Grid, NESCOE, NextEra, NRG, and Public Citizen. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **CASPR (ER18-619)**

Also on January 8, ISO-NE filed its Competitive Auctions with Sponsored Policy Resources (“CASPR”) Proposal. ISO-NE stated that its CASPR proposal is designed “to meet the region’s objectives of accommodating the entry of sponsored new resources into the FCM over time and maintaining competitive capacity pricing.” ISO-NE stated that wherever possible, it had prioritized the preservation of competitive prices in the FCM, and the Market Rules proposed include “financial incentives for existing resources to transfer their capacity obligations to new sponsored policy resources and to permanently exit the capacity market.” ISO-NE requested that the bulk of the CASPR rules become effective on March 9, 2018 (coincident with the beginning of the approximately year-long auction-administration cycle for FCA13), with the remainder to become effective on June 1, 2018 (for a small number of Tariff changes related to FCM settlements, where changes to become effective on June 1, 2018 are already pending). The Participants Committee considered but did not support the CASPR Proposal at its December 8 Annual Meeting.

Comments on this filing were due on or before January 29, 2018 and were filed by NEPOOL, Calpine, CPV Towantic, Dominion, the EMM (out-of-time), Exelon, FirstLight, NECOS, NEPGA, NextEra, NRG, Public Systems, Verso, CT PURA/DEEP/OCC, MA AG, MA DPU, MPUC, NHPUC, NESCOE, AEMA, APPA, Clean Energy Advocates, NGSa, Public Citizen, and RESA. A high level summary of those pleadings has been separately prepared and is being circulated and posted with this Report. Entities that intervened, but that did not submit comments and/or protests either individually or as part of a group, included: Avangrid, AWEA, Champlain VT, ConEd, CT PURA, Direct Energy, Dynegy, EEI, Emera, ENE, EPSA, Eversource, HQUS, LS Power, National Grid, NRECA, and PSEG. This matter is now pending before the FERC. If you have any questions concerning this proceeding, please contact Dave Doot (860-275-0102; dttdoot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **ART Market Rule Changes (ER18-455)**

On December 15, 2017, as corrected by ISO-NE on December 20,³⁴ ISO-NE and NEPOOL jointly filed changes to establish a new capacity market bilateral transaction -- an Annual Reconfiguration Transaction (“ART”) and to make other changes to the FCM rules (“ART Market Rule Changes”). ISO-NE and NEPOOL requested that the ART Market Rule Changes become effective in two stages, with most of the rule changes becoming effective on March 1, 2018 and the remainder becoming effective on June 1, 2018. The ART Market Rules Changes were supported by the Participants Committee at the November 3 meeting (Agenda Item #7). Comments on this filing, as corrected, were due on or before January 10, 2018. Two protests, on limited aspects of the Changes, were filed by (i) FirstLight (which, as it did at the November 3 meeting, protested the proposed exemption for deficiencies of less than 2 MW in the significant decrease provisions) and (ii) jointly by Exelon, CPV Towantic and NRG (“Indicated Generators”), who asked that the proposed “Required Demand Bid change”³⁵ take effect in the third ARA for FCA9, which will be held in March 2018, rather than in the ARA3 for FCA11. Doc-less interventions were filed by Brookfield, ConEd, Dominion, Eversource, National Grid, NESCOE, and PSEG (out-of-time). On

³⁴ On December 20, 2017, ISO-NE submitted an errata filing to correct the clean Tariff sheets to be posted in eLibrary. The comment deadline was thereby effectively extended to January 10, 2018.

³⁵ The “Required Demand Bid change” is the ISO-NE proposal to submit a demand bid in the third ARA (“ARA3”) only in those cases when there is a significant decrease in the capacity resource’s ability to fulfill its Capacity Supply Obligation (“CSO”) in all 12 months of the Capacity Commitment Period (“CCP”), beginning with ARA3 for FCA11.

January 25, NEPOOL and ISO-NE answered the FirstLight and Indicated Generators' protests. On January 29, FirstLight answered ISO-NE's January 25 answer. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Waiver Request: DR Auditing Requirements (CPower) (ER18-185)**

On January 25, the FERC denied the October 20, 2017 request by Enerwise Global Technologies Inc. d/b/a CPower Corp. ("CPower") for a one-time waiver of Tariff Sections III.13.6.1.5.4.1(c) and III.13.6.1.5.4.5 (which would have allowed ISO-NE to use July 26 Real-Time Demand Response ("RTDR") resource audit results as CPower's July 2017 Demand Reduction Value, rather than Jul 19 results which, because of a "communications software anomaly", produced "zero" reduction performance results).³⁶ In denying the waiver request, the FERC, agreeing with ISO-NE, found that CPower's waiver request was not of limited scope, would have undesirable consequences, and was distinguishable from other proceedings where the FERC had granted waiver.³⁷ Unless the January 25 order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CONE & ORTP Updates (ER17-795)**

Rehearing remains pending of the FERC's October 6 order accepting updated FCM Cost of New Entry ("CONE"), Net CONE and Offer Review Trigger Price ("ORTP") values filed by ISO-NE in January.³⁸ In accepting the changes, the FERC disagreed with the challenges to ISO-NE's choice of reference technology (gas-fired simple cycle combustion-turbine) and on-shore wind capacity factor (32%). The changes were accepted effective as of March 15, 2017, as requested. On November 6, NEPGA requested rehearing of the *CONE/ORTP Updates Order*. On December 4, 2017, the FERC issued a tolling order providing it additional time to consider NEPGA's request for rehearing of the *CONE/ORTP Updates Order*, which remains pending. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **2013/14 Winter Reliability Program Remand Proceeding (ER13-2266)**

Still pending before the FERC is ISO-NE's compliance filing in response to the FERC's August 8, 2016 remand order.³⁹ In the *2013/14 Winter Reliability Program Remand Order*, the FERC directed ISO-NE to request from Program participants the basis for their bids, including the process used to formulate the bids, and to file with the FERC a compilation of that information, an IMM analysis of that information, and the ISO's recommendation as to the reasonableness of the bids, so that the FERC can further consider the question of whether the Bid Results were just and reasonable.⁴⁰ ISO-NE submitted its compliance filing on January 23, 2017, reporting the IMM's conclusion that "the auction was not structurally competitive and a 'small proportion' of the total cost of the program may be the result of the exercise of market power" but that the "vast majority of supply was offered at prices that appear reasonable and that, for a number of reasons, it is difficult to assess the impact of market power on cost." Based on the IMM and additional analysis, the ISO recommended that "there is insufficient demonstration of market power to warrant modification of program."

³⁶ *Enerwise Global Technologies, Inc.*, 162 FERC ¶ 61,057 (Jan. 25, 2018).

³⁷ *Id.* at P 12.

³⁸ *ISO New England Inc.*, 161 FERC ¶ 61, 035 (Oct. 6, 2017) ("*CONE/ORTP Updates Order*"), *reh'g requested*.

³⁹ *ISO New England Inc.*, 156 FERC ¶ 61,097 (Aug. 8, 2016) ("*2013/14 Winter Reliability Program Remand Order*"). As previously reported, the DC Circuit remanded the FERC's decision in ER13-2266, agreeing with TransCanada that the record upon which the FERC relied is devoid of any evidence regarding how much of the 2013/14 Winter Reliability Program cost was attributable to profit and risk mark-up (without which the FERC could not properly assess whether the Program's rates were just and reasonable), and directing the FERC to either offer a reasoned justification for the order in ER13-2266 or revise its disposition to ensure that the Program rates are just and reasonable. *TransCanada Power Mktg. Ltd. v. FERC*, 2015 U.S. App. LEXIS 22304 (D.C. Cir. 2015).

⁴⁰ *2013/14 Winter Reliability Program Remand Order* at P 17.

In February 13 comments, both TransCanada and the MA AG protested ISO-NE's conclusion and recommendation that modification of the program was unwarranted. TransCanada requested that FERC establish a settlement proceeding where market participants could "exchange confidential information to determine what the rates should be" and refunds and "such other relief as may be warranted" provided. On February 28, ISO-NE answered the TransCanada and MA AG protests. On March 10, 2017, TransCanada answered ISO-NE's February 28 answer. This matter is pending before the FERC. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

IV. OATT Amendments / TOAs / Coordination Agreements

No Activity to Report

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

- **Schedule 20A-GMP Brookfield Complaint (EL18-52)**

As previously reported, Brookfield Energy Marketing LP ("Brookfield") filed a complaint on December 18, 2017 ("Brookfield Complaint") requesting that the FERC confirm the validity of its 10-year Phase I/II transmission service request ("TSR") and require Green Mountain Power ("GMP"), the Schedule 20A Service Provider, to allocate 46 MW of Available Transfer Capability ("ATC") at issue in accordance with the procedures set forth in Schedule 20A. Brookfield claimed that GMP rejected the TSR because the TSR sought service for a duration in excess of the one-year offering GMP posted on OASIS and because GMP claims that its contractual rights to market the ATC at issue are limited to the one-year time period that was posted. Brookfield requested expedited consideration of the Complaint and a FERC order by December 31, 2017, pursuant to the FERC's Fast Track procedures. On December 19, GMP opposed Brookfield request for Fast Track processing, which Brookfield answered on December 20, 2017. On December 20, the FERC issued a notice of the Complaint, which set the comment date at January 8, 2017.

Answers and protests to the Brookfield Complaint were filed by GMP, the Interconnection Rights Holders Management Committee ("IRH"), ENE, MAG Energy Solutions, and Unifil/Fitchburg. Doc-less interventions were submitted by the Eversource, HQUS, National Grid, Ontario Power, and the Schedule 20A Service Providers.⁴¹ However, on January 19, Brookfield withdrew its Complaint. This proceeding is therefore concluded. If there are questions on this proceeding, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Schedule 21-ES: PSNH/VEC LSA (ER18-745)**

On January 30, 2018, ISO-NE and Eversource, on behalf of PSNH, filed a non-conforming three-party Local Service Agreement ("LSA") between Vermont Electric Cooperative ("VEC"), PSNH and ISO-NE for Non-Firm Local Point-to-Point Service under Schedule 21-ES. The LSA is non-conforming in that it contains provisions reflecting a long-standing agreement between PSNH and VEC to provide each other with back-up transmission service. A January 1, 2018 effective date was requested. Comments on this filing are due on or before February 20. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

⁴¹ "Schedule 20A Service Providers" are self-described as "those public utility transmission providers who hold the rights to the transmission capacity over the [HQ Interconnection] and who make those rights available on an open-access basis to transmission customers under Schedule 20A of the ISO-NE OATT" and "a subset of the IRH."

- **Schedule 21-EM: Stored Solar J&WE LSA (ER18-387)**

On December 5, Emera Maine and ISO-NE filed an LSA by and among Emera Maine, Stored Solar J&WE, and ISO-NE for Local Non-Firm Point-to-Point Transmission Service under Schedule 21-EM of the ISO-NE OATT (the “Stored Solar LSA”). The LSA extends the same discounted service rate to Stored Solar that was offered to its predecessors, Indeck Maine and Covanta Maine. A January 1, 2016 effective date (the date Stored Solar acquired the Jonesboro facility) was requested. Emera Maine and ISO-NE resubmitted the filing on December 13 to include a clean version of the Stored Solar LSA that was inadvertently not included in the December 5 filing. Comments on the LSA were due on or before December 26, 2017; comments on the first supplement were due January 3. No comments were filed on either of those filings. On January 3, ISO-NE and Emera Maine submitted a second supplement. The second supplement made additional corrections to the filing and included an elaboration by Emera Maine on why time value of money refunds are not appropriate under the circumstances presented by this matter. Comments on the second supplement were due on or before January 24; none were filed. This matter is pending before the FERC. If there are any questions on these matters, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 22: Clear River LGIA (ER18-349)**

On January 26, the FERC accepted the unexecuted Large Generator Interconnection Agreement (“LGIA”) by and among ISO-NE, New England Power Company (“NEP” or “National Grid”) and Clear River that will govern the interconnection of Clear River’s proposed new Large Generating Facility to be located in Burrillville, Rhode Island (the “Clear River Project”).⁴² The LGIA was accepted effective as of January 29, 2018, the 61st day from the date of filing (and not November 30, 2017 as had been requested). In accepting the LGIA, the FERC found the LGIA just and reasonable and that both ISO-NE and National Grid had complied with the ISO-NE Tariff with regard to the Clear River LGIA. With respect to the issues contested in the proceeding, the FERC found: (i) the LGIA’s milestone dates, by which the notice to proceed must be issued and security posted, just and reasonable; without merit Clear River’s arguments that it could exercise an option to build the interconnecting transmission owner’s Interconnection Facilities; (iii) Clear River was provided with all of the study data that it was entitled to receive; and (iv) the interconnection-related facilities and Network Upgrades necessitated by the Clear River Project were properly identified and restudies not required. The FERC encouraged the parties to reach an agreement as to how to adjust the schedule as needed and noted that its determination in this case should not be read as prejudging the resolution of any substantive issue in the Schedule 11 O&M Complaint (which, as noted above, has been withdrawn). Unless the *Clear River LGIA Order* is challenged, this proceeding will be concluded. If there are questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Schedule 21-NEP: National Grid/Granite Reliable Power RFA (ER18-346)**

On January 24, the FERC accepted a Related Facilities Agreement (“RFA”) between New England Power and Granite Reliable Power, LLC (“Granite Reliable Power”) that addresses costs associated with upgrades to NEP’s equipment at the Moore Generating Station and modifications to NEP’s protection system in connection with the Dummer, New Hampshire interconnection of Granite Reliable Power’s 99 MW wind generation facility. The RFA was accepted effective November 1, 2017, as requested. Unless the January 24 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Schedule 21-EM: Recovery of Bangor Hydro/Maine Public Service Merger-Related Costs (ER15-1434 et al.)**

On June 2, 2016, the FERC accepted, but established hearing and settlement judge procedures for,⁴³ March 31 filings by Emera Maine in which Emera Maine sought authorization to recover certain merger-

⁴² *ISO New England Inc.*, 162 FERC ¶ 61,058 (Jan. 26, 2018) (“*Clear River LGIA Order*”).

