

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of January 6, 2021

The following activity, as more fully described in the attached litigation report, has occurred since the report dated December 2, 2020 ("last Report") was circulated. New matters/proceedings since the last Report are preceded by an asterisk '*'. Page numbers precede the matter description.

COVID-19



No Activity to Report

I. Complaints/Section 206 Proceedings



* 2	NEPGA Net CONE Complaint (EL21-26)	Dec 11 Dec 15-31	NEPGA files Complaint Avangrid, Calpine, Dominion, Eversource, FirstLight, LS Power, MA AG, MMWEC, National Grid, NHEC, NRG, MA DPU, RI PUC, Public Citizen, intervene
		Jan 4-5 Dec 31	BSW ProjectCo, CPV Towantic, Exelon intervene out-of-time Answers, comments and protests filed by ISO-NE , NEPOOL , NESCOE , NECOS/ENE , CT State Agencies , EPSA
3	NECEC/Avangrid Complaint Against NextEra/Seabrook (EL21-6)	Dec 7	Avangrid answers NextEra's November 30 supplemental answer
3	NextEra Energy Seabrook Declaratory Order Petition re: NECEC Elective Upgrade Costs Dispute (EL21-3)	Dec 4	Avangrid answers NextEra's Nov 19 answer
5	RNS/LNS Rates and Rate Protocols Settlement Agreement II (ER20-2054)	Dec 28	FERC approves Settlement Agreement II; compliance filing due on or before Jan 27, 2021

II. Rate, ICR, FCA, Cost Recovery Filings



* 8	Dynegy CIP IROL (Schedule 17) Cost Recovery Filing (ER21-774)	Dec 30 Jan 4	Dynegy requests FERC acceptance of a proposed rate schedule to allow Dynegy to begin the recovery period for certain CIP-IROL Costs under Schedule 17 of the ISO-NE Tariff; comment date Jan 20, 2021 Calpine, NESCOE intervene
* 8	IRH Amended and Restated Support and Use Agreements (ER21-712)	Dec 18 Dec 28-29	IRH file amended and restated Support and Use Agreements; comment date Jan 8, 2021 Avangrid, ENE, NESCOE intervene
9	ICR-Related Values and HQICCs – Annual Reconfiguration Auctions (ER21-496)	Dec 7-14	National Grid, NESCOE intervene
9	FCA15 Qualification Informational Filing (ER21-372)	Dec 2, 3 Dec 10	Avangrid, EPSA intervene out-of-time ISO-NE answers NEPGA, Mystic limited protests; IMM answers Andro Hydro limited protest
10	2021 NESCOE Budget (ER21-113)	Dec 18	FERC accepts 2021 NESCOE Budget, eff. Jan 1, 2021
10	2021 ISO-NE Administrative Costs and Capital Budgets (ER21-106)	Dec 18	FERC accepts 2021 ISO-NE Budgets, eff. Jan 1, 2021

11	Mystic 8/9 Cost of Service Agreement (ER18-1639)	Dec 21	FERC issues “Allegheny Order” modifying the discussion in the <i>July 17 Orders</i> , and setting aside in part both the <i>July 2018 Rehearing Order</i> and the <i>July 17 Compliance Order</i>
13	MPD OATT 2019 Annual Informational Filing Settlement Agreement (ER15-1429-014)	Dec 28	Versant Power files Settlement Agreement; comment date Jan 18, 2021 ; reply comments Jan 27, 2021

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



* 13	Updated CONE, Net Cone and PPR Values (eff. FCA16) (ER21-787)	Dec 31 Jan 4-6	ISO-NE files updated values; comment date Jan 21, 2021 Avangrid, Brookfield, Calpine, Dominion, LS Power, MA AG, NESCOE, NRG intervene
* 13	New DDBT Methodology (ER21-782)	Dec 31 Jan 4-6	ISO-NE and NEPOOL jointly file new methodology; comment date Jan 21, 2021 Brookfield, Calpine, Dominion, LS Power, MA AG, NESCOE, NRG intervene
* 14	Energy Efficiency Resource FCM Qual. Modifications (ER21-640)	Dec 14 Dec 16-30	ISO-NE and NEPOOL jointly file modifications Calpine, Eversource, National Grid, NESCOE, MA DPU intervene
14	ESI Alternatives (ER20-1567)	Dec 18	ISO-NE withdraws its Nov 13 request for clarification of the <i>Order Rejecting ESI Alternatives</i>
15	Order 841 Compliance Filings (Electric Storage in RTO/ISO Markets) (ER19-470)	Dec 7	ISO-NE and NEPOOL jointly file, in one comprehensive filing, Market Rule revisions in response to the requirements of the <i>Order 841 Compliance Filing II Order</i>
16	Fuel Security Retention Proposal (ER18-2364)	Dec 3	FERC issues <i>Fuel Security Retention Proposal Allegheny Order</i> , modifying the <i>Fuel Security Retention Proposal Order</i> , in part (to be consistent with its clarification that the proposal was reviewed under FPA section 205), sustaining the results of the Fuel Security Retention Proposal Order and denying Verso's request for reconsideration
16	ISO-NE Waiver Filing: Mystic 8 & 9 (ER18-1509; EL18-182)	Dec 3	FERC issues <i>Mystic Waiver Allegheny Order</i> modifying the discussion in the <i>Mystic Waiver Order</i> , reaching the same result and terminating the FPA section 206 proceeding instituted in EL18-182

V. OATT Amendments / TOAs / Coordination Agreements



No Activity to Report

V. Financial Assurance/Billing Policy Amendments



* 17	FAP Info Disclosure/KYC Requirements (ER21-816)	Jan 6 Jan 6	ISO-NE and NEPOOL jointly file changes; comment date Jan 27, 2021 Brookfield intervenes
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VI. Schedule 20/21/22/23 Changes



No Activity to Report

VII. NEPOOL Agreement/Participants Agreement Amendments



No Activity to Report

VIII. Regional Reports



19	Capital Projects Report - 2020 Q3 (ER20-108)	Dec 15	FERC accepts Q3 Report, eff. Oct 1, 2020
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IX. Membership Filings

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| * 19 | January 2021 Membership Filing (ER21-769) | Dec 29 | Memberships: Cassadaga Wind LLC; Centrica Business Solutions Optimize, LLC; Pilot Power Group, LLC; and SmartestEnergy US LLC;
Termination: Wheelabrator Bridgeport; comment date Jan 20, 2021 |
| 19 | November 2020 Membership Filing (ER21-260) | Dec 17 | FERC accepts Nautilus Solar Energy (AR Sector, RG Sub-Sector, Large AR RG Group Seat) as new member, eff. Dec 1, 2020 |

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

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| * 20 | NERC Annual Report on FFT & Compliance Exception Programs (RC11-6-011) | Dec 30 | NERC files annual report on FFT and compliance exception programs; comment date Jan 20, 2021 |
| * 20 | Revised Rel. Standards: CIP-013-2, CIP-005-7, CIP-010-4 (RD21-2) | Dec 14 | NERC files for approval proposed changes to CIP-013-2, CIP-005-7, and CIP-010-4 that address supply chain cybersecurity risk management |
| 20 | CIP Standards Development: Info Filings on Virtualization & Cloud Computing Srvcs Projects (RD20-2) | Dec 15 | NERC submits quarterly informational filing, reporting no change in schedule since that reported in Nov (Reliability Standards assoc. with Projects 2016-02 and 2019-02 to be filed in Dec 2021) |
| 21 | Virtualization and Cloud Computing Services in BES Operations (RM20-8) | Dec 17 | FERC issues order directing NERC to begin a formal process to assess, and to make an info. filing in a little over one year (Jan 1, 2022) that addresses, the feasibility of voluntarily conducting BES operations in the cloud in a secure manner |

XI. Misc. - of Regional Interest

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| 23 | 203 Application: CPV Towantic (EC21-16) | Dec 17 | FERC authorizes CPV Group LP to indirectly acquire all of the indirect voting securities owned by GIP II CPV in, among others, CPV Towantic |
| 23 | 203 Application: NRG/Direct (EC20-96) | Jan 5 | NRG consummates transaction acquiring, among others, Direct Energy Business and Direct Energy Business Marketing |
| * 23 | LGIA: NSTAR / MMWEC (Stony Brook) (ER21-777) | Dec 31 | NSTAR files a LGIA to provide for the continued interconnection of Stony Brook Station; comment date Jan 21 |
| * 24 | LGIA: CMP/ReEnergy Stratton (ER21-769) | Dec 30 | CMP files a LGIA to renew and replace the terms of their existing but expiring interconnection agreement; comment date Jan 20 |
| * 24 | Interim Distrib. Wheeling Agrm't: Unitol / Briar Hydro (ER21-759) | Dec 29 | Unitil files interim agreement; comment date Jan 19 |
| * 24 | D&E Agrm't Cancellation: NSTAR/ SEMASS (ER21-676) | Dec 17 | NSTAR submits notice of cancellation of D&E Agreement; comment date Jan 7 |
| * 24 | SGIA: CL&P / ECRRA (ER21-651) | Dec 15 | CL&P files SGIA to provide for the continued interconnection of ECRRA's refuse-to-energy municipal solid waste facility |
| 25 | VTransco Rate Schedule 2 Cancellation (ER21-256) | Dec 18 | FERC accepts cancellation notice, eff. Dec 28, 2020 |
| 25 | NECEC TSAs: NECEC Transmission Notice of Succession and CMP Notice of Cancellation (ER21-12 et al.) | Dec 18 | FERC accepts remaining notices addressing the transfer of TSAs with the participants that will fund the construction, operation and maintenance of the NECEC Transmission Line |
| * 26 | FERC Enforcement Action: Algonquin Power Windsor Locks (IN21-2) | Jan 5 | FERC approves Stipulation and Consent Agreement with Windsor Locks, requiring Windsor Locks to pay a \$1,119,073 million civil penalty and to disgorge \$1 million , including interest, to resolve the FERC's investigation into violations, between Jul 2012 and Sep 2013, of the FERC's Anti-Manipulation Rules |