⁴³ *Emera Maine and BHE Holdings*, 155 FERC ¶ 61,230 (June 2, 2016) (“*June 2 Order*”).

related costs viewed by the FERC's Office of Enforcement's Division of Audits and Accounting ("DAA") to be subject to the conditions of the orders authorizing Emera Maine's acquisition of, and ultimate merger with, Maine Public Service ("Merger Conditions"). As previously reported, the Merger Conditions imposed a hold harmless requirement, and required a compliance filing demonstrating fulfillment of that requirement, should Emera Maine seek to recover transaction-related costs through any transmission rate. Following its recent audit of Emera Maine, DAA found that Emera Maine "inappropriately included the costs of four merger-related capital initiatives in its formula rate recovery mechanisms" and "did not properly record certain merger-related expenses incurred to consummate the merger transaction to appropriate non-operating expense accounts as required by [FERC] regulations [and] inappropriately included costs of merger-related activities through its formula rate recovery mechanisms" without first making a compliance filing as required by the merger orders.

In the *June 2 Order*, the FERC found that the Compliance Filings raise issues of material fact that could not be resolved based on the record, and are more appropriately addressed in the hearing and settlement judge procedures.⁴⁴ The FERC reiterated several points with respect to transaction-related cost recovery explained in prior FERC orders and provided guidance on other transaction-related cost recovery points.⁴⁵ The FERC encouraged the parties to make every effort to settle their disputes before hearing procedures are commenced, and will hold the hearing in abeyance pending the outcome of settlement judge procedures.⁴⁶ The separate compliance filing dockets were consolidated for the purposes of settlement, hearing and decision.⁴⁷

Settlement Judge Procedures. ALJ John Dring is the settlement judge for these proceedings. There have been five settlement conferences: three in 2016 -- June 29, October 25, and December 1; and two in 2017 -- September 6 and November 9, 2017. In his most recent January 18, 2018 status report, Judge Dring found that the parties continue to make progress toward settlement, and recommended that settlement procedures (which are on-going) be continued.

Hearing Procedures? On October 11, Emera Maine requested that the Chief Judge establish an expedited hearing under specific terms and conditions set forth in Exhibit A to its October 11 motion ("Expedited Hearing"). The October 11 motion also asked that the answer period to its request be shortened to five days and that an order ruling on the motion be issued no later than October 18, 2017. On October 13, the Maine Customer Group, MPUC, ReEnergy Biomass Operations LLC, and FERC Trial Staff (collectively, "Intervenors and FERC Trial Staff"), filed an answer opposing the October 11 motion's request for a shortened answer period. On October 13, Chief Judge Cintron issued an order ("October 13 Order") which denied the request to shorten the answer period and identified additional questions that all participants in the proceeding were permitted the opportunity to address in their answers to the October 11 motion. Responses to the October 13 Order were filed by Emera Maine, Maine PUC/OPA, Maine Customer Group, and FERC Trial Staff ("October 26 Responses"). On November 13, Emera Maine responded to the October 26 Responses. The October 11 motion, October 26 Responses and Emera Maine's answer to the October 26 Responses are pending before Chief Judge Cintron.

If you have any questions concerning these matters, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

⁴⁴ *Id.* at P 24.

⁴⁵ *Id.* at PP 25-26.

⁴⁶ *Id.* at P 27.

⁴⁷ *Id.* at P 21; Ordering Paragraph (B).

- **Schedule 21-GMP Annual Forecast Informational Filing (ER12-2304)**

On January 16, 2018, GMP submitted its annual forecast informational filing containing cost estimates for the January 1, 2018 through December 31, 2018 service year. GMP stated that the filing complies with the requirements of Section 4 of Schedule 21-GMP. GMP noted that the informational filing reflects a material accounting change to adjust the 2018 charges billed under the Formula Rate in connection with the sale of its share of the Highgate facility.⁴⁸ The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-VEC: VEC/PSNH LSA (NJ18-10)**

On January 30, 2018, ISO-NE and VEC filed a non-conforming three-party LSA between VEC, PSNH and ISO-NE for Non-Firm Local Point-to-Point Service under Schedule 21-VEC. The LSA is non-conforming in that it contains provisions reflecting a long-standing agreement between PSNH and VEC to provide each other with back-up transmission service. The Agreement is docketed in an "NJ" docket due to VEC's representation that it is not a public utility subject to the obligations of Section 205 of the FPA. VEC asked that, if the filing of this rate schedule is not required (because, although VEC is the provider of service, VEC is not a public utility and the rates and charges for service do not affect regional service provided or are not collected by ISO-NE), the FERC reject the filing as moot or alternatively, give further guidance on how such agreements that are non-conforming should be handled in the future. A January 1, 2018 effective date was requested. Comments on this filing are due on or before February 20. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

VII.	NEPOOL Agreement/Participants Agreement Amendments
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No Activity to Report

VIII.	Regional Reports
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- **LFTR Implementation: 37th Quarterly Status Report (ER07-476; RM06-08)**

ISO-NE filed the 37th of its Quarterly Status Reports regarding LFTR implementation on January 16, 2018. ISO-NE again reported its plan to focus on implementation of the monthly reconfiguration auctions (accepted in ER12-2122). ISO-NE reported that the Participants Committee supported its revised monthly ARA financial assurance design (January 5 meeting, agenda item #5) and is evaluating when it will file that design based on implementation timing. ISO-NE went on to explain how and when it will renew efforts to address the financial assurance issues associated with LFTRs. These status reports are not noticed for public comment.

- **Opinion 531-A Local Refund Report: FG&E (EL11-66)**

FG&E's June 29, 2015 refund report for its customers taking local service during *Opinion 531-A's* refund period remains pending. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Opinions 531-A/531-B Regional Refund Reports (EL11-66)**

The TOs' November 2, 2015 refund report documenting resettlements of regional transmission charges by the ISO in compliance with *Opinions No. 531-A*⁴⁹ and *531-B*⁵⁰ also remains pending. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

⁴⁸ See *Green Mountain Power Corp. and Vt. Transco, LLC*, 161 FERC ¶ 62,175 (Dec. 6, 2017).

⁴⁹ *Martha Coakley, Mass. Att'y Gen.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) ("*Opinion 531-A*").

⁵⁰ *Martha Coakley, Mass. Att'y Gen.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) ("*Opinion 531-B*").

- **Opinions 531-A/531-B Local Refund Reports (EL11-66)**

The *Opinions 531-A and 531-B* refund reports filed by the following TOs for their customers taking local service during the refund period also remain pending before the FERC:

- ◆ Central Maine Power
- ◆ Emera Maine
- ◆ Eversource
- ◆ National Grid
- ◆ NHT
- ◆ NSTAR
- ◆ United Illuminating
- ◆ VT Transco

If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **IMM Quarterly Markets Reports - Summer 2017 (ZZ17-4)**

On December 20, the IMM filed with the FERC its report for the Summer quarter of 2017 of “market data regularly collected by [it] in the course of carrying out its functions under ... Appendix A and analysis of such market data,” as required pursuant to Section 12.2.2 of Appendix A to Market Rule 1. These filings are not noticed for public comment by the FERC, but the Summer 2017 was discussed with the Markets Committee at its January 9 meeting.

IX. Membership Filings

- **February 2018 Membership Filing (ER18-767)**

On January 31, NEPOOL requested that the FERC accept the termination of the Participant status of Emera Energy Services Subsidiaries Nos. 10, 13 and 14 [Related Persons to Emera Maine (Transmission Sector)]; Epico USA (AR Sector RG Sub-Sector, Small RG Group members); Shipley Choice (Supplier Sector); and WMECO [former Related Person to Eversource (Transmission Sector)]. Comments on the February Membership filing are due on or before February 21.

- **January 2018 Membership Filing (ER18-539)**

As previously reported, NEPOOL requested on December 26 that the FERC accept the termination of the Participant status of Aspurity Energy (Supplier Sector), Constellation Energy Services [Related Person to Exelon Generation Company (Supplier Sector) and Noble Americas Power & Gas [Related Person to Mercuria Energy America (Supplier Sector)]. On January 5, NEPOOL amended its December 26 filing to change the requested effective date for the termination of the Participant status of Constellation Energy Services to February 1, 2018. Comments on the amended December Membership filing were due on or before January 26. None were filed. The January membership filing, as amended, is pending before the FERC.

- **December 2017 Membership Filing (ER18-353)**

On January 4, 2018, the FERC accepted (i) the memberships of Fusion Solar Center (Related Person to Deepwater Wind Rhode Island (AR Sector) and Josco Energy MA (Supplier Sector); and (ii) the name change of Supplier Sector member Summer Energy Northeast (f/k/a REP Energy).

- **Suspension Notices (not docketed)**

Since the last Report, the ISO filed, pursuant to Section 2.3 of the Information Policy, a notice with the FERC noting that the following Participant was suspended from the New England Markets on the date indicated (at 8:30 a.m.) due to a Payment Default:

<i>Date of Suspension/ FERC Notice</i>	<i>Participant Name</i>	<i>Date Reinstated</i>
Jan 12/17	AmericaWide Energy	--

Suspension notices are for the FERC’s information only and are not docketed or noticed for public comment.

X. Misc. - ERO Rules, Filings; Reliability Standards

Questions concerning any of the ERO Reliability Standards or related rule-making proceedings or filings can be directed to Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **NOPR: Cyber Security Incident Reporting Reliability Standards (RM18-2)**

On December 21, 2017 the FERC issued a NOPR proposing to direct NERC to develop and submit modifications to the Critical Infrastructure Protection (“CIP”) Reliability Standards to improve the reporting of Cyber Security Incidents, including incidents that might facilitate subsequent efforts to harm the reliable operation of the bulk electric system (e.g. incidents that compromise, or attempt to compromise, a responsible entity’s Electronic Security Perimeter (“ESP”) or associated Electronic Access Control or Monitoring Systems (“EACMS”)).⁵¹ The mandatory reporting requirements are intended to improve awareness of existing and future cyber security threats and potential vulnerabilities. The reports would continue to go to the Electricity Information Sharing and Analysis Center (“E-ISAC”), but reports would also go to the Industrial Control Systems Cyber Emergency Response Team (“ICS-CERT”), with an annual, public, and anonymized summary of the reports. Comments on the *Cyber Security Incident Reporting NOPR* are due on or before February 26, 2018.⁵² Since the last Report, one set of comments, from J. Applebaum, were received.

- **NOPR: Revised Reliability Standards: CIP-005-6, CIP-010-3, CIP-013-1 (RM17-13)**

On January 18, 2018, the FERC issued a NOPR proposing to approve revised CIP Reliability Standards -- CIP-005-6 (Cyber Security – Electronic Security Perimeter(s)), CIP-010-3 (Cyber Security – Configuration Change Management and Vulnerability Assessments) and CIP-013-1 (Cyber Security – Supply Chain Risk Management) (together, the “Supply Chain Cybersecurity Risk Management Changes”).⁵³ The Supply Chain Cybersecurity Risk Management Changes are designed to further mitigate cybersecurity risks associated with the supply chain for BES Cyber Systems, consistent with *Order 829*. With respect to the proposed Reliability Standards’ implementation plan and effective date, the FERC proposed to reduce the implementation period as proposed by NERC to the first day of the first calendar quarter that is 12 months following the effective date of a FERC order. In addition, the FERC proposed to direct NERC (i) to develop modifications to the CIP Reliability Standards to include Electronic Access Control and Monitoring Systems (“EACMS”) associated with medium and high impact BES Cyber Systems within the scope of the supply chain risk management Reliability Standards; (ii) to evaluate the cyber security supply chain risks presented by Physical Access Control Systems (“PACS”) and Protected Cyber Assets (“PCAs”) in the study of cyber security supply chain risks requested by the NERC Board of Trustees (“BOT”) in its resolutions of August 10, 2017; and (iii) to file the BOT-requested study’s interim and final reports with the FERC upon their completion. Comments on the *Supply Chain Risk Management Standards NOPR* are due on or before March 26, 2018.⁵⁴

- **Order 840: Revised Reliability Standards: EOP-004-4, EOP-005-3, EOP-006-3, EOP-008-2 (RM17-12)**

On January 18, 2018, the FERC approved Emergency Preparedness and Operations (“EOP”) Reliability Standards EOP-004-4 (Event Reporting), EOP-005-3 (System Restoration from Blackstart Resources), EOP-006-3 (System Restoration Coordination), and EOP-008-2 (Loss of Control Center Functionality) (together, the “EOP

⁵¹ *Cyber Security Incident Reporting Reliability Standards*, 161 FERC ¶ 61,291 (Dec. 21, 2017) (“*Cyber Security Incident Reporting NOPR*”).

⁵² The *Cyber Security Incident Reporting NOPR* was published in the Fed. Reg. on Dec. 28, 2017 (Vol. 82, No. 248) pp. 61,499-61,505.

⁵³ *Supply Chain Risk Management Reliability Standards*, 162 FERC ¶ 61,044 (Jan. 18, 2018) (“*Supply Chain Risk Management Standards NOPR*”).

⁵⁴ *Supply Chain Risk Management Reliability Standards NOPR* was published in the Fed. Reg. on Jan. 25, 2018 (Vol. 83, No. 17) pp. 3,433-3,442.