XII. Misc. - Administrative & Rulemaking Proceedings

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| 27 | Offshore Wind Integration in RTOs/ISOs Tech Conf (AD20-18) | Dec 7 | Transcript of Oct 27, 2020 tech conf posted in FERC's eLibrary |
| 28 | Hybrid Resources Technical Conference Tech Conf (AD20-9) | Dec 8 | Transcript of Jul 23, 2020 tech conf posted in FERC's eLibrary |

XIII. Natural Gas Proceedings

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| 37 | Enforcement Action: BP Initial Decision (IN13-15) | Dec 17 | FERC issues <i>Opinion 549-A</i> , a 159-page decision addressing arguments raised on rehearing requested of <i>Opinion 549</i> , modifying the discussion in <i>Opinion 549</i> , but reaching the same result (ultimately requiring BP to pay a \$20.16 million civil penalty (roughly \$24.4 million with accrued interest) and disgorge \$207,169). |
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XIV. State Proceedings & Federal Legislative Proceedings

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| * 40 | New England States' Vision Statement / On-Line Technical Forums | Dec-Jan | On-line tech forums announced by State Agencies include:
Jan 13, 2021 (9:00am - 2:00pm) - Wholesale Market Reform
Jan 25, 2021 (1:00pm - 6:00pm) - Wholesale Market Reform
Feb 2, 2021 (1:00pm - 6:00pm) - Transmission Planning
Feb 2021 (TBD) - Governance Reform |
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XV. Federal Courts

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| * 41 | Exelon PP-10 Complaint (20-1509) | Dec 18 | Exelon petitions DC Circuit Court of Appeals for review of the FERC's orders denying its PP-10 Complaint |
| | | Dec 23 | Court issues order requiring appearances, docketing statements and statement of issues by Jan 22, 2021; dispositive motions, if any, and a Certified Index to the Record, by Feb 8, 2021 |
| 42 | ISO-NE Implementation of Order 1000 Exemptions for Immediate Need Reliability Projects (20-1422) | Dec 7 | Court extends deadlines for the filing of procedural and dispositive motions to Dec 10 and Dec 28, 2020, respectively |
| | | Dec 10 | FERC requests at least 60 days between the filing of LS Power's opening brief and the FERC's brief in response |
| | | Dec 28 | FERC files certified index to the record |
| | | Dec 29 | Court grants Avangrid, MMWEC interventions |
| 42 | CIP IROL Cost Recovery Rules (20-1389) | Dec 18 | FERC requests, with Petitioners' consent, a <i>revised</i> briefing schedule (adding 45 days to previous deadlines) |
| | | Dec 22 | Court issues order establishing <i>revised</i> briefing schedule, as requested |
| 42 | Mystic 8/9 Cost of Service Agreement (20-1343; 20-1361, 20-1362; 20-1365, 20-1368) (consolidated) | Jan 5 | FERC requests this proceeding be held in abeyance until Feb 26, 2021 (7 days after parties have an opportunity to appeal the <i>Dec 21 Order Addressing Arguments Raised on Rehearing</i>), when parties will file motions to govern further proceedings |
| 44 | ISO-NE's Inventoried Energy Program (Chapter 2B) Proposal (19-1224) | Dec 11 | Petitioners file opening briefs |
| 44 | PennEast Project (18-1128) | Dec 23 | Parties file Joint Status Report reporting that none of the events "constitute any of the conditions ... triggering an obligation to file a motion governing future proceedings" |
| 45 | Opinion 569/569-A: FERC's Base ROE Methodology (16-1325) (consol.) | Dec 3 | FERC files certified Index to the Record |
| | | Dec 23 | Parties file joint unopposed briefing schedule |
| | | Dec 23 | First Energy moves to voluntarily dismiss cases 20-1227 & 20-1275 |
| | | Dec 29 | Court consolidates 20-1513 with 16-1325 |
| | | Jan 5 | Court grants FirstEnergy Dec 23 motion, dismissing 20-1227 & 20-1275 |

M E M O R A N D U M

TO: NEPOOL Participants Committee Members and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: January 6, 2021

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 6, 2021. If you have questions, please contact us.

COVID-19

- **Jul 8-9 Tech Conf: Impacts of COVID-19 on the Energy Industry (AD20-17)**

On July 8-9, 2020, the FERC convened a Commissioner-led technical conference to explore the potential longer-term impacts of the emergency conditions caused by COVID-19 on FERC-jurisdictional entities "in order to ensure the continued efficient functioning of energy markets, transmission of electricity, transportation of natural gas and oil, and reliable operation of energy infrastructure today and in the future, while also protecting consumers". The conference included consideration of: (i) the energy industry's ongoing and potential future operational and planning challenges due to COVID-19 and as the situation evolves moving forward; (ii) the potential impacts of changes in electric demand on operations, planning, and infrastructure development; (iii) the potential impacts of changes in natural gas and oil demand on operations, planning, and infrastructure development; and (iv) issues related to access to capital, including credit, liquidity, and return on equity. Comments and speaker opening statements are posted in eLibrary.

Interested parties were invited to file, on or before August 31, 2020, post-technical conference comments on any or all of the topics discussed at the July 8-9 technical conference, as well as to respond to the questions outlined in the July 1, 2020 supplemental notice of technical conference. Comments were filed by AEP, APPA, America Forest & Paper, America's Power, EEI, IEEE Power & Energy Society, Clearview Energy Partners, TAPS, Assoc. of Oil Pipelines, Pilot Travel Centers, and Process Gas. This matter is pending before the FERC.

- **Remote ALJ Hearings (AD20-12)**

All hearings before Administrative Law Judges ("ALJs") are being held remotely through video conference software (WebEx and SharePoint) until further notice.² The Presiding Judge in each remote hearing will ensure that the participants have access to an "IT Day" prior to the hearing to allow all participants, witnesses, and the public who will attend the hearing to learn more about the remote hearing software and to get their technical questions answered by the appropriate FERC staff. Uniform Hearing Rules for all Office of the ALJ hearings were adopted effective September 15, 2020.³ The "Remote Hearing Guidance

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 Chief Administrative Law Judge's Notices to the Public, Docket No. AD20-12 (June 17, 2020).

³ Chief Administrative Law Judge's Notices to the Public, Docket No. AD20-12 (Sep. 1, 2020).

for Participants” was revised on September 23, 2020 to make three changes.⁴ The [Uniform Hearing Rules](#) and [Remote Hearing Guidance for Participants](#) are publicly available in this proceeding in eLibrary and on the [FERC’s Administrative Litigation webpage](#).

- **Extension of Filing Deadlines (AD20-11)**

The waiver of FERC regulations that require that filings with the FERC be notarized or supported by sworn declarations is *in effect through January 29, 2021*.⁵ The August 20 notice extended the waiver first noticed in May.⁶ As previously reported, Entities may also seek waiver of FERC orders, regulations, tariffs and rate schedules, including motions for waiver of regulations that govern the form of filings, as appropriate, to address needs resulting from steps they have taken in response to the coronavirus.⁷

- **Blanket Waiver of ISO/RTO Tariff In-Person Meeting and Notarization Requirements (EL20-37)**

The extension of the blanket waivers of ISO/RTO Tariff *in-person*⁸ meeting and notarization requirements has similarly been *extended through January 29, 2021*.⁹ The August 20, 2020 order extended the blanket waivers first granted in the FERC’s April 2, 2020 order.¹⁰

I. Complaints/Section 206 Proceedings

- **NEPGA Net CONE Complaint (EL21-26)**

On December 11, 2020, NEPGA filed a complaint against ISO-NE alleging that ISO-NE violated its Tariff and the filed-rate doctrine by recalculating and reviewing with NEPOOL a Net CONE value methodology demonstrably inconsistent with the Tariff and prior practice. NEPGA seeks an order directing ISO-NE to recalculate, review with NEPOOL stakeholders, and file with the FERC a Net CONE value consistent with the existing Tariff definition. Should its requested relief be granted, NEPGA asked the FERC to find unjust and unreasonable the Net CONE value for FCAs 16-18 (filed on December 31, *see* ER21-787 in Section III below) and, should there not be sufficient time to allow for completion of stakeholder review before the beginning of the FCA16 calendar (March 2021), NEPGA asked that ISO-NE be directed to apply the Tariff-defined annual adjustment factors to the FCA15 Net CONE value to be used for the FCA16 Net CONE value.