Changes”).⁵⁵ In addition, the FERC approved the associated VRFs, VSLs, implementation plans, effective dates, and retirements of the currently-effective versions of the Standards immediately prior to the effective dates of the new Standards. The EOP Changes are designed to incorporate several recommendations resulting from a periodic review of the Standards, changes to eliminate inaccurate or duplicate reporting of events identified in the Department of Energy’s (“DOE”) Electric Emergency Incident and Disturbance Report (OE-417) and Attachment 1 to EOP-004, and to improve the Standards by enhancing the requirements for emergency operations, including the communication and coordination amongst reporting entities. *Order 840* will become effective on March 26, 2018.⁵⁶

- **NOPR: Revised Reliability Standard: CIP-003-7 (RM17-11)**

On October 19, 2017 the FERC issued a NOPR proposing to approve changes to Reliability Standard CIP-003 (Cyber Security - Security Management Controls), its associated implementation plan, VRFs, VSLs, and revised NERC Glossary definitions of “Removable Media” and “Transient Cyber Asset”, and the retirement of the currently-effective version of CIP-003 and the NERC Glossary definitions of “Low Impact External Routable Connectivity” and “Low Impact BES Cyber System Electronic Access Point” (“CIP-003 Changes”).⁵⁷ The CIP-003 Changes (i) clarify the electronic access control requirements applicable to low impact BES Cyber Systems; (ii) add requirements related to the protection of transient electronic devices used for low impact BES Cyber Systems (e.g., thumb drives, laptop computers, and other portable devices frequently connected to and disconnected from systems); and (iii) require Responsible Entities to have a documented cyber security policy related to declaring and responding to CIP Exceptional Circumstances for low impact BES Cyber Systems. In addition, the FERC proposes to direct NERC to develop certain modifications to the NERC Reliability Standards to provide clear, objective criteria for electronic access controls for low impact BES Cyber Systems; and address the need to mitigate the risk of malicious code that could result from third-party transient electronic devices. The proposed implementation plan provides that the CIP-003-Changes become effective on the first day of the first calendar quarter that is 18 calendar months after the effective date of the FERC’s order approving the CIP-003 Changes. Comments on the *CIP-003-7 NOPR* were due on or before December 26, 2017,⁵⁸ and were filed by NERC, ELCON, TAPS, and Trade Associations⁵⁹ (each urging the FERC to approve the CIP-003 Changes without directives or conditions) and by an individual, Jonathan Applebaum, who submitted comments limited to, and contesting the sufficiency of, the proposed electronic access controls requirement. This matter is pending before the FERC.

- **NOPR: New Reliability Standards: PRC-027-1 and PER-006-1 (RM16-22)**

On November 16, 2017 the FERC issued a NOPR proposing to (i) two new Reliability Standards -- PRC-027-1 (Coordination of Protection Systems for Performance During Faults) and PER-006-1 (Specific Training for Personnel), (ii) associated Glossary definitions, (iii) an implementation plan, (iv) VRFs and VSLs, and (v) the retirement of PRC-001-1.1(ii) (together, the “Protection System Changes”). In addition, the FERC proposes to direct NERC to develop certain modifications to PRC-027-1. NERC stated that the purpose of the Protection System Changes is to: (1) maintain the coordination of Protection Systems installed to detect and isolate Faults on Bulk Electric System (“BES”) Elements, such that those Protection Systems operate in the intended sequence during Faults; and (2) require registered entities to provide training to their relevant personnel on Protection Systems and Remedial Action Schemes (“RAS”) to help ensure that the BES is reliably operated. NERC requested that the new Standards and definitions become effective on the first day of the first calendar quarter that is 24 months following the effective date of the FERC’s order approving the Standards. Comments on the *Protection*

⁵⁵ *Emergency Preparedness and Ops. Rel. Standards*, Order No. 840, 162 FERC ¶ 61,020 (Jan. 18, 2018) (“*Order 840*”).

⁵⁶ The *EOP NOPR* was published in the Fed. Reg. on Sep. 26, 2017 (Vol. 82, No. 185) pp. 44,746-44,750.

⁵⁷ *Rev. Critical Infrastructure Protection Rel. Standard CIP-003-7 – Cyber Security – Security Management Controls*, 161 FERC ¶ 61,047 (Oct. 19, 2017) (“*CIP-003-7 NOPR*”).

⁵⁸ The *CIP-007-3 NOPR* was published in the Fed. Reg. on Oct. 26, 2017 (Vol. 82, No. 206) pp. 49,541-49,549.

⁵⁹ “Trade Associations” are the American Public Power Association (“APPA”), Edison Electric Institute (“EEI”) and the National Rural Electric Cooperative Association (“NRECA”).

System Changes NOPR were due on or before January 29, 2018⁶⁰ and were filed by over 12 parties. The Protection System Changes are pending before the FERC.

- **Rules of Procedure Changes (RR18-1)**

On November 21, 2017, NERC filed for approval revisions to Appendix 3D (Registered Ballot Body Criteria) of the NERC Rules of Procedure (“ROP”). NERC stated that the purpose of the proposed revisions is to help ensure that the votes of Independent System Operators (“ISOs”) and Regional Transmission Organizations (“RTOs”) are appropriately represented in Segment 2 of NERC’s registered ballot body for voting on Reliability Standards. Specifically, the revisions limit participation in “Segment 2” to RTO/ISOs exclusively, excluding other individuals and entities who may be consultants or vendors to RTO/ISOs from participating in that Segment. NERC requested that the proposed revisions be made effective upon FERC approval. Comments on this filing were due on or before December 12, 2017; none were filed. Dominion filed a doc-less intervention. This matter is pending before the FERC.

- **Rules of Procedure Changes (RR17-6)**

On June 26, 2017, NERC filed for approval revisions to Sections 600 (Personnel Certification Program) and 900 (Training and Education) of the NERC Rules of Procedure (“ROP”). The purpose of the revisions is to (i) clarify the scope of the Personnel Certification Program, the Training and Education Program and the Continuing Education Program; and (ii) streamline and align the language of the ROP with current practices of those programs. NERC stated that the changes are part of its first comprehensive review to modernize and align the language of the ROP with current NERC practices. NERC requested that the proposed revisions be made effective upon FERC approval. Comments on this filing were due on or before July 17, 2017 and were filed jointly by the Alberta Electric System Operator (“AESO”), The California Independent System Operator (“CAISO”), The Independent Electricity System Operator (“IESO”), ISO-NE and PJM (“System Operators”). System Operators, while agreeing that changes to Sections 600 and 900 are needed, nevertheless disagreed with the proposed changes as written and the rationale for making those changes in the first instance. On October 17, NERC answered System Operators’ comments. This matter remains pending before the FERC.

XI. Misc. - of Regional Interest

- **203 Application: PSNH/HSE Hydro NE (EC18-42)**

On December 28, 2017, PSNH and HSE Hydro NE AC, LLC (“HSE Hydro NE”)⁶¹ requested authorization for a proposed transaction pursuant to which HSE Hydro NE will acquire PSNH’s portfolio of hydroelectric generation assets (the “PSNH Hydro Transaction”).⁶² Applicants requested an order authorizing the PSNH Hydro Transaction on or before February 23, 2018. Comments on the application were due on or before January 18, 2018; none were filed. This matter is pending before the FERC.

- **203 Application: Dynegy/Vistra (EC18-23)**

On November 22, Dynegy and Vistra Energy Corp. (“Vistra”) requested authorization for a proposed transaction pursuant to which Dynegy will merge with and into Vistra, with Vistra being the surviving corporation (the “Vistra Transaction”). Applicants requested an order authorizing the Vistra Transaction on or before March 15, 2018. Comments on the application were due on or before January 22, 2018. Public Citizen filed the lone protest (because the Horizontal Competitive Analysis Screen failed to include generation owned by Dynegy’s major shareholder, Energy Capital Partners, including assets that are part of ECP’s proposed acquisition of Calpine

⁶⁰ The *Protection System Changes NOPR* was published in the Fed. Reg. on Nov. 22, 2017 (Vol. 82, No. 224) pp. 55,535-55,541.

⁶¹ HSE Hydro NE is a Related Person to Generation Sector Group Seat members Nautilus Hydro and Pawtucket Power.

⁶² PSNH’s hydro portfolio (61.8 MW) includes the following facilities: Smith (15.78 MW); Amoskeag (17.5 MW); Garvins Falls/Hooksett (7.09 MW); Ayers Island (8.94 MW); Eastman Falls (6.1 MW); Jackman (3.54 MW); Gorham (1.68 MW); Canaan (1.17 MW).

Corp.). Doc-less interventions were filed by PJM and the Illinois Attorney General's Office. This matter is pending before the FERC.

- **203 Application: PSNH/Granite Shore (EC18-12)**

On January 12, PSNH and Granite Shore Power LLC ("Granite Shore")⁶³ submitted a notice that Granite Shore's acquisition of a portfolio of PSNH's fossil-fueled generation assets,⁶⁴ authorized by the FERC on December 27,⁶⁵ was consummated on January 10. Reporting on this proceeding is now concluded.

- **203 Application: MATEP (EC18-10)**

On January 24, the FERC authorized⁶⁶ a transaction pursuant to which MATEP LLC, which purchases all of the output its QF affiliate's 95.8 MW cogeneration facility located in Boston's Longwood Medical and Academic Area, will be owned by a joint venture between indirect subsidiaries of Engie and Axium US and will become a Related Person to Generation Sector member ENGIE Energy Marketing. Among other conditions, the order required notice within 10 days of the consummation of the transaction. Subject to that notice, this proceeding will be concluded.

- **203 Application: Calpine/ECP (EC17-182)**

On September 15, Calpine Corporation ("Calpine") requested authorization for a proposed transaction pursuant to which it will become an indirect, wholly-controlled subsidiary of ECP Control Co, LLC ("ECP") (the "Calpine/ECP Transaction"). Applicants requested an order authorizing the Calpine/ECP Transaction on or before January 15, 2018. Comments on the application were due on or before November 14, 2017. A protest was filed by Public Citizen, which asserted that, because the application failed to include Dynegy's merchant generation assets in the market power analysis (in which it believes Capital Partners has a significant financial interest), the application was incomplete. Calpine answered the Public Citizen protest, refuting its assertions and arguments. Public Citizen answered Calpine's answer, again asserting that the application be considered incomplete until ECP fully divests all Dynegy ownership or redoes the Competitive Analysis Screen to include ECP's ownership of Dynegy. This matter is pending before the FERC.

- **203 Application: GenOn Reorganization (EC17-152)**

On October 31, the FERC approved certain conversions of GenOn notes into common equity of, and corporate structure changes that will result in, a "reorganized GenOn".⁶⁷ Reorganized GenOn will emerge as a result of a plan of reorganization to be confirmed by the United States Bankruptcy Court for the Southern District of Texas in connection with GenOn's Chapter 11 restructuring (the "Restructuring"). As a result of the Restructuring, Reorganized GenOn will likely not be a subsidiary of, and GenOn Energy Management will thus likely no longer be a Related Person to, NRG. Among other conditions, the order required notice within 10 days of the consummation of the transaction. Subject to that notice, this proceeding will be concluded.

- **203 Application: Green Mountain Power/ENEL Hydros (EC17-76)**

On May 9, the FERC authorized GMP's acquisition of the following small hydroelectric generation facilities (each a QF, collectively 8.39 MW of total generating capacity) from subsidiaries of Enel Green Power North America, Inc.: Hoague-Sprague, Kelley's Falls, Lower Valley, Glen, Rollinsford, South Berwick, Somersworth, and

⁶³ Granite Shore is a Related Person to Supplier Sector members Castleton Commodities Merchant Trading LP, Rensselaer Generating LLC, and Roseton Generating LLC.

⁶⁴ PSNH's generation portfolio (1,130 MW) includes the following facilities: Merrimack, Schiller, Newington, White Lake, and Lost Nation.

⁶⁵ *Pub. Service Co. of New Hampshire, Granite Shore Power LLC*, 161 FERC ¶ 62,231 (Dec. 27, 2017).

⁶⁶ *MATEP LLC*, 162 FERC ¶ 62,046 (Jan. 23, 2018).

⁶⁷ *GenOn Energy Inc.*, 161 FERC ¶ 62,063 (Oct. 31, 2017).

Woodsville.⁶⁸ Among other conditions, the order required notice within 10 days of the consummation of the transaction, which as of date of this Report has not been filed. Subject to that notice, this proceeding will be concluded.

- **MOPR-Related Proceedings (PJM, NYISO) (EL16-49; EL13-62)**

In two proceedings which, unless narrowly limited solely to the unique facts of the directly applicable markets (PJM in EL16-49; NYISO in EL13-62), could impact the New England market through FERC jurisdictional or other determinations, NEPOOL filed limited comments requesting that any Commission action or decision be limited narrowly to the facts and circumstances as presented in the applicable market. NEPOOL urged that any changes that may be ordered by the Commission in the proceedings not circumscribe the results of NEPOOL's stakeholder process or predetermine the outcome of that process through dicta or a ruling concerning different markets with different history and different rules. NEPOOL's comments were filed on January 24 in the NYISO proceeding; January 30 in the PJM proceeding, and are pending before the FERC. Since the last Report, EPSA filed motions to lodge information in each proceeding. In the PJM proceeding, EPSA moved to lodge a July 14, 2017 Memorandum Opinion and Order of the United States District Court for the Northern District of Illinois, Eastern Division, which dismissed challenges to the zero emissions credits ("ZECs") legislation enacted by the State of Illinois. In the NYISO proceeding, in a substantively similar motion, EPSA moved to lodge a Memorandum and Order of the New York District Court dismissing challenges to the ZECs program implemented by the NYPSC. In each case, EPSA reiterated its position that unless addressed, the ZEC programs will adversely impact the respective markets. Answers to the EPSA motions to lodge were filed by Exelon and the NYPSC in the NYISO Proceeding and by Exelon, First Energy, the Load Group, NRECA, Talen Companies, and the Illinois Commerce Commission in the PJM Proceeding. These proceedings remain pending before the FERC. If you have any questions concerning these proceedings, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **NSTAR/WMECO Succession Proceedings (ER18-749/751)**

On January 30, Eversource, on behalf its subsidiary NSTAR and former subsidiary WMECO, submitted a pair of filings to reflect the merger of WMECO with and into NSTAR. The filings included a Notice of Succession identifying all the WMECO jurisdictional documents to which NSTAR Electric is succeeding and cancelled WMECO's eTariff database and certain WMECO jurisdictional documents not currently filed in WMECO's eTariff database. A March 31, 2018 effective date was requested. Comments on this filing are due on or before February 20, 2018. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **REMVEC II and REMVEC SAS Agreement Terminations (ER18-716)**

On January 26, National Grid filed to terminate the Rhode Island, Eastern Massachusetts, Vermont Energy Control ("REMVEC") II Agreement and the related REMVEC Security Analysis Services ("SAS") Agreement. The Agreements were recently superseded and replaced by a Local Control Center ("LCC") Agreement (accepted by letter order dated October 3, 2017 in Docket No. ER17-2339) pursuant to which certain local control center services are provided at or through NEP's dispatching center that is operated under ISO-NE's direction/ authorization. A March 28, 2018 effective date was requested. Comments on this filing are due on or before February 16, 2018. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **LGIA: Emera Maine/Penobscot Energy Recovery Co (ER18-505)**

On December 21, 2017, Emera Maine filed a fully executed, non-conforming LGIA with Penobscot Energy Recovery Company ("Penobscot"). The LGIA would establish the interconnection of Penobscot's solid 25 MW waste-fired generating facility (Line 247) as a direct assignment facility (possible because its radial in nature and serves a single customer) and thereby support Penobscot's access to New England Market upon

⁶⁸ *Green Mountain Power Corp.*, 159 FERC ¶ 62,144 (May 9, 2017).

expiration of its long-time PPA with Emera Maine (through a resulting lower monthly charge). A March 1, 2018 effective date was requested. Comments on this filing were due on or before January 11, 2018; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Third Supplement to Lease Agreement: UI/CT DOT (ER18-454)**

On January 30, the FERC accepted an amendment to the Lease Agreement between United Illuminating (“UI”) and the Connecticut Department of Transportation (“CT DOT”) that provides for UI’s recovery of costs UI has incurred and will incur in connection with certain Direct Assignment Facilities (“DAF”) necessary to facilitate the purchase by Metro-North Commuter Railroad Company (“Metro-North”) of additional electric energy to power new commuter rail cars that Metro-North plans to deploy on its New Haven Line. The amendment was accepted effective as of December 15, 2017, as requested. Unless the January 30 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Anbaric’s Ocean Grid Project: Transmission Rights at Negotiated Rates (ER18-435)**

Anbaric Development Partners’ (“Anbaric”) December 13, 2017 request for FERC authorization to sell transmission rights at negotiated rates on its “Ocean Grid Project” project remains pending.⁶⁹ Anbaric anticipates that the first phase of the Project (1,200 MW) will be in service by December 2021 and the second phase in service by 2024. Anbaric requested an order on its application on or before February 12, 2018. Comments on this filing were due on January 3, 2018; none were filed. A doc-less intervention was filed by Bay State Wind LLC. This matter remains pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **IA: NSTAR/Covanta SEMASS (ER18-424)**

On January 29, the FERC accepted a two-party IA between NSTAR and Covanta SEMASS (“Covanta”) which replaces an October 31, 1985 Power Sale Agreement between the parties (that expired on December 1, 2017) and to recognize that Covanta now uses the New England transmission system to market the output of its 80 MW Rochester, MA facility. The IA was accepted effective as of December 1, 2017, as requested. Unless the January 29 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **NEP/HQUS Phase I/II HVDC-TF Service Agreement (ER18-388)**

On December 5, NEP filed a new Phase I/II HVDC-TF Service Agreement with HQUS to allow the continuation without interruption of service provided pursuant to an existing agreement between NEP and HQUS that conforms to the pro forma Phase I/II HVDC-TF Service Agreement set forth in Attachment A of Schedule 20A—Common to the ISO-NE OATT. The Agreement is being filed as “non-conforming” as it was unclear whether the FERC would deem conforming the provisions included in the Agreement that accommodate HQUS’ exercise of its right of first refusal to extend its transmission customer service rights beyond the five-year term of its currently effective Service Agreement with NEP pursuant to Schedule 20A (while taking into account the fact that NEP currently only has contractual rights allowing it to sell service over the Phase I/II HVDC-TF through October 31, 2020). A January 1, 2018 effective date was requested. Comments, if any, on this filing were due on or before December 26 and were filed by HQUS, which supported the filing and requested that the Service Agreement be accepted as filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

⁶⁹ The “Ocean Grid Project” will be integrated offshore transmission system that includes two 1,000 to 1,200 megawatt (“MW”) High-Voltage Direct Current (“HVDC”) transmission lines, each approximately 40 to 60 miles in length, with a total integrated system capacity of up to 2,400 MW, connecting Massachusetts off-shore wind generation to the transmission system in the Southeastern Massachusetts Load Zone (“SEMA”).

- **D&E Agreement Cancellation: NSTAR/Essential Power Newington (ER18-330)**

On January 8, the FERC accepted NSTAR's notice of cancellation of the Design and Engineering Agreement ("D&E Agreement") between NSTAR and Essential Power Newington (designated as service agreement IA-NSTAR-34). The D&E Agreement set forth the terms and conditions under which NSTAR undertook certain design and engineering activities on its transmission system⁷⁰ in connection with Essential Power Newington's FCA11 New Capacity Qualification Determination Notification. With the work completed, the D&E Agreement is now terminated. The cancellation notice was accepted effective as of November 27, 2017, as requested. Unless the January 8 order is challenged, this matter will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **IA: CL&P/Woods Hill Solar (ER18-316)**

On January 18, the FERC accepted a two-party IA between CL&P and Woods Hill Solar to govern the interconnection of a 20 MW photovoltaic ("PV") generating facility to be located in Pomfret, CT. The IA was accepted effective as of November 30, 2017, as requested. Unless the January 18 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **FERC Enforcement Action: Order of Non-Public, Formal Investigation (IN15-10)**

MISO Zone 4 Planning Resource Auction Offers. On October 1, 2015, the FERC issued an order authorizing Enforcement to conduct a non-public, formal investigation, with subpoena authority, regarding violations of FERC's regulations, including its prohibition against electric energy market manipulation, that may have occurred in connection with, or related to, MISO's April 2015 Planning Resource Auction for the 2015/16 power year.

Unlike a staff NOV, a FERC order converting an informal, non-public investigation to a formal, non-public investigation does not indicate that the FERC has determined that any entity has engaged in market manipulation or otherwise violated any FERC order, rule, or regulation. It does, however, give OE's Director, and employees designated by the Director, the authority to administer oaths and affirmations, subpoena witnesses, compel their attendance and testimony, take evidence, compel the filing of special reports and responses to interrogatories, gather information, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records.

- **FERC Audit of ISO-NE (PA16-6)**

The FERC's audit of ISO-NE docketed in this proceeding is on-going. As previously reported, the FERC informed ISO-NE on November 24, 2015 that it would evaluate ISO-NE's compliance with: (1) the transmission provider obligations described in the Tariff, (2) *Order 1000* as it relates to transmission planning and expansion, and interregional coordination, (3) accounting requirements of the Uniform System of Accounts under 18 C.F.R. Part 101, (4) financial reporting requirements under 18 C.F.R. Part 141; and (5) record retention requirements under 18 CFR Part 125. The FERC indicated that the audit will cover the July 10, 2013 period through the present.

XII. Misc. - Administrative & Rulemaking Proceedings

- **Grid Resilience in RTO/ISOs; DOE NOPR (AD18-7; RM18-1)**

On January 8, 2018, the FERC terminated the DOE NOPR rulemaking proceeding (RM18-1)⁷¹ and initiated a new Grid Resilience in RTO/ISOs proceeding (AD18-7).⁷² In terminating the DOE NOPR proceeding, the FERC

⁷⁰ Specifically, NSTAR has agreed to make changes to the Zone 2 timer on both primary (P1) and backup (P2) relays at its Mystic Substation that are associated with NSTAR Line 423-515.

⁷¹ As previously reported, the FERC opened the DOE NOPR proceeding in response to a September 28, 2017 proposal by Energy Secretary Rick Perry, issued under a rarely-used authority under §403(a) of the Department of Energy ("DOE") Organization Act, that would

concluded that the Proposed Rule and comments received did not support FERC action under Section 206 of the FPA, but did suggest the need for further examination by the FERC and market participants of the risks that the bulk power system faces and possible ways to address those risks in the changing electric markets. Accordingly, the FERC initiated AD18-7 to evaluate the resilience of the bulk power system in RTO/ISO regions, directed each RTO/ISO to submit information on certain resilience issues and concerns, and committed to use the information submitted to evaluate whether additional FERC action regarding resilience is appropriate. RTO submissions are due on or before March 9, 2018; reply comments by interested entities are due on or before April 9, 2018.

- **State Policies & Wholesale Markets Operated by ISO-NE, NYISO, PJM (AD17-11)**

As previously reported, the FERC held a 2-day technical conference (on May 1-2, 2017) to foster further discussion regarding the development of regional solutions in the Eastern RTOs/ISOs that reconcile the competitive market framework with the increasing interest by states to support particular resources or resource attributes. FERC staff sought to “discuss long-term expectations regarding the relative roles of wholesale markets and state policies in the Eastern RTOs/ISOs in shaping the quantity and composition of resources needed to cost-effectively meet future reliability and operational needs”. A more detailed summary of the technical conference was circulated with the last Report. Pre-conference comments from the conference’s speakers, panelists and other interested parties are available in the FERC’s eLibrary and through the tech conference’s calendar entry. Those interested were invited to submit post-conference comments on or before June 22, 2017. Comments were received from over 80 parties, and were briefly summarized at the Summer Meeting. Reply comments, not exceeding 10 pages, were filed by over 30 parties. This matter remains pending before the FERC.

- **NOI: FERC’s Policy for Recovery of Income Tax Costs & ROE Policies (PL17-1)**

On December 15, 2016, the FERC issued a notice of inquiry (“NOI”) seeking comments regarding how to address any double recovery resulting from the FERC’s current income tax allowance and ROE policies.⁷³ The NOI followed the D.C. Circuit’s *United Airlines*⁷⁴ holding that the FERC failed to demonstrate that there is no double recovery of taxes for a partnership pipeline as a result of the income tax allowance and ROE determined pursuant to the DCF methodology, and remanding the decisions to the FERC to develop a mechanism “for which the Commission can demonstrate that there is no double recovery” of partnership income tax costs.⁷⁵ Comments and reply comments were submitted by over 25 and 18 parties, respectively. Since the last Report, on January 2, 2018, R. Gordon Gooch filed a motion requesting that the FERC compel all pass-through entities to reduce their claims for income tax allowance in rates, lowering rates as necessary to make their rates “just and reasonable” in response to the passage and signature into law of the “Tax Cut and Jobs Act” (Public Law No. 115-97). A second motion for partial summary judgement was filed by Gooch on January 16. Answers to the motions of partial summary judgement were by the Liquids Shippers Group, Natural Gas Indicated Shippers, the American Public Gas Association and INGAA. This matter remains pending before the FERC.

have required RTO/ISOs to develop and implement market rules for the full recovery of costs and a fair rate of return for “eligible units” that (i) are able to provide essential energy and ancillary reliability services, (ii) have a 90-day fuel supply on site in the event of supply disruptions caused by emergencies, extreme weather, or natural or man-made disasters, (iii) are compliant with all applicable environmental regulations, and (iv) are not subject to cost-of-service rate regulation by any State or local authority. More than 450 comments were submitted in response to the DOE NOPR, raising and discussing an exceptionally broad spectrum of process, legal, and substantive arguments. A summary of those initial comments was circulated under separate cover and can be found with the posted materials for the November 3, 2017 Participants Committee meeting. Reply comments and answers to those comments were filed by over 100 parties.

⁷² *Grid Reliability and Resilience Pricing*, 162 FERC ¶ 61,012 (Jan. 8, 2018).

⁷³ *Inquiry Regarding the FERC’s Policy for Recovery of Income Tax Costs*, 157 FERC ¶ 61,210 (Dec. 15, 2017).

⁷⁴ *United Airlines Inc. v. FERC*, 827 F.3d 122, 134, 136 (D.C. Cir. 2016) (“*United Airlines*”).

⁷⁵ *Id.* at 137.

- **Order 839: Civil Monetary Penalty Inflation Adjustments (RM18-4)**

On January 8, the FERC issued *Order 839*⁷⁶ to amend its regulations governing the maximum civil monetary penalties assessable for violations of statutes, rules, and orders within FERC's jurisdiction. The FERC is required to update each such civil monetary penalty on an annual basis every January 15.⁷⁷ Of particular interest is the increase in potential civil penalties for market manipulation, which were increased from \$1,193,970 to \$1,213,503 per violation, per day. *Order 839* became effective January 11, 2018.⁷⁸

- **NOPR: LGIA/LGIP Reforms (RM17-8)**

As previously reported, the FERC issued a NOPR⁷⁹ on December 15, 2016 proposing reforms designed to improve certainty,⁸⁰ promote more informed interconnection,⁸¹ and enhance interconnection processes.⁸² Based, in part, on input received in response to AWEA's petition for changes to the *pro forma* LGIP/LGIA, and the FERC's May 13, 2016 technical conference to explore generator interconnection issues (as reported previously under Docket Nos. RM16-12; RM15-21), the FERC identified proposed reforms which it states could remedy potential shortcomings in the existing interconnection processes. The FERC also sought comment on whether any of its proposed reforms should be applied to the *pro forma* SGIP/SGIA.⁸³ 60 sets of comments on and answer to the *LGIP/LGIA Reforms NOPR* were submitted, including comments by: NEPOOL (approved at the April 7 Participants Committee meeting), ISO-NE, Avangrid, EDF Renewable, EDP Renewables, Eversource,

⁷⁶ *Civil Monetary Penalty Inflation Adjustments*, Order No. 839, 162 FERC ¶ 61,010 (Jan. 8, 2018) ("*Order 839*").