ISO-NE’s answer, comments and interventions with respect to the Net CONE Complaint were due December 31, 2020. In its answer, [ISO-NE](#) explained why it acted legally and consistent with its Tariff, and requested a FERC order summarily dismissing or denying NEPGA’s Complaint. [NEPOOL](#) filed comments explaining why the Complaint was premature and should be rejected so that NEPGA’s arguments could be properly addressed in response to ISO-NE’s filing of its proposed updates to CONE, Net CONE and the PPR values. NEPOOL’s comments, alternatively, suggested that the Complaint proceeding be held in abeyance pending the outcome of ISO-NE’s December 31 Updated CONE, Net CONE and PPR Values filing. Protests were also filed by

⁴ *Chief Administrative Law Judge’s Notices to the Public*, Docket No. AD20-12 (Sep. 23, 2020) (removing law clerk requirement to share screen when moving exhibits, revising procedures for requesting Live Litigation, and revising witness communication guidance to require that “[c]ommunications with a witness through concealed channels of communications are prohibited while the witness is providing testimony on the witness stand. Communications with a witness are allowed during breaks and when they are not on the witness stand.”)

⁵ *See Extension of Non-Statutory Deadlines*, Docket No. AD20-11-000 (Aug. 20, 2020).

⁶ *Extension of Non-Statutory Deadlines*, Docket No. AD20-11-000 (May 8, 2020).

⁷ *Extension of Non-Statutory Deadlines*, Docket No. AD20-11-000 (Apr. 2, 2020).

⁸ The waiver only applies to a specific requirement that meetings be held *in person*. Other than the in-person requirement, such meetings must still be held consistent with the tariff, but should be conducted by other means (e.g. telephonically).

⁹ *Temporary Action to Facilitate Social Distancing*, 172 FERC ¶ 61,151 (Aug. 20, 2020).

¹⁰ *Temporary Action to Facilitate Social Distancing*, 171 FERC ¶ 61,004 (Apr. 2, 2020) (waiving notarization requirements through Sep. 1, 2020, contained in any tariff, rate schedule, service agreement, or contract subject to the FERC’s jurisdiction under the Federal Power Act (“FPA”), the Natural Gas Act (“NGA”), or the Interstate Commerce Act).

[NESCOE](#), [NECOS/ENE](#)¹¹ and [CT State Agencies](#).¹² [EPSA](#) filed comments supporting NEPGA's Complaint. Doc-less interventions only were filed by Avangrid, Calpine, Dominion, Eversource, FirstLight, LS Power, MA AG, MMWEC, National Grid, NHEC, NRG, MA DPU, RI PUC, 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) or Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **NECEC/Avangrid Complaint Against NextEra/Seabrook (EL21-6)**

On October 13, 2020, NECEC Transmission LLC ("NECEC") and Avangrid Inc. (together, "Avangrid") filed a complaint against NextEra¹³ requesting FERC action "to stop NextEra from unlawfully interfering with the interconnection of the New England Clean Energy Connect transmission project ("NECEC Project")." The Complaint seeks, among other things, an initial, expedited order that grants certain relief¹⁴ and directs NextEra to immediately commence engineering, design, planning and procurement activities that are necessary for NextEra to construct the generator owned transmission upgrades during Seabrook Station's Planned 2021 Outage.

Comments on the Complaint were due on or before November 2, 2020. On November 2, NextEra submitted an answer to the Complaint (requesting the FERC dismiss or deny the Complaint) and National Grid filed comments. Doc-less interventions were filed by Dominion, Eversource, Calpine, Exelon, HQ US, MA AG, MMWEC National Grid, NESCOE, NRG, Public Citizen. On November 17, Avangrid submitted an answer to NextEra's November 2 Answer. On November 30, NextEra answered Avangrid's November 17 answer ("supplemental answer"), repeating its request that the FERC dismiss or deny the Complaint. Avangrid answered the November 30 supplemental answer on December 7, 2020. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **NextEra Energy Seabrook Declaratory Order Petition re: NECEC Elective Upgrade Costs Dispute (EL21-3)**

In a related matter initiated a week earlier, NextEra Energy Seabrook, LLC ("Seabrook") filed a Petition for a Declaratory Order ("Petition") "by which it seeks to understand the scope of its FERC-jurisdictional regulatory obligations with respect to the project ("NECEC Elective Upgrade"), and to resolve its dispute with NECEC". Specifically, Seabrook asked the FERC to declare that: (1) Seabrook is not required to incur a financial loss to upgrade, for NECEC's sole benefit, a 24.5 kV generator circuit breaker and ancillary equipment ("Generation Breaker") at Seabrook Station; (2) "Good Utility Practice" for replacement of the nuclear plant Generation Breaker is defined in terms of the practices of the nuclear power industry, such that Seabrook's proposed definition of that term is appropriate for use in a facilities agreement with NECEC; and (3) Seabrook will not be liable for consequential damages for the service it provides to NECEC under a facilities agreement (collectively, the "Requested Declarations"). Alternatively, Seabrook asked that the FERC declare that nothing in ISO-NE's Tariff requires Seabrook to enter into an agreement to replace the Generation Breaker, and therefore, Seabrook and the

¹¹ "NECOS/ENE" are: Belmont Municipal Light Department, Block Island Utility District, Braintree Electric Light Department, Georgetown Municipal Light Department, Groveland Electric Light Department, Hingham Municipal Lighting Plant, Littleton Electric Light Department, Merrimac Municipal Light Department, Middleborough Gas & Electric Department, Middleton Electric Light Department, North Attleborough Electric Department, Norwood Light & Broadband Department, Reading Municipal Light Department, Rowley Municipal Lighting Plant, Stowe Electric Department, Taunton Municipal Lighting Plant, and Wallingford Department of Public Utilities Electric Division (collectively, "NECOS"); and Energy New England, LLC ("ENE").

¹² "CT Agencies" are: the Connecticut Department of Energy and Environmental Protection ("CT DEEP"), William Tong, Attorney General for the State of Connecticut ("CT AG"), the Connecticut Public Utilities Regulatory Authority ("CT PURA") and the Connecticut Office of Consumer Counsel ("CT OCC")

¹³ For purposes of this Complaint proceeding, "NextEra" is short for NextEra Energy Resources, LLC ("NextEra Energy Resources"), NextEra Energy Seabrook, LLC ("NextEra Seabrook"), FPL Energy Wyman LLC ("Wyman"), and FPL Energy Wyman IV LLC ("Wyman IV").

¹⁴ Directing NextEra to comply with the ISO-NE OATT, to comply with open access requirements, and to cease and desist unlawful interference with the NECEC Project; and to have the FERC temporarily revoke NextEra's blanket waiver under Part 358 of the FERC's regulations and to initiate an investigation and require NextEra to preserve and provide documents related to the interconnection of the NECEC Project.

Joint Owners are entitled to bargain for appropriate terms and conditions to recover their costs, to define Good Utility Practice, and to limit liability associated with providing the service ("Alternative Declaration").

Comments on Seabrook's Petition were due on or before November 4, 2020, and were filed by Eversource, MMWEC, and NEPGA. Avangrid and NECEC Transmission ("Avangrid") protested the Declaratory Order. Doc-less interventions were filed by Avangrid, Dominion, Eversource, Calpine, Exelon, HQ US, National Grid, NESCOE, NRG, and Public Citizen. On November 19, NextEra answered Avangrid's protest. On December 4, Avangrid answered NextEra's November 19 answer. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **New England Generators' Exelon Complaint (EL20-67)**

New England Generators¹⁵ August 25, 2020 complaint against Exelon¹⁶ remains pending. As previously reported, the Complaint requested that, if and to the extent the FERC does not grant all relief requested by the New England Generators in its August 27, 2020 request for clarification and/or rehearing of the *July 17 Orders* in the Mystic 8/9 Cost of Service Agreement ("COS Agreement") proceeding (see ER18-1639 below), the FERC should find that the new information about Exelon's two new queue positions and Exelon's intention to continue to operate Everett beyond the term of the Mystic Agreement makes the existing rate in the Mystic Agreement unjust and unreasonable. New England Generators further requested that the FERC change the Mystic Agreement to: (i) apply the clawback mechanisms to Exelon's two new interconnection queue positions (to prevent Exelon from using interconnection queue positions for "new" or "repowered" units to skirt restrictions imposed on Mystic's recovery of costs pursuant to the COS Agreement); (ii) delete or give no meaning to the words "that were expensed" (in order to prevent Exelon from shielding costs paid for by captive ratepayers from the application of the COS Agreement's clawback provision); and (iii) require that Mystic return any of the undepreciated Everett repair and capital expenditure costs in the event that Mystic 8 or 9 return to the market after the end of the COS Agreement.

Exelon's answer and all interventions, or protests were due on or before September 14, 2020. In addition to Exelon's answer, comments supporting the Complaint were filed by NESCOE, Public Systems¹⁷ and Connecticut Parties.¹⁸ On September 28, NEPGA answer Exelon's answer. Interventions only were filed by Calpine, ENE, Eversource, Massachusetts Attorney General ("MA AG") National Grid, and Public Citizen. The Complaint, as well as all of the pleadings in response, remain pending before the FERC. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **206 Proceeding: FCM Pricing Rules Complaints Remand (EL20-54)**

On December 2, 2020, the FERC issued an order¹⁹ finding the price-lock mechanism and zero-price offer rule ("New Entrant Rules") no longer just and reasonable and directing ISO-NE to remove them from the Tariff.²⁰ Specifically, the FERC found that, "in light of changed circumstances, the New Entrant Rules are unjust and unreasonable because they result in unreasonable price distortion."²¹ The FERC further found that the FCA price

¹⁵ "New England Generators" are Vistra, Dynegy Marketing and Trade, NextEra Energy Resources, NRG Power Marketing, LS Power Associates, FirstLight Power, and Cogentrix Energy Power Management.

¹⁶ For purposes of this Complaint, "Exelon" is short for Constellation Mystic Power, LLC ("Mystic"), Exelon Generation Company, LLC ("Exelon Generation") and Exelon Corporation ("Exelon Corp.").

¹⁷ "Public Systems" are Mass. Municipal Wholesale Elec. Co. ("MMWEC") and New Hampshire Elec. Coop., Inc. ("NHEC").

¹⁸ "Connecticut Parties" are CT PURA, CT DEEP, and the CT OCC.

¹⁹ *ISO New England Inc.*, 173 FERC ¶ 61,198 (Dec. 2, 2020) ("*December 2 Order*").

²⁰ *Id.* at PP 1, 77.

²¹ *Id.* at P 68.

assurance that the FERC previously found necessary in approving these rules is no longer required to attract new entry, with the benefits provided by price certainty no longer outweighing their price suppressive effects. The FERC clarified that the “termination of the price lock will not impact price-lock agreements in effect prior to the issuance of the order”.²² The FERC directed ISO-NE to submit a compliance filing, on or before February 1, 2021, eliminating the price lock and associated zero-price offer rule for new entrants starting in FCA16.²³ The ISO-NE’s proposed compliance changes will be reviewed at Markets Committee meetings in January (January 12-13 and 19).

As described in previous Reports, this proceeding was instituted when the FERC, in response to a February 2, 2018 remand by the United States Court of Appeals for the District of Columbia Circuit (“DC Circuit”),²⁴ found preliminarily that ISO-NE’s new entrant rules may be unjust and unreasonable.²⁵ The FERC established paper hearing procedures, which included one round of briefs and reply briefs submitted in the late summer and early fall of 2020.²⁶

If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **RNS/LNS Rates and Rate Protocols Settlement Agreement II (ER20-2054)**

On December 28, 2020, the FERC approved the uncontested Joint Offer of Settlement (“Settlement Agreement II”) filed by the Transmission Owners to resolve all issues in this proceeding.²⁷ In approving Settlement Agreement II, the FERC suggested that it would be “legally authorized to impose a more rigorous application of the statutory “just and reasonable” standard of review” if it were required to determine the standard of review in a later challenge to Settlement II by a third party or by the Commission acting *sua sponte*.²⁸ The TOs were directed to make a compliance filing in this proceeding on or before January 27, 2021, with revised tariff records in eTariff format reflecting the FERC’s action in the December 28 order. Challenges or requests for clarification, if any, would also be due on or before January 27, 2021. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Base ROE Complaints I-IV: (EL11-66, EL13-33; EL14-86; EL16-64)**

There are four proceedings pending before the FERC in which consumer representatives seek to reduce the TOs’ return on equity (“Base ROE”) for regional transmission service.

²² *Id.*

²³ *Id.*

²⁴ *New England Power Generators Assoc. v FERC*, 881 F.3d 202 (DC Cir. 2018) (granting NEPGA’s and Exelon’s petitions for review of orders accepting the Forward Capacity Market’s (“FCM”) 7-year price lock-in (EL14-7) and capacity-carry-forward rules (EL15-23) after finding that the FERC did not adequately explain why it allowed ISO-NE to forego an offer floor for its seven-year price lock period despite previously rejecting PJM’s request to remove the offer floor for its three-year price lock period).

²⁵ *ISO New England Inc.*, 172 FERC ¶ 61,005 (July 1, 2020) (“FCM Pricing Rules Complaints Remand Order”).

²⁶ Initial briefs, due Aug. 24, 2020, were filed by ISO-NE, ISO-NE External Market Monitor (“EMM”), MA AG, NEPGA, NRG, and RENEW Northeast. NEPOOL filed limited comments (urging the FERC, should it conclude that the Tariff is unjust and unreasonable and/or unduly discriminatory, to allow sufficient time and flexibility to permit meaningful opportunities for New England stakeholders to work with ISO-NE to develop any required market adjustments through the complete NEPOOL Participant Processes). Responses to the initial briefs were due Sept. 23, 2020 and were filed by Responses to the initial briefs were due September 23, 2020 and were filed by [ISO-NE](#), [BSW Project Co.](#), [MA AG](#), [NEPGA](#), [MA AG](#), [CT PURA](#), [PJM IMM](#), and [RENEW/ESA](#). No additional answers or briefs were permitted. No additional answers or briefs were permitted.

²⁷ *ISO New England Inc., et al.*, 173 FERC ¶ 61,270 (Dec. 28, 2020).

²⁸ *Id.* at PP 3-4

- **Base ROE Complaint I (EL11-66).** In the first Base ROE Complaint proceeding, the FERC concluded that the TOs' ROE had become unjust and unreasonable,²⁹ set the TOs' Base ROE at 10.57% (reduced from 11.14%), capped the TOs' total ROE (Base ROE *plus* transmission incentive adders) at 11.74%, and required implementation effective as of October 16, 2014 (the date of *Opinion 531-A*).³⁰ However, the FERC's orders were challenged, and in *Emera Maine*,³¹ the DC Circuit vacated the FERC's prior orders, and remanded the case for further proceedings consistent with its order. The FERC's determinations in *Opinion 531* are thus no longer precedential, though the FERC remains free to re-adopt those determinations on remand as long as it provides a reasoned basis for doing so.
- **Base ROE Complaints II & III (EL13-33 and EL14-86) (consolidated).** The second (EL13-33)³² and third (EL14-86)³³ ROE complaint proceedings were consolidated for purposes of hearing and decision, though the parties were permitted to litigate a separate ROE for each refund period. After hearings were completed, ALJ Sterner issued a 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.³⁴ The *Initial Decision* also lowered the ROE ceilings. Parties to these proceedings filed briefs on exception to the FERC, which has not yet issued an opinion on the ALJ's *Initial Decision*.
- **Base ROE Complaint IV (EL16-64).** The fourth and final ROE proceeding³⁵ also went to hearing before an ALJ, Judge Glazer, who issued his initial decision on March 27, 2017.³⁶ The *Base ROE IV Initial Decision* concluded that the currently-filed base ROE of 10.57%, which may reach a

²⁹ The TOs' 11.14% pre-existing Base ROE was established in *Opinion 489*. *Bangor Hydro-Elec. Co.*, Opinion No. 489, 117 FERC ¶ 61,129 (2006), *order on reh'g*, 122 FERC ¶ 61,265 (2008), *order granting clarif.*, 124 FERC ¶ 61,136 (2008), *aff'd sub nom.*, *Conn. Dep't of Pub. Util. Control v. FERC*, 593 F.3d 30 (D.C. Cir. 2010) ("*Opinion 489*").

³⁰ *Coakley Mass. Att'y Gen. v. Bangor Hydro-Elec. Co.*, 147 FERC ¶ 61,234 (2014) ("*Opinion 531*"), *order on paper hearing*, 149 FERC ¶ 61,032 (2014) ("*Opinion 531-A*"), *order on reh'g*, 150 FERC ¶ 61,165 (2015) ("*Opinion 531-B*").

³¹ *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).

³² 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% ROE, and seeks a reduction of the Base ROE to 8.7%.

³³ The 2014 Base ROE Complaint, filed July 31, 2014 by the Massachusetts Attorney General, 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.

³⁴ *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*").

³⁵ 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%. The FERC established hearing and settlement judge procedures (and set a refund effective date of April 29, 2016) for the 4th ROE Complaint on September 20, 2016. Settlement procedures did not lead to a settlement, were terminated, and hearings were held subsequently held December 11-15, 2017. The September 26, 2016 order was challenged on rehearing, but rehearing of that order was denied on January 16, 2018. *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) (together, the "*Base ROE Complaint IV Orders*"). The *Base ROE Complaint IV Orders*, as described in Section XV below, have been appealed to, and are pending before, the DC Circuit.