⁷⁷ See Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701, Pub. L. 114-74, 129 Stat. 584, 599. The FERC made its first adjustment under the Act in July 2016. See *Civil Monetary Penalty Inflation Adjustments*, Order No. 826, 81 FR 43937 (July 6, 2016), FERC Stats. & Regs. ¶ 31,386 (2016). The second adjustment was made January 9, 2017. *Civil Monetary Penalty Inflation Adjustments*, Order No. 834, 158 FERC ¶ 61, 170 (Jan. 9, 2017).

⁷⁸ *Order 839* was published in the *Fed. Reg.* on Jan. 11, 2018 (Vol. 83, No. 8) pp. 1,289-1,293.

⁷⁹ *Reform of Generator Interconnection Procedures and Agreements*, 157 FERC ¶ 61,212 (Dec. 15, 2016) ("*LGIP/LGIA Reforms NOPR*"). The *LGIP/LGIA Reforms NOPR* was published in the *Fed. Reg.* on Jan. 13, 2017 (Vol. 82, No. 9 pp. 4,464-4,501).

⁸⁰ To accomplish this goal, the FERC proposes to: (1) revise the *pro forma* LGIP to require transmission providers that conduct cluster studies to move toward a scheduled, periodic restudy process; (2) remove from the *pro forma* LGIA the limitation that interconnection customers may only exercise the option to build transmission provider's interconnection facilities and standalone network upgrades if the transmission owner cannot meet the dates proposed by the interconnection customer; (3) modify the *pro forma* LGIA to require mutual agreement between the transmission owner and interconnection customer for the transmission owner to opt to initially self-fund the costs of the construction of network upgrades; and (4) require that the RTO/ISO establish dispute resolution procedures for interconnection disputes. The Commission also seeks comment on the extent to which a cap on the network upgrade costs for which interconnection customers are responsible can mitigate the potential for serial restudies without inappropriately shifting cost responsibility. *Id.* at P 6.

⁸¹ The FERC proposes to: (1) require transmission providers to outline and make public a method for determining contingent facilities in their LGIPs and LGIAs based upon guiding principles in the Proposed Rule; (2) require transmission providers to list in their LGIPs and on their OASIS sites the specific study processes and assumptions for forming the networking models used for interconnection studies; (3) require congestion and curtailment information to be posted in one location on each transmission provider's OASIS site; (4) revise the definition of "Generating Facility" in the *pro forma* LGIP and LGIA to explicitly include electric storage resources; and (5) create a system of reporting requirements for aggregate interconnection study performance. The FERC also seeks comment on proposals or additional steps that the Commission could take to improve the resolution of issues that arise when affected systems are impacted by a proposed interconnection. *Id.* at P 7.

⁸² The FERC proposes to: (1) allow interconnection customers to limit their requested level of interconnection service below their generating facility capacity; (2) require transmission providers to allow for provisional agreements so that interconnection customers can operate on a limited basis prior to completion of the full interconnection process; (3) require transmission providers to create a process for interconnection customers to utilize surplus interconnection service at existing interconnection points; (4) require transmission providers to set forth a separate procedure to allow transmission providers to assess and, if necessary, study an interconnection customer's technology changes (e.g., incorporation of a newer turbine model) without a change to the interconnection customer's queue position; and (5) require transmission providers to evaluate their methods for modeling electric storage resources for interconnection studies and report to the Commission why and how their existing practices are or are not sufficient. *Id.* at P 8.

⁸³ *Id.* at P 11.

Exelon, Invenergy, National Grid, NextEra, APPA/LPPC/NRECA, AWEA, EEI, ELCON, ESA, and Public Interest Organizations. This matter is pending before the FERC.

- **NOPR: Uplift Cost Allocation and Transparency in RTO/ISO Markets (RM17-2)**

On January 19, 2017, the FERC issued a NOPR proposing to require each RTO and ISO that currently allocates the costs of Real-Time uplift due to deviations to do so only to those market participants whose transactions are reasonably expected to have caused the real-time uplift costs.⁸⁴ In addition, the FERC proposed to revise its regulations to enhance transparency by requiring that each RTO/ISO post uplift costs paid (dollars) and operator-initiated commitments (MWs) on its website; and define in its tariff its transmission constraint penalty factors, as well as the circumstances under which those penalty factors can set LMPs, and any procedure for changing those factors. Comments and reply comments on the *Uplift/Transparency NOPR* were filed by over 40 parties, including: ISO-NE, Brookfield, Calpine, DC Energy, Direct, Exelon, Potomac Economics, Saracen, EEI, APPA/NRECA, Appian Way Energy Partners, AWEA, ELCON, EPSA, Financial Marketers Coalition, and the IRC. This matter is pending before the FERC.

- **NOPR: Electric Storage Participation in RTO/ISO Markets (RM16-23; AD16-20)**

The FERC's *Storage NOPR* remains pending. As previously reported, on November 23, 2016, the FERC issued the *Storage NOPR* proposing to require each RTO and ISO to revise its tariff "to (1) establish a participation model consisting of market rules that, recognizing the physical and operational characteristics of electric storage resources, accommodates their participation in the organized wholesale electric markets and (2) define distributed energy resource aggregators as a type of market participant that can participate in the organized wholesale electric markets under the participation model that best accommodates the physical and operational characteristics of its distributed energy resource aggregation."⁸⁵ Comments on the *Storage NOPR* were filed by over 100 parties, including: NEPOOL, ISO-NE, APPA/ NRECA, Avangrid, AWEA, Brookfield, CT DEEP, CT PURA, Dominion, DTE, EEI, ELCON, EPSA, EPRI, ESA, Exelon, FirstLight, Genbright, Harvard Environmental Policy Initiative, IPKeys, MA DPU, MIT, MMWEC, NARUC, NERC, NESCOE, NextEra, NRG, SEIA, UCS. Since the last Report, supplemental comments were filed by the Advanced Energy Management Alliance. In addition, on September 22, a number of US Senators⁸⁶ requested that this rulemaking proceed towards completion as quickly as possible. Chairman Chatterjee responded to each on October 5, noting that the comments received are being reviewed and relaying his personal commitment to address the issues raised in the NOPR as the rulemaking proceeds forward. This matter remains pending before the FERC.

- **NOPR: Data Collection for Analytics & Surveillance and MBR Purposes (RM16-17)**

The FERC's *Data Collection NOPR* remains pending. As previously reported, the FERC issued a July 21, 2016 NOPR, which superseded both its *Connected Entity NOPR* (RM15-23) and *Ownership NOPR* (RM16-3), proposing to collect certain data for analytics and surveillance purposes from market-based rate ("MBR") sellers and entities trading virtual products or holding FTRs and to change certain aspects of the substance and format of information submitted for MBR purposes.⁸⁷ The *Data Collection NOPR* presents substantial revisions from what the FERC proposed in the *Connected Entity NOPR*, and responds to the comments and concerns submitted by NEPOOL in that proceeding. Among other things, the changes proposed in the *Data NOPR* include: (i) a different set of filers; (ii) a reworked and substantially narrowed definition of Connected Entity; and (iii) a different submission process. With respect to the MBR program, the proposals include: (i) adopting certain changes to reduce and clarify the scope of ownership information that MBR sellers must provide; (ii)

⁸⁴ *Uplift Cost Allocation and Transparency in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 158 FERC ¶ 61,047 (Jan. 19, 2017) ("*Uplift/Transparency NOPR*").

⁸⁵ *Electric Storage Participation in Markets Operated by Regional Transmission Orgs. and Indep. Sys. Operators*, 157 FERC ¶ 61,121 (Nov. 17, 2016) ("*Storage NOPR*").

⁸⁶ Senators Whitehouse (RI), Booker (NJ), Markey (MA), Wyden (OR), Warren (MA), and Sanders (VT).

⁸⁷ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (July 21, 2016) ("*Data Collection NOPR*").

reducing the information required in asset appendices; and (iii) collecting currently-required MBR information and certain new information in a consolidated and streamlined manner. The FERC also proposes to eliminate MBR sellers' corporate organizational chart submission requirement adopted in *Order 816*. Comments on the *Data Collection NOPR* were due on or before September 19, 2016⁸⁸ and were filed by over 30 parties, including: APPA, Avangrid, Brookfield, EPSA, Macquarie/DC Energy/Emera Energy Services, NextEra, and NRG.

- **Order 833: Critical Energy/Electric Infrastructure Information (CEII) Procedures (RM16-15)**

Rehearing of *Order 833*⁸⁹ remains pending. As previously reported, *Order 833* amended FERC regulations to implement provisions of the Fixing America's Surface Transportation ("FAST") Act that pertain to the designation, protection and sharing of Critical Electric Infrastructure Information ("CEII") and amend other regulations that pertain to CEII. The amended procedures will be referred to as the Critical Energy/Electric Infrastructure Information (CEII) procedures. *Order 833* became effective February 21, 2017.⁹⁰ On December 19, 2016, EEI requested rehearing of *Order 833*. The FERC issued a tolling order on January 17, 2017 affording it additional time to consider the EEI request for rehearing, which remains pending.

- **NOPR: Primary Frequency Response - Essential Reliability Services and the Evolving Bulk-Power System (RM16-6)**

The *Primary Frequency Response NOPR*⁹¹ remains pending. The *Primary Frequency Response NOPR*, issued on November 17, 2016, proposes to require all newly interconnecting large and small generating facilities, both synchronous and non-synchronous, to install and enable primary frequency response capability as a condition of interconnection. To implement these requirements, the Commission proposes to revise the *pro forma* LGIA and the *pro forma* SGIA. The *Primary Frequency Response NOPR* follows the FERC's *Frequency Response NOI*⁹² from early 2016. Comments on the *Primary Frequency Response NOPR* were filed by over 30 parties, including AWEA, EEI, ELCON, EPSA, ESA, First Solar, the IRC, NRECA, and UCS. Supplemental comments were filed by ELCON. On August 18, 2017, the FERC issued a request for supplemental comments related to whether and when electric storage resources should be required to provide primary frequency response, and the costs associated with primary frequency response capabilities for small generating facilities.⁹³ Supplemental comments were filed by over 20 parties, including the AES Companies, NERC, Western Interconnection Advisory Body, Magnum CAES, NRECA, Arizona Public Service, Tri-State Generation, and North American Generator Forum, Independent Transmission Company ("ITC"), the IRC, NYTOs, SoCal Edison, San Diego Gas & Electric, and the Energy Storage Association ("ESA").

⁸⁸ The *Data Collection NOPR* was published in the *Fed. Reg.* on Aug. 4, 2016 (Vol. 81, No. 150 pp. 51,726-51,772).

⁸⁹ *Regulations Implementing FAST Act Section 61003 – Critical Electric Infrastructure Security and Amending Critical Energy Infrastructure Information; Availability of Certain North American Electric Reliability Corporation Databases to the Commission*, Order No. 833, 157 FERC ¶ 61,123 (Nov. 17, 2016) ("*Order 833*").

⁹⁰ *Order 833* was published in the *Fed. Reg.* on Dec. 21, 2016 (Vol. 81, No. 245) pp. 93,732-93,753.

⁹¹ *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 157 FERC ¶ 61,122 (Nov. 17, 2016) ("*Primary Frequency Response NOPR*").

⁹² *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 154 FERC ¶ 61,117 (Feb. 18, 2016) ("*Frequency Response NOI*").

⁹³ Notice of the Request for Supplemental Comments was published in the *Fed. Reg.* on Aug. 24, 2017 (Vol. 82, No. 163) pp. 40,081-40,085.

XIII. Natural Gas Proceedings

For further information on any of the natural gas proceedings, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Jamie Blackburn (202-218-3905; jblackburn@daypitney.com).

- **Algonquin EDC Capacity Release Bidding Requirements Exemption Request (RP16-618)**

On March 31, 2016, the FERC conditionally accepted Algonquin tariff modifications and request for waiver that provided an exemption from capacity release bidding requirements for certain types of firm transportation capacity releases by Electric Distribution Companies (“EDCs”) that are participating in state-regulated electric reliability programs.⁹⁴ As previously reported, Algonquin stated that the modifications were consistent with the FERC’s current policy of exempting releases pursuant to state-regulated retail access programs of natural gas local distribution companies (“LDCs”) from bidding requirements. Algonquin added that its proposal (i) supports the efforts of EDCs to increase the reliability of supply for natural gas-fired electric generation facilities in New England and to address high electricity prices during peak periods in New England and therefore is in the public interest; and (ii) furthers the FERC’s initiatives related to gas-electric coordination. On May 9, 2016, the FERC held a technical conference to examine “concerns raised regarding the basis and need for the waiver.” Initial comments were due May 31. Almost two dozen sets of initial comments were filed, raising numerous issues both in support and in opposition to the Algonquin proposal. Reply comments were due June 10, 2016 and were filed by Algonquin Gas Transmission, Sequent Energy Management, L.P. and Tenaska Marketing Ventures, Indicated Shippers, National Grid, Eversource, Repsol, Calpine, Exelon/NextEra, New England LDCs, CT PURA and the MA AG.