³⁶ *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 162 FERC ¶ 63,026 (Mar. 27, 2018) ("*Base ROE Complaint IV Initial Decision*").

maximum ROE of 11.74% with incentive adders, was **not** unjust and unreasonable for the Complaint IV period, and hence was not unlawful under section 206 of the FPA.³⁷ Parties in this proceeding filed briefs on exception to the FERC, which has not yet issued an opinion on the *Base ROE IV Initial Decision*.

October 16, 2018 Order Proposing Methodology for Addressing ROE Issues Remanded in Emera Maine and Directing Briefs. On October 16, 2018, the FERC, addressing the issues that were remanded in *Emera Maine*, proposed a new methodology for determining whether an existing ROE remains just and reasonable.³⁸ The FERC indicated its intention that the methodology be its policy going forward, including in the four currently pending New England proceedings (see, however, *Opinion 569-A*³⁹ (EL14-12; EL15-45) in Section XI below). The FERC established a paper hearing on how its proposed methodology should apply to the four pending ROE proceedings.⁴⁰

At highest level, the new methodology will determine whether (1) an existing ROE is unjust and unreasonable under the first prong of FPA section 206 and (2) if so, what the replacement ROE should be under the second prong of FPA section 206. In determining whether an existing ROE is unjust and under the first prong of Section 206, the FERC stated that it will determine a “composite” zone of reasonableness based on the results of three models: the Discounted Cash Flow (“DCF”), Capital Asset Pricing Model (“CAPM”), and Expected Earnings models. Within that composite zone, a smaller, “presumptively reasonable” zone will be established. Absent additional evidence to the contrary, if the utility's existing ROE falls within the presumptively reasonable zone, it is not unjust and unreasonable. Changes in capital market conditions since the existing ROE was established may be considered in assessing whether the ROE is unjust and unreasonable.

If the FERC finds an existing ROE unjust and unreasonable, it will then determine the new just and reasonable ROE using an averaging process. For a diverse group of average risk utilities, FERC will average four values: the midpoints of the DCF, CAPM and Expected Earnings models, and the results of the Risk Premium model. For a single utility of average risk, the FERC will average the medians rather than the midpoints. The FERC said that it would continue to use the same proxy group criteria it established in *Opinion 531* to run the ROE models, but it made a significant change to the manner in which it will apply the high-end outlier test.

The FERC provided preliminary analysis of how it would apply the proposed methodology in the Base ROE I Complaint, suggesting that it would affirm its holding that an 11.14% Base ROE is unjust and unreasonable. The FERC suggested that it would adopt a 10.41% Base ROE and cap any preexisting incentive-based total ROE at 13.08%.⁴¹ The new ROE would be effective as of the date of *Opinion 531-A*, or October 16, 2014. Accordingly, the issue to be addressed in the Base ROE Complaint II proceeding is whether the ROE established on remand in the first complaint proceeding remained just and reasonable based on financial data for the six-month period September 2013 through February 2014 addressed by the evidence presented by the

³⁷ *Id.* at P 2.; Finding of Fact (B).

³⁸ *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (Oct. 18, 2018) (“*Order Directing Briefs*” or “*Coakley*”).

³⁹ *Ass’n of Buss. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569-A, 171 FERC ¶ 61,154 (2020) (“*Opinion 569-A*”). The refinements to the FERC’s ROE methodology included: (i) the use of the Risk Premium model instead of only relying on the DCF model and CAPM under both prongs of FPA Section 206; (ii) adjusting the relative weighting of long- and short-term growth rates, increasing the weight for the short-term growth rate to 80% and reducing to 20% the weight given to the long-term growth rate in the two-step DCF model; (iii) modifying the high-end outlier test to treat any proxy company as high-end outlier if its cost of equity estimated under the model in question is more than 200% of the median result of all the potential proxy group members in that model before any high- or low-end outlier test is applied, subject to a natural break analysis. This is a shift from the 150% threshold applied in *Opinion 569*; and (iv) calculating the zone of reasonableness in equal thirds, instead of using the quartile approach that was applied in *Opinion 569*.

⁴⁰ *Id.* at P 19.

⁴¹ *Id.* at P 59.

participants in the second proceeding. Similarly, briefing in the third and fourth complaints will have to address whether whatever ROE is in effect as a result of the immediately preceding complaint proceeding continues to be just and reasonable.

The FERC directed participants in the four proceedings to submit briefs regarding the proposed approaches to the FPA section 206 inquiry and how to apply them to the complaints (separate briefs for each proceeding). Additional financial data or evidence concerning economic conditions in any proceeding must relate to periods before the conclusion of the hearings in the relevant complaint proceeding. Following a FERC notice granting a request by the TOs and Customers⁴² for an extension of time to submit briefs, the latest date for filing initial and reply briefs was extended to January 11 and March 8, 2019, respectively. On January 11, initial briefs were filed by EMCOS, Complainant-Aligned Parties, TOs, EEI, Louisiana PSC, Southern California Edison, and AEP. As part of their initial briefs, each of the Louisiana PSC, SEC and AEP also moved to intervene out-of-time. Those interventions were opposed by the TOs on January 24. The Louisiana PSC answered the TOs' January 24 motion on February 12. Reply briefs were due March 8, 2019 and were submitted by the TOs, Complainant-Aligned Parties, EMCOS, FERC Trial Staff.

TOs Request to Re-Open Record and file Supplemental Paper Hearing Brief. On December 26, 2019, the TOs filed a Supplemental Brief that addresses the consequences of the November 21 *MISO ROE Order*⁴³ and requested that the FERC re-open the record to permit that additional testimony on the impacts of the *MISO ROE Order's* changes. On January 21, 2020, EMCOS and CAPs opposed the TOs' request and brief.

These matters remain pending before the FERC. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com) or Joe Fagan (202-218-3901; jfagan@daypitney.com).

II. Rate, ICR, FCA, Cost Recovery Filings

- **Dynegy CIP IROL (Schedule 17) Cost Recovery Filing (ER21-774)**

On December 30, 2020, Dynegy Marketing & Trade, LLC ("Dynegy") requested FERC acceptance of a proposed rate schedule to allow Dynegy to begin the recovery period for certain Interconnection Reliability Operating Limits Critical Infrastructure Protection costs ("CIP-IROL Costs") under Schedule 17 of the ISO-NE Tariff. Dynegy stated that the rate schedule will provide interested parties notice of Dynegy's intent to recover CIP-IROL Costs for each affiliated facility designated as an IROL-Critical Facility, and an order accepting the rate schedule will provide an effective date after which associated costs incurred can be recovered following completion of the process contemplated by Schedule 17 and a subsequent Section 205 filing identifying the specific costs to be recovered. A March 1, 2021 effective date was requested. Comments on this filing are due on or before January 21, 2021. Thus far, Calpine and NESCOE have filed doc-less interventions. If you have any questions concerning these matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Amended and Restated IRH Support and Use Agreements (ER21-712)**

On December 18, 2020, New England Hydro-Transmission Electric Company, Inc.; New England Hydro-Transmission Corporation; New England Electric Transmission Corporation; and Vermont Electric Transmission Company (collectively the "Asset Owners") and the IRH Management Committee ("IMC") on behalf of the renewing Interconnection Rights Holders ("IRH") submitted for approval an Offer of Settlement that amends and restates four Support Agreements and an Agreement with Respect to Use of Québec Interconnection

⁴² For purposes of the motion seeking clarification, "Customers" are CT PURA, MA AG and EMCOS.

⁴³ *Ass'n of Buss. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569, 169 FERC ¶ 61,129 (2019) ("*MISO ROE Order*"), *order on reh'g*, Opinion No. 569-A, 171 FERC ¶ 61,154 (May 21, 2020).