On August 31, 2016, the FERC issued an order in which it rejected Algonquin’s request for a waiver that would have exempted gas-fired generators from capacity release bidding requirements but accepted Algonquin’s proposal to exempt from bidding an EDC’s capacity release to an asset manager who is required to use the released capacity to carry out the EDC’s obligations under the state-regulated electric reliability program.⁹⁵ The FERC explained that its capacity release regulations seek to balance the interests of the releasing shipper in releasing capacity to a replacement shipper of its choosing while still ensuring that allocative efficiency is enhanced by ensuring the capacity is used for its highest valued use.⁹⁶ Algonquin’s proposal, whereby any gas-fired generator to whom EDCs release capacity would be a pre-arranged replacement shipper, failed to meet the standard of “improving the competitive structure of the natural gas industry” as formulated by the FERC in granting bidding exemptions for state-regulated retail access programs.⁹⁷ Furthermore, the FERC found that exemption proponents had not shown why such a broad exemption was necessary in order for EDCs to have a sufficient ability to direct their capacity releases to natural gas-fired generators in order to accomplish the goal of increasing electric reliability.⁹⁸ On September 30, 2016, ConEd and Orange & Rockland Utilities, Inc. (“O&R”) requested clarification of the *Algonquin Order Following Technical Conference*, asking the FERC to clarify certain aspects of its approval exempting from bidding an EDC’s capacity release to an asset manager. Algonquin Gas Transmission, National Grid Electric Distribution Companies, and Sequent Energy Management and Tenaska Marketing Ventures filed answers to the requests for clarification on October 17. Those requests are pending before the FERC.

On September 23, 2016, Algonquin submitted a compliance filing in response to the requirements of the *Algonquin Order Following Technical Conference*. Comments on that compliance were due on or before October 5, 2016; none were filed. The compliance filing remains pending before the FERC.

⁹⁴ *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,269 (Mar. 31, 2016).

⁹⁵ *Algonquin Gas Transmission, LLC*, 156 FERC ¶ 61,151 (Aug. 31, 2016) (“*Algonquin Order Following Technical Conference*”).

⁹⁶ *Id.* at P 27.

⁹⁷ *Id.* at P 34.

⁹⁸ *Id.* at P 35.

- **Natural Gas-Related Enforcement Actions**

The FERC continues to closely monitor and enforce compliance with regulations governing open access transportation on interstate natural gas pipelines:

BP (IN13-15). On July 11, 2016, the FERC issued *Opinion 549*⁹⁹ affirming Judge Cintron's August 13, 2015 Initial Decision finding that BP America Inc., BP Corporation North America Inc., BP America Production Company, and BP Energy Company (collectively, "BP") violated Section 1c.1 of the Commission's regulations ("Anti-Manipulation Rule") and section 4A of the Natural Gas Act ("NGA").¹⁰⁰ Specifically, after extensive discovery and hearing procedures, Judge Cintron found that BP's Texas team engaged in market manipulation by changing their trading patterns, between September 18, 2008 through the end of November 2008, in order to suppress next-day natural gas prices at the Houston Ship Channel ("HSC") trading point in order to benefit correspondingly long position at the Henry Hub trading point. The FERC agreed, finding that the "record shows that BP's trading practices during the Investigative Period were fraudulent or deceptive, undertaken with the requisite scienter, and carried out in connection with Commission-jurisdictional transactions."¹⁰¹ Accordingly, the FERC assessed a **\$20.16 million civil penalty** and required BP to **disgorge \$207,169** in "unjust profits it received as a result of its manipulation of the Houston Ship Channel Gas Daily index." The \$20.16 million civil penalty was at the top of the FERC's Penalty Guidelines range, reflecting increases for having had a prior adjudication within 5 years of the violation, and for BP's violation of a FERC order within 5 years of the scheme. BP's penalty was mitigated because it cooperated during the investigation, but BP received no deduction for its compliance program, or for self-reporting. The *BP Penalties Order* also denied BP's request for rehearing of the order establishing a hearing in this proceeding.¹⁰² BP was directed to pay the civil penalty and disgorgement amount within 60 days of the *BP Penalties Order*. On August 10, 2016 BP requested rehearing of the *BP Penalties Order*. On September 8, the FERC issued a tolling order, affording it additional time to consider BP's request for rehearing of the *BP Penalties Order*, which remains pending.

On September 7, 2016, BP submitted a motion for modification of the *BP Penalties Order's* disgorgement directive because it cannot comply with the disgorgement directive as ordered. BP explained that the entity to which disgorgement was to be directed, the Texas Low Income Home Energy Assistance Program ("LIHEAP"), is not set up to receive or disburse amounts received from any person other than the Texas Legislature. In response, on September 12, the FERC stayed the disgorgement directive (until an order on BP's pending request for rehearing is issued), but indicated that interest will continue to accrue on unpaid monies during the pendency of the stay.¹⁰³

Since the last Report, BP moved, on December 11, 2017, to lodge, to reopen the proceeding, and to dismiss, or in the alternative, for reconsideration based on changes in the law it asserted are dispositive and that have occurred since BP filed its request for rehearing of the *BP Penalties Order*. FERC Staff asked for, and was granted, additional time, to January 25, 2018, to file its Answer to BP's December 11 motion. FERC Staff filed its answer on January 25, 2018. This matter is again pending before the FERC.

Total Gas & Power North America, Inc. et al. (IN12-17). On April 28, 2016, the FERC issued a show cause order¹⁰⁴ in which it directed Total Gas & Power North America, Inc. ("TGPNA") and its West Desk traders and supervisors, Therese Tran f/k/a Nguyen ("Tran") and Aaron Hall (collectively, "Respondents") to show cause why Respondents should not be found to have violated NGA Section 4A and the FERC's Anti-Manipulation Rule through

⁹⁹ *BP America Inc.*, Opinion No. 549, 156 FERC ¶ 61,031 (July 11, 2016) ("*BP Penalties Order*").

¹⁰⁰ *BP America Inc.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) ("*BP Initial Decision*").

¹⁰¹ *BP Penalties Order* at P 3.

¹⁰² *BP America Inc.*, 147 FERC ¶ 61,130 (May 15, 2014) ("*BP Hearing Order*"), *reh'g denied*, 156 FERC ¶ 61,031 (July 11, 2016).

¹⁰³ *BP America Inc.*, 156 FERC ¶ 61,174 (Sep. 12, 2016) ("*Order Staying BP Disgorgement*")

¹⁰⁴ *Total Gas & Power North America, Inc.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) ("*TGPNA Show Cause Order*").

a scheme to manipulate the price of natural gas at four locations in the southwest United States between June 2009 and June 2012.¹⁰⁵

The FERC also directed TGPNA to show cause why it should not be required to disgorge unjust profits of **\$9.18 million**, plus interest; TGPNA, Tran and Hall to show cause why they should not be assessed civil penalties (TGPNA - **\$213.6 million**; Hall - **\$1 million** (jointly and severally with TGPNA); and Tran - **\$2 million** (jointly and severally with TGPNA)). In addition, the FERC directed TGPNA's parent company, Total, S.A. ("Total"), and TGPNA's affiliate, Total Gas & Power, Ltd. ("TGPL"), to show cause why they should not be held liable for TGPNA's, Hall's, and Tran's conduct, and be held jointly and severally liable for their disgorgement and civil penalties based on Total's and TGPL's significant control and authority over TGPNA's daily operations. Respondents filed their answer on July 12, 2016. OE Staff replied to Respondents' answer on September 23, 2016. Respondents answered OE's September 23 answer on January 17, 2017, and OE Staff responded to that answer on January 27, 2017. This matter remains pending before the FERC.

Staff Notices of Alleged Violations (IN __ - __)

Rover. On July 13, 2017, the FERC issued a notice that Staff has preliminarily determined that, between February 2015 and September 2016, Rover Pipeline, LLC and Energy Transfer Partners, L.P. (collectively, "Rover") violated Section 7 of the Natural Gas Act by failing to fully and forthrightly disclose all relevant information to the FERC in Rover's application for a Certificate of Public Convenience and Necessity and attendant filings in Docket No. CP15-93. Staff alleges that Rover falsely promised it would avoid adverse effects to a historic resource that it was simultaneously working to purchase and destroy, and subsequently made several misstatements in its docketed responses to FERC questions about why it had purchased and demolished the resource.

Recall that Notices of Alleged Violations ("NoVs") are issued only after the subject of an enforcement investigation has either responded, or had the opportunity to respond, to a preliminary findings letter detailing Staff's conclusions regarding the subject's conduct.¹⁰⁶ NoVs are designed to increase the transparency of Staff's nonpublic investigations conducted under Part 1b of its regulations. A NoV does not confer a right on third parties to intervene in the investigation or any other right with respect to the investigation.

- **New England Pipeline Proceedings**

The following New England pipeline projects are currently under construction or before the FERC:

- **Atlantic Bridge Project (CP16-9)**

- ▶ 132,700 Dth/d of firm transportation to new and existing delivery points on the Algonquin system and 106,276 Dth/d of firm transportation service from Beverly, MA to various existing delivery points on the Maritimes & Northeast system.
- ▶ 6.3 miles of replacement pipeline along Algonquin in NY and CT; new 7,700-horsepower compressor station in Weymouth, MA; more horsepower at existing compressor stations in CT and NY.
- ▶ Seven firm shippers: Heritage Gas Limited, Maine Natural Gas Company, NSTAR Gas Company d/b/a Eversource Energy, Exelon Generation Company, LLC (as assignee and

¹⁰⁵ The allegations giving rise to the Total Show Cause Order were laid out in a September 21, 2015 FERC Staff Notice of Alleged Violations which summarized OE's case against the Respondents. Staff determined that the Respondents violated section 4A of the Natural Gas Act and the Commission's Anti-Manipulation Rule by devising and executing a scheme to manipulate the price of natural gas in the southwest United States between June 2009 and June 2012. Specifically, Staff alleged that the scheme involved making largely uneconomic trades for physical natural gas during bid-week designed to move indexed market prices in a way that benefited the company's related positions. Staff alleged that the West Desk implemented the bid-week scheme on at least 38 occasions during the period of interest, and that Tran and Hall each implemented the scheme and supervised and directed other traders in implementing the scheme.

¹⁰⁶ See *Enforcement of Statutes, Regulations, and Orders*, 129 FERC ¶ 61,247 (Dec. 17, 2009), *order on requests for reh'g and clarification*, 134 FERC ¶ 61,054 (Jan. 24, 2011).

asset manager of Summit Natural Gas of Maine), Irving Oil Terminal Operations, Inc., New England NG Supply Limited, and Norwich Public Utilities.

- ▶ Certificate of public convenience and necessity granted Jan. 25, 2017.¹⁰⁷
 - ▶ Certain facilities,¹⁰⁸ providing 40,000 out of the project's total capacity of 132,705 dekatherms per day of incremental firm transportation service, placed into service on November 1, 2017.¹⁰⁹ Remaining Project capacity will be available when the remaining Project facilities are placed into service following Director of OEP authorization.
 - ▶ Authorization to proceed with construction of additional Project segments requested on Oct. 31, 2017. Detailed information regarding construction activities can be found in the weekly construction reports filed in this docket.
- **Constitution Pipeline (CP13-499) and Wright Interconnection Project (CP13-502)**
 - ▶ Constitution Pipeline Company and Iroquois Gas Transmission (Wright Interconnection) concurrently filed for Section 7(c) certificates on June 13, 2013.
 - ▶ 650,000 Dth/d of firm capacity from Susquehanna County, PA (Marcellus Shale) through NY to Iroquois/Tennessee interconnection (Wright Interconnection).
 - ▶ New 122-mile interstate pipeline.
 - ▶ Two firm shippers: Cabot Oil & Gas and Southwestern Energy Services.
 - ▶ Final EIS completed on Oct 24, 2014.
 - ▶ Certificates of public convenience and necessity granted Dec 2, 2014.
 - By letter order issued July 26, 2016, the Director of the Division of Pipeline Certificates (Director) granted Constitution's requested two-year extension of time to construct the project.
 - Construction was expected to begin Spring 2016 (after final Federal Authorizations), but has been plagued by delays (see below).
 - ▶ On April 22, 2016, New York State Department of Environmental Conservation (NY DEC) denied Constitution's application for a Section 401 permit under the Clean Water Act.
 - On August 18, 2017, the 2nd Circuit denied Constitution's petition for review of the NY DEC decision, concluding that (1) the court lacked jurisdiction over the Constitution's claims to the extent that they challenged the timeliness of the decision; and (2) the NY DEC acted within its statutory authority in denying the certification, and its denial was not arbitrary or capricious.
 - ▶ On October 11, 2017, Constitution filed with the FERC a petition for declaratory order ("Petition") requesting that the FERC find that NY DEC waived its authority under section 401 of the Clean Water Act by failing to act within a "reasonable period of time."
 - On January 11, 2018, the FERC denied Constitution's Petition.¹¹⁰ Although noting that states and project sponsors that engage in repeated withdrawal and refiling of applications for water quality certifications are acting, in many cases, contrary to the public interest and to the spirit of the Clean Water Act by failing to provide reasonably expeditious state decisions, the FERC did not conclude that the

¹⁰⁷ Order Issuing Certificate and Authorizing Abandonment, *Algonquin Gas Transmission LLC and Maritimes & Northeast Pipeline, LLC*, 158 FERC ¶ 61,061 (Jan. 25, 2017), *order denying stay*, 160 FERC ¶ 61,015 (2017), *reh'g denied*, 161 FERC ¶ 61,255 (Dec. 13, 2017) ("*Atlantic Bridge Project Order*").

¹⁰⁸ The following facilities placed into service: Southeast Discharge Take-up and Relay (Fairfield County, CT); Modified Oxford Compressor Station (New Haven County, CT); Modified Chaplin Compressor Station (Windham County, CT); Modified Danbury (CT) Meter Station; and Modified Stony Point Compressor Station (Rockland County, NY).

¹⁰⁹ *Algonquin Gas Transmission, LLC*, 158 FERC ¶ 61,061 (Oct. 27, 2017).