("Use Agreement")⁴⁴ to provide for ongoing financial support of, and related rights and obligations with respect to, the United States portion of the 2,000 MW high-voltage, direct current ("HVDC") transmission facilities interconnecting New England and Québec. The initial term of the existing Support Agreements was scheduled to end on October 31, 2020, and the Use Agreement by its own terms will remain in effect through the term of the last Support Agreement to expire. The filing extends the term of those Support Agreements (and thereby the Use Agreement) another 20 years, until October 31, 2040. A January 1, 2021 effective date was requested. Comments on this filing are due on or before January 8, 2021. Thus far, Avangrid, ENE and NESCOE have filed doc-less interventions. If you have any questions concerning these matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **ICR-Related Values and HQICCs – Annual Reconfiguration Auctions (ER21-496)**

On November 25, 2020, ISO-NE and NEPOOL jointly filed materials that identify 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 "ICR-Related Values") for the third annual reconfiguration auction ("ARA") for the 2021-22 Capability Year, the second ARA for the 2022-23 Capability Year, and the first ARA for the 2023-24 Capability Year. The ICR-Related Values were supported by the Participants Committee at its November 5, 2020 meeting (Consent Agenda Items 3 and 4). A January 24, 2021 effective date was requested. Comments on this filing were due December 15, 2020; none were filed. Dominion, NRG, NESCOE and National Grid filed doc-less interventions. This matter is pending before the FERC. If you have any questions concerning these matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **FCA15 Qualification Informational Filing (ER21-372)**

On November 10, 2020, ISO-NE submitted its informational filing (the "FCA15 Informational Filing") for qualification in FCA15. ISO-NE is required under Market Rule Section 13.8.1 to submit an informational filing with the FERC containing the determinations made by ISO-NE for the upcoming Forward Capacity Auction ("FCA") at least 90 days prior to each auction. FCA15 is scheduled to begin February 8, 2021. The Informational Filing contained ISO-NE's determinations that four Capacity Zones will be modeled for FCA15 -- Southeastern New England ("SENE"), Northern New England ("NNE"), the Maine Capacity Zone ("Maine"), and Rest of Pool. SENE will again be modeled as import-constrained; NNE will be modeled as export-constrained. The Maine Load Zone will be modeled as a separate nested export-constrained Capacity Zone within NNE. The Informational Filing reported that there will be 33,662 MW of existing capacity in FCA15 competing with 7,030 MW of new capacity under a Net ICR of 33,270 MW (ICR minus HQICCs). ISO-NE reported also that there were a total of 813 MW of Static De-List Bids. A summary of the De-List Bids accepted and those rejected for reliability purposes was included in a privileged Attachment E. ISO-NE qualified 13 demand bids, totaling 196 MW, and 116 supply offers, totaling 463 MW, to participate in the substitution auction.

Comments on the FCA15 Informational Filing were due November 25, 2020. Limited protests were filed by Andro Hydro, Mystic and NEPGA. **Andro Hydro** protested the basis for the IMM's mitigation of its resources. **NEPGA's** limited protest focused on the qualification of the Killingly Energy Center, requesting that the FERC require ISO-NE to submit additional confidential information regarding that qualification (related to the project's development progress) so that it can assess ISO-NE's determinations. **Mystic**, for its part, asserted that the Informational Filing is based on a flawed transmission security analysis and the FERC should direct ISO-NE to re-run its transmission security analysis to reconsider its decision to assume completion of a

⁴⁴ The Support Agreements are separate contracts between the IRH and each of the Asset Owners under which the IRH agree to financially support the elements of the Phase I/II HVDC-TF owned by each Asset Owner in exchange for rights to use the transmission capacity of the Phase I/II HVDC-TF to transmit power to and from the HQ system ("Use Rights"). The Use Agreement is a contract among the IRH that provides the rules for the exercise of the Use Rights, for making the Use Rights available to others, and for the collective management of those individual contractual rights through the IMC.

now delayed and contentious NECEC transmission project when conducting that analysis. ISO-NE answered the NEPGA and Mystic protests on December 10, 2020; the IMM, Andro Hydro. Doc-less interventions were filed by NEPOOL, NEPOOL, Boston Energy Trading and Marketing, Calpine, Dominion, Eversource, National Grid, NESCOE, NRG, Avangrid (out-of-time) and EPSA (out-of-time). 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 Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **ICR-Related Values and HQICCs – FCA15 (2024-25) Capacity Commitment Period (ER21-371)**

On November 10, 2020, ISO-NE filed the ICR, LSR for SENE, MCL for the Maine and NNE Capacity Zones, HQICCs, and Marginal Reliability Impact (“MRI”) Demand Curves (collectively, the “2024-25 ICR-Related Values”) for the 2024-25 Capacity Commitment Period (“CCP”). The 2024-25 ICR will be 34,153 MW (reflecting tie benefits of 1,735 MW) and HQICCs of 883 MW/mo., the net amount of capacity to be purchased in FCA15 to meet the ICR will be 33,270 MW. The LSR for the SENE Capacity Zone is 10,305 MW. The MCL for the Maine Capacity Zone is 4,145 MW. The MCL for the NNE Capacity Zone is 8,680 MW. The Participants Committee supported the FAC15 ICR-Related Values at its October 1, 2020 virtual meeting. Comments on this filing were due December 1; none were filed. Doc-less interventions were filed by Calpine, Dominion, Eversource, MA DPU, National Grid, NESCOE, and NRG. This matter is still pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com) or Sophia Browning (202-218-3904; sbrowning@daypitney.com).

- **2021 NESCOE Budget (ER21-113)**

On December 18, 2020, the FERC accepted ISO-NE’s October 15, 2020 filing of the budget for funding NESCOE’s 2021 operations.⁴⁵ As previously reported, the 2021 Operating Expense Budget for NESCOE is \$2,428,300. The amount to be recovered reflects true-ups from 2019 (over-collections of \$1,067,405). Accordingly, if accepted, the NESCOE budget will result in a charge of \$0.00626 per kilowatt (“kW”) of Monthly Network Load. Unless the NESCOE 2021 Budget Order is challenged, this proceeding will be concluded. If there are any questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **2021 ISO-NE Administrative Costs and Capital Budgets (ER21-106)**

Also on December 18, 2020, the FERC accepted ISO-NE’s 2021 Budgets (its “2021 Revenue Requirement” and its “2021 Capital Budget”).⁴⁶ As previously reported, the 2021 Revenue Requirement is \$205.1 million (administrative costs (i.e., the 2021 Core Operating Budget) of \$178.6 million; depreciation and amortization of regulatory assets, \$26.3 million; and a \$151,000 true-up for 2019 under-collections.); the 2021 Capital Budget, \$28 million. The 2021 Capital Budget is comprised of the following (with 2021 projected costs and target completion dates, if available, in parentheses):

▸ nGem Market Clearing Engine Implementation (Mar 2023)	(\$5.3 million)	▸ Energy Security Improvements	(\$3.0 million)
▸ nGem Software Development Part II (Dec 2021)	(\$2.0 million)	▸ Forward Capacity Tracking System Infrastructure Conversation Part II (Dec 2020)	(\$2 million)
▸ 2021 Issue Resolution Projects (June 2021 and Dec 2021)	(\$1.5 million)	▸ 2020 Corrective Action Preventative Actions (Mar 2021)	(\$100,000)
▸ Enhanced Market Simulator	(\$1.5 million)	▸ CIP Electronic Security Perimeter Redesign	(\$1 million)

⁴⁵ ISO New England Inc., Docket No. ER21-113 (Dec. 18, 2021) (unpublished letter order) (“NESCOE 2021 Budget Order”).

⁴⁶ ISO New England Inc., Docket No. ER21-106 (Dec. 18, 2021) (unpublished letter order) (“2021 ISO-NE Budgets Order”).

▸ Forward Capacity Tracking System Infrastructure Conversation Part II (Jun 2021)	(\$1 million)	▸ Cyber Security Improvements (Sep 2021)	(\$1 million)
▸ Identity and Access Management – Phase II (May 2021)	(\$700,000)	▸ Enterprise Application Integration Phase III (Nov 2021)	(\$500,000)
▸ Data Governance, Risk Management & Compliance Software Phase I (Jun 2021)	(\$400,000)	▸ Data Governance, Risk Management & Compliance Software Phase II (Nov 2021)	(\$500,000)
▸ IMM Data Analysis Phase III (Nov 2021)	(\$500,000)	▸ Human Resources Workflow & Document Management (Jun 2021)	(\$500,000)
▸ Sub-accounts for FTR Market (Aug 2021)	(\$500,000)	▸ Security Information and Event Management Log Monitoring	(\$500,000)
▸ TranSMART Technical Architecture Update (Dec 2021)	(\$500,000)	▸ PI Historian for Short-term PMU Data Repository (Jun 2021)	(\$300,000)
▸ FERC Form 1, 3-Q, 714 (Oct 2021)	(\$200,000)	▸ External Website Migration to Cloud (Mar 2021)	(\$100,000)
▸ Wireless Infrastructure Upgrade (Jun 2021)	(\$200,000)	▸ Non-Project Capital Expenditures	(\$3.5 million)
▸ 2020 Issue Resolution Projects (Mar 2021)	(\$100,000)	▸ Other Emerging Work	(\$1.9 million)
		▸ Capitalized Interest	(\$500,000)

Unless the 2021 ISO-NE Budgets Order is challenged, this proceeding will be concluded. If there are any questions on this proceeding, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **Mystic 8/9 Cost of Service Agreement (ER18-1639)**

As previously reported, the FERC issued four orders in this proceeding in July 2020 (three on July 17 (together, the “*July 17 Orders*”); one on July 28, 2020). Each of the orders addressed in part or in whole the Cost-of-Service Agreement (“COS Agreement”)⁴⁷ among Constellation Mystic Power (“Mystic”), Exelon Generation Company (“ExGen”) and ISO-NE, which is to provide compensation for the continued operation of the Mystic 8 & 9 units from June 1, 2022 through May 31, 2024. As noted in Section XV below, each of the *July 17 Orders*⁴⁸ (and the earlier, underlying orders) have been appealed to the DC Circuit.

ROE Paper Hearings (-000). The *Dec 2018 Order* established a paper hearing to determine the just and reasonable ROE to be used in setting charges under Mystic’s COS Agreement. On April 19, 2019, Mystic,

⁴⁷ The COS Agreement, submitted on May 16, 2018, is between Mystic, Exelon Generation Company, LLC (“ExGen”) and ISO-NE. The COS Agreement is to provide cost-of-service compensation to Mystic for continued operation of Mystic 8 & 9, which ISO-NE has requested be retained to ensure fuel security for the New England region, for the period of June 1, 2022 to May 31, 2024. The COS Agreement provides for recovery of Mystic’s fixed and variable costs of operating Mystic 8 & 9 over the 2-year term of the Agreement, which is based on the pro forma cost-of-service agreement contained in Appendix I to Market Rule 1, modified and updated to address Mystic’s unique circumstances, including the value placed on continued sourcing of fuel from the Distrigas liquefied natural gas (“LNG”) facility, and on the continued provision of surplus LNG from Distrigas to third parties.

⁴⁸ The “*July 17 Orders*” are the *July 2018 Rehearing Order*, *Dec 2018 Rehearing Order* and the *July 17 Compliance Order*. *Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022 (July 13, 2018) (“*July 2018 Order*”), *clarif. granted in part and denied in part, reh’g denied*, 172 FERC ¶ 61,043 (July 17, 2020) (“*July 2018 Rehearing Order*”); *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 (Dec. 20, 2018) (“*Dec 2018 Order*”), *set aside in part, clarification granted in part and clarification denied in part*, 172 FERC ¶ 61,044 (July 17, 2020) (“*Dec 2018 Rehearing Order*”); *Constellation Mystic Power, LLC*, 172 FERC ¶ 61,045 (July 17, 2020) (“*July 17 Compliance Order*”) (order on compliance and directing further compliance).

Connecticut Parties, ENECOS, MA AG, and FERC Trial Staff filed initial briefs. On July 18, 2019, Constellation Mystic Power, CT Parties, ENECOS, MA AG, National Grid, FERC Trial Staff filed reply briefs. In a July 28, 2020 order,⁴⁹ the FERC reopened the record to allow parties an opportunity to present written evidence applying the FERC's *Opinion 569-A* ROE methodology to the facts of this proceeding. CT Parties, EMCOS, MA AG, and FERC Trial Staff filed their initial "Opinion 569-A" briefs on September 28, 2020. Responses to those initial briefs were due October 28, 2020 and were filed by Mystic, CT Parties, ENECOS, and FERC Trial Staff. The ROE issue is now pending before the Commission.

Sep 2020 Compliance Filing (-007). On September 15, 2020, Mystic filed a revised COS Agreement in response to the requirements of the *July 17 Compliance Order*. Also included were typographical edits proposed by NESCOE in its protest of the First Compliance Filing. Mystic also filed revisions to the Fuel Security Agreement ("FSA") for informational purposes because some of the compliance directives required changes to the FSA. Comments on the Sep 2020 Compliance Filing were due on or before October 6, 2020. CT Parties and ENECOS protested the compliance filing. On October 21, Mystic answered the CT Parties' and ENECOS' protests. The compliance filing is pending before the FERC.

Dec 21 Order Addressing Arguments Raised on Rehearing (-004; -005; -006). On December 21, 2020, the FERC issued an "Allegheny Order"⁵⁰ modifying the discussion in the *July 17 Orders*,⁵¹ and setting aside in part both the *July 2018 Rehearing Order* and the *July 17 Compliance Order*. Changes to those orders included:

- (i) a FERC finding that "a Tank Congestion Charge and a methodology for calculating tank congestion costs may be necessary for Mystic to demonstrate that ISO-NE ratepayers only pay the costs of tank congestion that are attributable to serving Mystic ... [t]o the extent the [*Dec 2018 Rehearing Order*] called into question ISO-NE's plans to develop this methodology with Exelon, we modify the [*Dec 2018 Rehearing Order*];"⁵²
- (ii) Persuaded by NESCOE's request for clarification, the FERC modified the *Dec 2018 Rehearing Order* to state that Tank Congestion Charges may be reviewed in the true-up process;⁵³ the FERC also agreed with Mystic and clarified that it did not intend to impose a heightened standard of review or *ex post* second-guessing of fuel supply practices, but rather its intent was limited to the expectation that ISO-NE will audit and ensure that the tank congestion charge is properly calculated;⁵⁴
- (iii) Persuaded by New England Generators arguments on rehearing, the FERC found the language "that were expensed" renders the clawback provision in section 2.4 of the Mystic Agreement unjust and unreasonable, and directed Mystic to remove that language;⁵⁵

⁴⁹ *Constellation Mystic Power, LLC*, 172 FERC ¶ 61,093 (July 28, 2020), *order addressing arguments on reh'g*, 173 FERC ¶ 61,261 (Dec. 21, 2020).

⁵⁰ *Constellation Mystic Power, LLC*, 173 FERC ¶ 61,261 (Dec. 21, 2020) ("*Dec 21 Order Addressing Arguments Raised on Rehearing*").

⁵¹ The "*July 17 Orders*" are the *July 2018 Rehearing Order*, *Dec 2018 Rehearing Order* and the *July 17 Compliance Order*. *Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022 (July 13, 2018) ("*July 2018 Order*"), *clarif. granted in part and denied in part, reh'g denied*, 172 FERC ¶ 61,043 (July 17, 2020) ("*July 2018 Rehearing Order*"); *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 (Dec. 20, 2018) ("*Dec 2018 Order*"), *set aside in part, clarification granted in part and clarification denied in part*, 172 FERC ¶ 61,044 (July 17, 2020) ("*Dec 2018 Rehearing Order*"); *Constellation Mystic Power, LLC*, 172 FERC ¶ 61,045 (July 17, 2020) ("*July 17 Compliance Order*") (order on compliance and directing further compliance).

⁵² *Id.* at P 26.

⁵³ *Id.* at P 27.

⁵⁴ *Id.* at P 28.

⁵⁵ *Id.* at P 33.

- (iv) As requested by NESCOE, the FERC clarified that “the third-party revenue crediting mechanism discussed in the July 2020 Orders refers to a specific type of third-party sales that were subject to the revenue crediting mechanism recommended by Trial Staff and adopted by the December 2018 Order (i.e., forward sales).”⁵⁶

As noted above, the *July 17 Orders* have been appealed to the DC Circuit and further developments will be reported on in Section XV below. If you have questions on any aspect of this proceeding, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **MPD OATT 2019 Annual Informational Filing Settlement Agreement (ER15-1429-014)**

On December 28, 2020, Versant Power submitted an uncontested Joint Offer of Settlement between itself, MPUC, MOPA, and the MCG to resolve certain issues raised by the MPUC and the MCG with regards to Versant Power’s annual charges update under the Open Access Transmission Tariff for Maine Public District (“MPD OATT”), as filed in Docket No. ER15-1429-000 on May 1, 2019, and revised on May 16, 2019 (together, the “2019 Annual Update”).⁵⁷ Initial comments and reply comments are due January 18 and 27, 2021, respectively. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

- **Updated CONE, Net Cone and PPR Values (eff. FCA16) (ER21-787)**

On December 31, 2020, ISO-NE filed changes to update the Cost of New Entry (“CONE”), Net CONE, and Payment Performance Rate (“PPR”) values beginning with FCA16. The values in this filing are the same CONE, Net CONE and PPR values that the NPC approved at its December 5 meeting as part of a broader FCM updates package; however, this filing did not include the updated Offer Review Trigger Prices (“ORTPs”), which were part of the broader package, and on which NEPOOL and ISO-NE will propose alternative values in a jump ball filing to be submitted later this month. ISO-NE explained in its filing that, if the schedule for FCA16 is to be maintained, the updated CONE, Net CONE and PPR values need to be acted on by the FERC and become effective by early March, 2021 (a March 2, 2021 effective date was requested). ISO-NE stated that the revised ORTPs and related Tariff changes, however, do not need to be effective until slightly later in the FCA16 qualification process (thereby permitting a slightly later submission of, and FERC action on, the various ORTPs and related Tariff changes). Because NEPOOL did not vote on the CONE, Net CONE and PPR values separately, but rather as part of a broader package with the alternative ORTP provisions, NEPOOL did not join this ISO-NE filing but will provide comments in response to the filing explaining the December 5 NEPOOL vote on the package of proposed FCM parameters. Comments on this ISO-NE filing are due on or before January 21, 2021. Thus far, doc-less interventions have been filed by Avangrid, Brookfield, Calpine, Dominion, LS Power, MA AG, NRG, and NESCOE. If you have any questions concerning this proceeding, please contact Dave Doot (dttdoot@daypitney.com; 860-275-0102), Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **New DDBT Methodology (ER21-782)**

On December 31, 2020, ISO-NE and NEPOOL jointly filed proposed Tariff revisions to implement a new methodology for calculating the FCM Dynamic De-List Bid Threshold (“DDBT”). Specifically, the new DDBT Methodology would replace the current triennial update methodology with an annual one, with the DDBT to be calculated annually for each FCA, using a new Tariff-based DDBT calculation methodology. That methodology,

⁵⁶ *Id.* at P 39.