¹¹⁰ *Constitution Pipeline Co.*, 162 FERC ¶ 61,014 (Jan. 11, 2018).

practice violates the letter of the statute, found factually that Constitution gave the NY DEC new deadlines, and found that the record did not show that the NY DEC in any instance failed to act on Constitution's application for more than the outer time limit of one year.¹¹¹

- ▶ On May 16, 2016, the New York Attorney General filed a complaint against Constitution at the FERC (CP13-499) seeking a stay of the December 2014 order granting the original certificates, as well as alleging violations of the order, the Natural Gas Act, and the Commission's own regulations due to acts and omissions associated with clear-cutting and other construction-related activities on the pipeline right of way in New York.
 - In July 2016, the FERC rejected the NY AG's filing as procedurally deficient, and declined to stay of the Certificate Order
- ▶ Tree felling and site preparation continues, but the long-term status of the pipeline is currently unknown. Constitution will submit its monitoring reports monthly rather than weekly until activities resume in 2018.

- **Non-New England Pipeline Proceedings**

The following pipeline projects could affect ongoing pipeline proceeding in New England and around the country:

- ***Southeast Market Pipelines Project (CP14-554, CP15-16, CP15-17)***

- ▶ Florida Southeast Connection, LLC, Transcontinental Gas Pipe Line Company, LLC and Sabal Trail Transmission, LLC (Sabal Trail) filed for a Section 7(c) certificates in Sept. – Nov. 2014.
- ▶ The three separate but connected natural gas transmission pipeline projects project total approximately 685.5 miles of natural gas transmission pipeline and provide transportation service for up to approximately 1.1 billion cubic feet per day of natural gas to markets in Florida and the southeast United States .
- ▶ Certificates of public convenience and necessity were granted Feb. 2, 2016.¹¹²
 - Project construction began in August 2016, and in June and July 2017, Commission Staff authorized the pipelines to commence service on completed facilities.
- ▶ On August 22, 2017, the DC Circuit vacated and remanded the FERC's certificate order, holding that the FERC's environmental review of the project failed to adequately consider the downstream effects of greenhouse gas emissions resulting from increased power generation.¹¹³
 - The DC Circuit held that FERC must either quantify and consider the project's downstream carbon emissions or explain in more detail why it cannot do so. According to the court, quantification would permit the agency to compare the emissions from this project to emissions from other projects, to total emissions from the state or the region, or to regional or national emissions-control goals. Without such comparisons, it is difficult to see how FERC could engage in "informed decision making" with respect to the greenhouse-gas effects of this project, or how "informed public comment" could be possible.
 - This opinion could have significant consequences for future pipeline proceedings at FERC.
- ▶ On September 27, 2017, the FERC issued a Draft Supplemental EIS, estimating the pipeline

¹¹¹ *Id.* at P 23.

¹¹² *Fla. Southeast Connection, LLC*, 154 FERC ¶ 61,080, 61 (Feb. 2, 2016) (order issuing certificate).

¹¹³ *Sierra Club v. FERC*, 2017 U.S. App. LEXIS 15911 (D.C. Cir. Aug. 22, 2017).

would potentially increase the Florida GHG emission inventory between 3.7 and 9.7 percent.

- In the supplemental EIS, the FERC stated that it “could not find a suitable method to attribute discrete environmental effects to GHG emissions.”

- **Millennium Pipeline Valley Lateral Project (CP16-17)**

- ▶ On July 21, 2017, Millennium Pipeline Company, L.L.C. (Millennium) filed a Request for Notice to Proceed with Construction of its Valley Lateral Project in Orange County, New York.
 - The Valley Lateral Pipeline will connect the existing Millennium Pipeline to the 680 MW CPV Valley Energy Center.
- ▶ To receive a notice to proceed, Millennium was required to demonstrate that it had obtained all federally-required environmental permits and authorizations, including authorizations under the Clean Water Act (CWA). Millennium stated that the New York State Department of Environmental Conservation (New York DEC) had waived its authority to issue a water quality certification under Section 401 of the CWA by failing to act before the statutorily-imposed deadline.
 - In August 2017, the NY DEC denied the water quality certification to the Valley Lateral Project, citing the D.C. Circuit’s recent ruling in *Sierra Club v. FERC* and the FERC’s “lack of a complete environmental review.”
- ▶ By Letter Order issued on September 15, 2017, the FERC agreed with Millennium, finding that the New York DEC had waived its authority to issue or deny a water quality certification. Because the NY DEC had received Millennium’s Section 401 certification in November 2015, but did not rule on it until August 2017, FERC ruled that NY DEC, as the certifying agency, had therefore failed to act within the statutory timeframe and had waived its certification authority.¹¹⁴ The FERC’s order effectively nullifies the NY DEC’s August 2017 rejection of the water quality certification.
 - The NY DEC, on October 13, 2017, filed a Request for Rehearing and Stay of the FERC’s September 15, 2017, Order. On November 15, the FERC denied the requests for rehearing, stay, and rescission.¹¹⁵
- ▶ Millennium sought, and on October 3, 2017, the FERC granted, a one year extension of time to complete construction of the Valley Lateral Project and make it available for service by November 2018.
- ▶ On October 27, 2017, the FERC issued a Notice to Proceed, granting Millennium’s request to begin construction of the Valley Lateral.
 - The NY DEC, on October 30, 2017, filed a Request for Stay of the Notice to Proceed. The *November 15 Order* also denied the October 30 request for stay.¹¹⁶

¹¹⁴ *Millennium Pipeline Co., L.L.C.*, 160 FERC ¶ 61,065 (Sept. 15, 2017), *reh’g denied*, 161 FERC ¶ 61,186 (Nov. 15, 2017).

¹¹⁵ *Millennium Pipeline Co., L.L.C.*, 161 FERC ¶ 61,186 (Nov. 15, 2017) (“*November 15 Order*”).

¹¹⁶ On Oct. 30, 2017, NY DEC also petitioned the United States Court of Appeals for the Second Circuit for a temporary stay of the FERC’s Notice to Proceed until the FERC acts on NY DEC’s request for rehearing of the Declaratory Order. *In re New York State Department of Environmental Conservation v. FERC*, 2d Cir. No. 17-3503, Petitioner’s Emergency Petition for a Writ of Prohibition (Oct. 30, 2017) (Emergency Petition). NY DEC also requested the court to stay the effectiveness of the Notice to Proceed on an interim basis while the court considers the merits of its petition. *Id.* at 34. On Nov. 2, 2017, the court granted an administrative stay pending consideration of the petition by the next available three-judge panel. *In re New York State Dep’t of Env’tl. Conservation v. FERC*, 2d Cir. No. 17-3503 (Nov. 2, 2017). NY DEC’s Emergency Petition is pending at the court.

- **Northern Access Project (CP15-115)**
 - ▶ On Feb. 3, 2017, the FERC issued an order authorizing National Fuel Gas Supply Corporation and Empire Pipeline, Inc. to construct and operate pipeline, compression, and ancillary facilities in McKean County, Pennsylvania, and Allegany, Cattaraugus, Erie, and Niagara Counties, New York (Northern Access Project)
 - ▶ In March 2017, Allegheny Defense Project and Sierra Club (collectively Allegheny) filed a request for rehearing of the FERC's order and on August 31, 2017, FERC issued an Order Denying Stay
 - Consistent with its previous authorization, FERC found no evidence of irreparable harm in letting the project go forward.
 - ▶ Despite the FERC's Order, the project remains halted pending the outcome of National Fuel's fight with the NY DEC's April denial of a Clean Water Act permit.
 - NY DEC found National Fuel's application for a water quality certification, as well as for stream and wetlands disturbance permits, failed to comply with water regulations aimed at protecting wetlands and wildlife and that the pipeline failed to explore construction alternatives.

XIV. State Proceedings & Federal Legislative Proceedings

- **Massachusetts Emissions Allowance Auctions: Stakeholder Input on Auction Design Parameters**

In an action that could have implications for the New England Markets, the Massachusetts (MA) Department of Environmental Protection ("MassDEP") issued on August 11, 2017 final regulations to ensure that MA will meet the 2020 statewide greenhouse gas ("GHG") emissions limits mandated by MA's 2008 Global Warming Solutions Act ("GWSA"). Section 7.74¹¹⁷ of those regulations reduces carbon dioxide ("CO₂") emissions from MA-based power plants by imposing an annually declining aggregate emissions cap on MA's 21 large fossil fuel-fired generators. Operators of those facilities will have to offset their CO₂ production with allowances (a limited authorization to emit one metric ton of CO₂ in a calendar year). Allowances will be allocated directly in 2018 based on historical generation. Beginning with compliance year 2019, Section 7.74 requires auctioning of the emissions allowances that facilities must use to comply with the regulation. Allowances may be traded between facilities and a limited quantity may be banked from year to year.

On December 15, 2017, MassDEP filed final amendments to correct errors for two facilities in the 2018 allowance allocations. These amendments were published in the Massachusetts register on December 29, 2017. In addition, MassDEP has committed to post on its website compliance forms and an "FAQ" document.

The allowance tracking system will be deployed in the Spring of 2018. Detailed instructions for regulated facilities will be provided at that time. Stakeholder comments on the auction design solicited in the Fall of 2017 will be considered as the MassDEP develops procedures in preparation for allowance auctions that begin in 2019. MassDEP anticipates additional opportunities for stakeholders to participate in the auction design process in 2018, possibly including an opportunity to comment on proposed regulatory amendments. MassDEP is also in the process of soliciting market monitoring services, and will hire an auction administrator in 2018. Questions regarding 310 CMR 7.74 can be directed to Will Space (william.space@state.ma.us; 617-292-5610).

- **NG Advantage (NY) Permit Challenge (RJI No.: 2017-0799; RJI No.: 2017-0800)**

Chenango Valley Central School District and various nearby residents Petitioners have initiated proceedings against the Town of Fenton, New York Planning Board and NG Advantage, LLC to halt NG Advantage, LLC's ("NG Advantage") proposed construction of a natural gas compressor facility that would extract gas up to 4000 psi and transport the compressed natural gas to NG Advantage customers. Petitioners are concerned that

¹¹⁷ Additional information about 310 CMR 7.74 (Reducing CO₂ Emissions from Electricity Generating Facilities) is available at: <http://www.mass.gov/eea/agencies/massdep/climate-energy/climate/ghg/electricity-generatoremissions-limits.html>.

the project infringes on the rights of those who live near the transfer station. They are specifically concerned about the site's proximity to schools, and the burden it could place on local roads.

A judicial decision on whether the Town of Fenton followed proper procedures with respect to zoning laws in approving the Project has been held in reserve while Supreme Court Judge Ferris Lebo's reviews oral arguments and submissions. The Project is currently halted pending judgment.

XV. Federal Courts

The following are matters of interest, including petitions for review of FERC decisions in NEPOOL-related proceedings, that are currently pending before the federal courts (unless otherwise noted, the cases are before the U.S. Court of Appeals for the District of Columbia Circuit). An "***" following the Case No. indicates that NEPOOL has intervened or is a litigant in the appeal. The remaining matters are appeals as to which NEPOOL has no organizational interest but that may be of interest to Participants. For further information on any of these proceedings, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FCM Resource Retirement Reforms (17-1275)**

Underlying FERC Proceedings: ER16-551¹¹⁸

Petitioner: Constellation

On December 28, 2017, Constellation ("Petitioner") petitioned the DC Circuit Court of Appeals for review of the FERC's FCM Resource Retirement Reforms orders. Among other submission, Constellation must file by February 1, 2018 a docketing statement, statement of issues, and any procedural motions. Dispositive motions must be filed by February 16. Appearances by others in this case must be filed by February 1.

- **Demand Curve Changes (17-1110**)**

Underlying FERC Proceedings: ER14-1639¹¹⁹

Petitioners: NextEra, NRG, PSEG

On April 3, 2017, NextEra, NRG and PSEG ("Petitioners") again petitioned the DC Circuit Court of Appeals for review of the FERC's Demand Curve orders, which, as previously reported, had been remanded back to the FERC at the FERC's request following the first appeal by Petitioners. Petitioners' statement of issues and other initial procedural submissions, as well as the FERC's initial submissions, were filed May 8. The Clerk granted on June 2 the interventions filed by NEPOOL, NESCOE, CT PURA, and CPV. Petitioner's Brief was filed on September 8, and corrected on September 18 (for compliance with the Court's rules on acronyms and abbreviations). Respondent FERC's Brief was filed on November 21, 2017. On November 28, NRDC and CLF jointly moved for leave to participate as amici curiae and filed an amicus curiae brief in support of the FERC. On December 5, the Court granted NRDC/CLF leave to participate as amici curiae and the Clerk lodged the Nov 28 amicus curiae brief. Intervenor's Respondent Brief was filed by NESCOE, CT PURA and CPV Towantic on December 12, 2017. Petitioner's Reply Brief was filed on January 11, 2018 and the Deferred Appendix was filed on January 25. Final Briefs are to be filed on February 1, 2018.

¹¹⁸ *ISO New England Inc.*, 155 FERC ¶ 61,029 (Apr. 12, 2016) ("Resource Retirement Reforms Order"), *reh'g and clarif. denied*, 161 FERC ¶ 61,115 (Oct. 30, 2017).

¹¹⁹ 147 FERC ¶ 61,173 (May 30, 2014) (*Demand Curve Order*); 150 FERC ¶ 61,065 (Jan. 30, 2015) (*Demand Curve Clarification Order*); 155 FERC ¶ 61,023 (Apr. 8, 2016) (*Demand Curve Remand Order*); 158 FERC ¶ 61,138 (Feb. 3, 2017) (*Demand Curve Remand Rehearing Order*).

- **FCA10 Results (16-1408) and FCA9 Results (16-1068)**
Underlying FERC Proceedings: ER16-1041¹²⁰ ER15-1137¹²¹
Petitioners: UWUA Local 464 and Robert Clark

UWUA Local 464 and Robert Clark (“Petitioners”) filed petitions for review of the FERC’s orders on the FCA10 and FCA9 Results Filings, consolidated by the Court on January 31, 2017. With Final Briefs submitted on June 26, 2017, all briefing is complete. On December 14, the court scheduled these cases for oral argument on February 9, 2018, and oral argument will be held before Judges Rogers, Millett and Pillard.

- **NEPGA PER Complaint and FCM Jump Ball and Compliance Proceedings (16-1023/1024)**
Underlying FERC Proceeding: ER14-1050,¹²² EL14-52;¹²³ EL15-25¹²⁴
Petitioner: NEPGA

On January 19, 2018, the Court dismissed for lack of jurisdiction the petition for review in 16-1023 (the appeal of the FCM Jump Ball and Compliance Proceedings) and denied on the merits the petition for review in 16-1024 (the NEPGA PER Complaint appeal). As previously reported, NEPGA filed, on January 19, 2016, a petition for review of the FERC’s orders on NEPGA’s first PER Complaint. On February 24, 2016, the Court granted NEPGA’s motion to consolidate this proceeding with 16-1024. Briefing was completed on November 28, 2016. Oral argument was held October 27, 2017 before Judges Griffith, Dentelle and Randolph. In denying 16-1024 on the merits, the Court found that the underlying orders were not arbitrary and capricious. The Court further stated that “so long as any change is reasonably explained, it is not arbitrary and capricious for an agency to change its mind in light of experience, or in the face of new or additional evidence, or further analysis or other factors indicating that the agency’s earlier decision should be altered or abandoned.” With respect to 16-1023, the Court found it lacked jurisdiction because petitioner NEPGA had not itself sought rehearing of the FERC order appealed from, which for the Court to have jurisdiction it would have had to do.

- **Base ROE Complaints II & III (2012 & 2014) (15-1212)**
Underlying FERC Proceedings: EL13-33; EL14-86¹²⁵
Appellants: New England Transmission Owners

As previously reported, the TOs filed a petition for review of the FERC’s orders in the 2012 and 2014 ROE complaint proceedings on July 13, 2015. On August 14, 2015, the TOs filed an unopposed motion to hold this case in abeyance pending final FERC action on the 2012 and 2014 ROE Complaints (see Section I above). On August 20, 2015, the Court granted the TOs’ motion to hold the case in abeyance, subject to submission of status reports every 90 days. The most recent status report, the ninth such report filed, was filed on November 13, 2017. In that report, the parties again indicated, ultimately, that the proceedings upon which the TOs based their request for abeyance of this appeal remain ongoing. This case continues to be held in abeyance.

¹²⁰ 155 FERC ¶ 61,273 (June 16, 2016); 157 FERC ¶ 61,060 (Oct. 27, 2016).

¹²¹ 153 FERC ¶ 61,378 (Dec. 30, 2015); 151 FERC ¶ 61,226 (June 18, 2015).

¹²² 153 FERC ¶ 61,224 (Nov. 19, 2015); 153 FERC ¶ 61,223 (Nov. 19, 2015); 147 FERC ¶ 61,172 (May 30, 2014).

¹²³ 153 FERC ¶ 61,222 (Nov. 19, 2015); 150 FERC ¶ 61,053 (Jan. 30, 2015).

¹²⁴ 153 FERC ¶ 61,222 (Nov. 19, 2015); 150 FERC ¶ 61,053 (Jan. 30, 2015).

¹²⁵ 147 FERC ¶ 61,235 (June 19, 2014); 149 FERC ¶ 61,156 (Nov. 24, 2014); 151 FERC ¶ 61,125 (May 14, 2015).

- **FCM Pricing Rules Complaints (15-1071**, 16-1042) (consol.)**
Underlying FERC Proceeding: EL14-7,¹²⁶ EL15-23¹²⁷
Petitioners: NEPGA, Exelon

On March 31, 2015, NEPGA filed a petition for review of the FERC's orders on NEPGA's FCM Administrative Pricing Rules Complaint. Following briefing, oral argument was held October 6, 2017 before Judges Srinivasan, Wilkins and Dentelle. This matter is now pending before the Court.

Other Federal Court Developments of Interest

- ***California Public Utilities Commission v. FERC* (9th Cir., 16-70481)** (Jan. 8, 2018)

In a decision that could impact how the FERC approaches future orders on ROE filings, the Ninth Circuit Court of Appeals held that the FERC acted arbitrarily and capriciously, and erred, by granting a transmission owner (PG&E) an incentive adder for its participation in an RTO (CAISO) where the participation by the TO was not voluntary. Doing so created a generic incentive adder (for TO participation in an RTO) in contravention of Order 679's requirement of case-by-case review of adders to be granted, which were designed to induce voluntary RTO participation. The Ninth Circuit remanded the matter back to the FERC with instructions to follow the appeals court's reasoning.

¹²⁶ 150 FERC ¶ 61,064 (Jan. 30, 2015); 146 FERC ¶ 61,039 (Jan. 24, 2014).

¹²⁷ 154 FERC ¶ 61,005 (Jan. 7, 2016); 150 FERC ¶ 61,067 (Jan. 30, 2015).

INDEX
Status Report of Current Regulatory and Legal Proceedings
as of January 31, 2018

I. Complaints/Section 206 Proceedings

206 Proceeding: RNS/LNS Rates and Rate Protocols.....	(EL16-19).....	5
Base ROE Complaint I-IV: TOs’ Motion to Dismiss/Consolidate	(EL16-64 et al.).....	5
Base ROE Complaints II & III (2012 & 2014) (Consolidated)	(EL13-33 and EL14-86)	6
Base ROE Complaint IV (2016).....	(EL16-64).....	4
Calpine/LS Power Delayed Resource Complaint	(EL18-53).....	2
Clear River Schedule 11 O&M Complaint	(EL18-31).....	2
NEPGA PER Adjustment Complaint Settlement Agreement.....	(ER17-2153)	3

II. Rate, ICR, FCA, Cost Recovery Filings

206 Proceeding: RNS/LNS Rates and Rate Protocols.....	(EL16-19).....	5
Base ROE Complaints II & III (2012 and 2014) (Consolidated).....	(EL13-33 and EL14-86)	6
Base ROE Complaint IV (2016).....	(EL16-64).....	4
Calpine/LS Power Delayed Resource Complaint	(EL18-53).....	2
Emera MPD OATT Attachment J Revision	(ER18-210)	8
FCA12 Qualification Informational Filing.....	(ER18-264)	7
ICR-Related Values and HQICCs – Annual Reconfiguration Auctions	(ER18-371)	7
NEPGA PER Adjustment Complaint Settlement Agreement.....	(ER17-2153)	3
TOs’ Opinion 531-A Compliance Filing Undo.....	(ER15-414)	8

***III. Market Rule and Information Policy Changes,
 Interpretations and Waiver Requests***

2013/14 Winter Reliability Program Remand Proceeding.....	(ER13-2266)	11
ART Market Rule Changes	(ER18-455)	10
Calpine/LS Power Delayed Resource Complaint	(EL18-53).....	2
CONE & ORTP Updates	(ER17-795)	11
CSO Termination: Blue Sky West.....	(ER18-704)	9
NEPGA PER Adjustment Complaint Settlement Agreement.....	(ER17-2153)	3
Waiver Request: Timing of Canal-MA-GHG-Rule-Related Addl. Cost Recon. Filing (GenOn)	(ER18-623)	9
Waiver Request: DR Auditing Requirements (CPower)	(ER18-185)	11
Updated Dynamic De-List Bid Threshold	(ER18-620)	9
CASPR.....	(ER18-619)	10

IV. OATT Amendments/Coordination Agreements

No Activity to Report

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Updates

Schedule 20A-GMP Brookfield Complaint (EL18-52) 12
 Schedule 21-EM: Bangor Hydro/Maine Public Service Merger-Related Costs Recovery (ER15-1434 et al.) 13
 Schedule 21-EM: Stored Solar J&WE LSA (ER18-387) 13
 Schedule 21-ES: PSNH/VEC LSA (ER18-745) 12
 Schedule 21-GMP Annual Forecast Informational Filing (ER12-2304) 15
 Schedule 21-NEP: National Grid/Granite Reliable Power RFA (ER18-346) 13
 Schedule 21-VEC: VEC/PSNH LSA (NJ18-10)..... 15
 Schedule 22: Clear River LGIA..... (ER18-349) 13

**VII. NEPOOL Agreement/
 Participants Agreement Amendments**

No Activity to Report

VIII. Regional Reports

IMM Quarterly Markets Reports - Summer 2017..... (ZZ17-4)..... 16
 LFTR Implementation: 37th Quarterly Status Report..... (ER07-476; RM06-08)..... 15
Opinion 531-A Local Refund Report: FG&E (EL11-66) 15
Opinions 531-A/531-B Local Refund Reports (EL11-66) 16
Opinions 531-A/531-B Regional Refund Reports..... (EL11-66) 15

IX. Membership Filings

December 2017 Membership Filing (ER18-353) 16
 February 2018 Membership Filing..... (ER18-767) 16
 January 2018 Membership Filing..... (ER18-539) 16
 Suspension Notice – AmericaWide Energy..... (not docketed) 16

X. Misc. - ERO Rules, Filings; Reliability Standards

NOPR: Cyber Security Incident Reporting Reliability Standards..... (RM18-2) 17
 NOPR: New Rel. Standards: PRC-027-1 and PER-006-1 (RM16-22) 18
 NOPR: Revised Rel. Standard: CIP-003-7 (RM17-11) 18
 NOPR: Revised Rel. Standards: CIP-005-6, CIP-010-3, CIP-013-1..... (RM17-13) 17
Order 840: Revised Rel. Standards: EOP-004-4, EOP-005-3, EOP-006-3, EOP-008-2 (RM17-12) 17
 Rules of Procedure Changes (Appendix 3D - Registered Ballot Body Criteria)..... (RR18-1) 19
 Rules of Procedure Changes (Sections 600 and 900) (RR17-6) 19

XI. Misc. Regional Interest

203 Application: Calpine/ECP (EC17-182) 20
 203 Application: Dynegy/Vistra (EC18-23) 19
 203 Application: GenOn Reorganization (EC17-152) 20
 203 Application: Green Mountain Power/ENEL Hydros..... (EC17-76) 20
 203 Application: MATEP (EC18-10) 20
 203 Application: PSNH/Granite Shore (EC18-12) 20
 203 Application: PSNH/HSE Hydro NE..... (EC18-42) 19
 Anbaric’s Ocean Grid Project: Transmission Rights at Negotiated Rates (ER18-435) 22
 D&E Agreement Cancellation: NSTAR/Essential Power Newington..... (ER18-330) 23
 FERC Audit of ISO-NE (PA16-6) 23

FERC Enforcement Action: Formal Investigation
 (MISO Zone 4 Planning Resource Auction Offers)..... (IN15-10)..... 23

IA: CL&P/Woods Hill Solar (ER18-316) 23

IA: NSTAR/Covanta SEMASS (ER18-424) 22

LGIA: Emera Maine/Penobscot Energy Recovery Co..... (ER18-505) 21

MOPR-Related Proceedings (NYISO, PJM)..... (EL13-62; EL16-49) 21

NEP/HQUS Phase I/II HVDC-TF Service Agreement (ER18-388) 22

NSTAR/WMECO Succession Proceedings (ER18-749/751)..... 21

REMOVED II and REMOVED SAS Agreement Terminations..... (ER18-716) 21

Third Supplement to Lease Agreement: UI/CT DOT (ER18-454) 22

XII. Misc: Administrative & Rulemaking Proceedings

Grid Resilience in RTO/ISOs; DOE NOPR..... (AD18-7; RM18-1) 23

NOI: FERC’s Policy for Recovery of Income Tax Costs & ROE Policies (PL17-1)..... 24

NOPR: Data Collection for Analytics & Surveillance and MBR Purposes (RM16-17) 26

NOPR: Electric Storage Participation in RTO/ISO Markets (RM16-23; AD16-20) 26

NOPR: LGIA/LGIP Reforms (RM17-8) 25

NOPR: Primary Frequency Response -
 Essential Reliability Services and the Evolving Bulk-Power System (RM16-6) 27

NOPR: Uplift Cost Allocation and Transparency in RTO/ISO Markets (RM17-2) 26

Order 833: Critical Energy/Electric Infrastructure Information (CEII) Procedures (RM16-15)..... 27

Order 839: Civil Monetary Penalty Inflation Adjustments..... (RM18-4) 25

State Policies & Wholesale Markets Operated by ISO-NE, NYISO, PJM (AD17-11)..... 24

XIII. Natural Gas Proceedings

Algonquin EDC Capacity Release Bidding Requirements Exemption Request (RP16-618) 28

Enforcement Action: BP Initial Decision (IN13-15)..... 29

Enforcement Action: Rover-Staff Notice of Alleged Violation..... (not docketed) 30

Enforcement Action: Total Gas & Power North America, Inc..... (IN12-17) 29

New England Pipeline Proceedings 30

Non-New England Pipeline Proceedings 32

XIV. State Proceedings & Federal Legislative Proceedings

Massachusetts Emissions Allowance Auctions: Stakeholder Input on Auction Design Parameters 34

NG Advantage (NY) Permit Challenge 34

XV. Federal Courts

Base ROE Complaints II & III (2012 & 2014) 15-1212 (DC Cir.)..... 36

California Public Utilities Commission v. FERC (16-70481, 9th Cir.)..... 37

Demand Curve Changes 17-1110 (DC Cir.)..... 35

FCA10 Results and FCA9 Results..... 16-1068/16-1408 (DC Cir.)... 36

FCM Pricing Rules Complaints 15-1071/16-1042 (DC Cir.)... 37

FCM Resource Retirement Reforms (17-1275) 35

NEPGA PER Complaint and FCM Jump Ball and Compliance Proceedings 16-1023/1024 (DC Cir.) 36