⁵⁷ As previously reported, MCG moved to strike the true-up to actuals portion of the 2019 Annual Update to the extent that the true-up proposed a change in the formula rate from a direct assignment of Maine Public District (“MPD”) post-retirement benefits other than pensions (“PBOPs”) to an allocation of company-wide PBOPs (which MCG argued would be a retroactive change to the formula rate, otherwise required to effect only prospectively).

referred to as the “recalibration method,” updates the DDBT value for each auction based on the most recently available supply conditions, as evidenced in the last FCA, and the most up-to-date projected demand conditions, using the estimated system-wide demand curve for the next FCA. The new DDBT methodology filed was the compromise DDBT proposal overwhelmingly approved by the Participants Committee in November, rather than the one that had been offered by ISO-NE. A March 2, 2021 effective date was requested. Comments on this filing are due on or before January 21, 2021. Thus far, doc-less interventions have been filed by Brookfield, Calpine, Dominion, LS Power, MA AG, NRG, and NESCOE. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **Energy Efficiency Resource FCM Qualification Modifications (ER21-640)**

On December 14, 2020, ISO-NE and NEPOOL jointly filed changes to the Market Rules to (i) produce Qualified Capacity values that better reflect performance capabilities of Energy Efficiency Resources (“EERs”); (ii) modify the rules that determine the quantity of Capacity Supply Obligation (“CSO”) that a resource of any type may acquire in monthly reconfiguration auctions or CSO Bilateral transactions to increase trading opportunities; and (iii) reflect a number of conforming and clean-up changes (“EER FCM Qual. Modifications”). The EER FCM Qual. Modifications were approved by the Participants Committee at the December Annual meeting (Consent Agenda Item No. 1). A February 12, 2021 effective date was requested. Comments on this filing were due on or before January 4, 2021; none were filed. Calpine, Eversource, National Grid, NESCOE, and the MA DPU filed doc-less interventions. 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) or Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **ESI Alternatives (ER20-1567)**

On October 30, 2020, the FERC rejected as unjust and unreasonable both the ISO-NE and NEPOOL “Energy Security Improvements” or “ESI” proposals.⁵⁸ Finding that ISO-NE failed to demonstrate that ESI will materially improve fuel security, and treating the filing as submitted under FPA section 205,⁵⁹ the FERC concluded that “ESI does not strike an appropriate balance between addressing fuel security in New England while protecting consumers from the significant cost of those fuel security benefits.”⁶⁰ And, although the FERC noted that the NEPOOL Alternative would result in lower costs to consumers than ISO-NE’s ESI proposal, they rejected the NEPOOL Alternative as unjust and unreasonable because it contained the “same deficiencies that render ISO-NE’s proposal unjust and unreasonable.”⁶¹

Because the FERC rejected both alternative ESI proposals, the FERC also rejected ISO-NE’s associated proposal to sunset one year earlier than currently provided for in the Tariff the Fuel Security Retention Mechanism and the Inventoried Energy Program (the Interim Programs).⁶²

The FERC made no finding on whether ISO-NE faces a fuel security or energy security issue,⁶³ but said ISO-NE may propose “other steps it believes are warranted to address fuel security, such as submitting a revised long-

⁵⁸ *ISO New England Inc.*, 173 FERC ¶ 61,106 (Oct. 30, 2020) (“*Order Rejecting ESI Alternatives*”), *clarif. requested*.

⁵⁹ *Id.* at n. 2. The April 15, 2020 ESI filing was submitted in response to the requirements of the *Mystic Waiver Order*, which directed ISO-NE, in part, to submit permanent Tariff revisions reflecting improvements to its market design to better address regional fuel security concerns. See *ISO New England Inc.*, 164 FERC ¶ 61,003 (July 2, 2018), *reh’g requested* (“*Mystic Waiver Order*”).

⁶⁰ *Id.* at P 55.

⁶¹ *Id.* at P 56.

⁶² *Id.* at P 63.

⁶³ *Id.* at P 57.

term fuel security proposal or seeking to extend one or more of the Interim Programs.”⁶⁴ While the FERC did not direct ISO-NE to pursue any particular approach, if ISO-NE decides to pursue a solution to address their concerns, it encouraged ISO-NE:

“to explore a market-based reserve product that provides resources sufficient lead time and ability to acquire fuel or take other steps necessary to be able to deliver energy when needed. We expect that such a market solution would be designed to (1) coordinate procurement of forward reserves with co-optimization of energy and reserves in the day-ahead and real-time markets; (2) incentivize resources to offer into the forward, day-ahead and real-time energy and reserves markets based on their actual costs; (3) prevent the exercise of market power, including through mitigation measures, if necessary; and (4) include financial obligations or incentives sufficient to ensure resources can deliver energy and/or reserves in real-time.”⁶⁵

The FERC noted that nothing in its order prohibits ISO-NE from proposing a Day-Ahead reserves market independent of any proposal to address the concerns at issue in the ESI proceeding.⁶⁶

On November 13, 2020, ISO-NE requested clarification of the *Order Rejecting ESI Alternatives*. Specifically, ISO-NE asked the FERC to clarify that ISO-NE may engage in communications with the FERC and its staff about the ESI market design, the design of the reserve markets, the option construct, and the voluntary nature of the markets as of December 1, 2020, unfettered from any *ex parte* restrictions arising out of this or antecedent proceedings (e.g. ER18-1509 and EL18-182 (see ISO-NE Waiver Filing: Mystic 8 & 9 below)). On December 18, 2020, ISO-NE withdrew its November 13 request, citing (i) the passage of the deadline for parties to request (and no requests filed for) rehearing and/or clarifications of the *Order Rejecting ESI Alternatives* and (ii) the December 3, 2020 orders issued in Docket Nos. ER18-1509 and EL18-182.

If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **Order 841 Compliance Filings (Electric Storage in RTO/ISO Markets) (ER19-470)**

As previously reported, the FERC conditionally accepted both the November 22, 2019⁶⁷ and February 10, 2020⁶⁸ *Order 841*⁶⁹ compliance filings, each subject to additional compliance filing(s). On December 7, 2020, ISO-NE and NEPOOL filed, in one comprehensive filing, revisions to Market Rule 1 in response to the requirements of the *Order 841 Compliance Filing II Order*.⁷⁰ The revisions were supported by the Participants Committee at the December Annual Meeting (Consent Agenda Items 2 and 3). A March 1, 2021 effective date was requested for the majority of the revisions; a January 1, 2026 effective date was requested for the revisions specific to the Day-Ahead Energy Market. Comments on the December 7 filing were due on or before December 28, 2020; none were filed. No additional parties intervened in the proceeding. This matter

⁶⁴ *Id.* at P 63.

⁶⁵ *Id.* at P 57.

⁶⁶ *Id.*

⁶⁷ *ISO New England Inc.*, 169 FERC ¶ 61,140 (Nov. 22, 2019) (“*Order 841 Initial Compliance Filing Order*”).

⁶⁸ *ISO New England Inc.*, 172 FERC ¶ 61,125 (Aug. 4, 2020) (“*Order 841 Compliance Filing II Order*”).

⁶⁹ See *Elec. Storage Participation in Mkts. Operated by Regional Transmission Orgs. and Indep. Sys. Operators*, Order No. 841, 162 FERC ¶ 61,127 (Feb. 15, 2018) (“*Order 841*”).

⁷⁰ The compliance filing included revisions addressing (i) the application of transmission charges; (ii) ISO-NE Market participation (ensuring the Tariff cannot be read to create a barrier to entry); and (iii) how state of charge and duration characteristics will be accounted for in the Day-Ahead Energy Market.

is pending before the FERC. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Fuel Security Retention Proposal (ER18-2364)**

On December 3, 2020, the FERC issued an “Allegheny Order”⁷¹ addressing arguments raised in requests for rehearing and/or clarification of the *Fuel Security Retention Proposal Order*⁷² by NEPGA, NRG, Verso, Vistra/Dynegy, MPUC, and PIOs.⁷³ While “[p]ursuant to *Allegheny Defense Project v. FERC*, the rehearing requests filed in this proceeding may be deemed denied by operation of law ... as permitted by section 313(a) of the FPA, [the FERC modified] the discussion in the *Fuel Security Retention Proposal Order*,”⁷⁴ the FERC modified the order, in part, sustained the results of the *Fuel Security Retention Proposal Order* and denied Verso’s request for reconsideration.⁷⁵ Specifically, the FERC clarified that it reviewed ISO-NE’s Tariff revisions in this proceeding “as a new FPA section 205 filing” and to the extent that the FERC in the *Fuel Security Retention Proposal Order* “referred to ISO-NE’s filing as a compliance filing, which built on how ISO-NE styled its filing,”⁷⁶ the FERC modified the *Fuel Security Retention Proposal Order* consistent with its clarification.

If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **ISO-NE Waiver Filing: Mystic 8 & 9 (ER18-1509; EL18-182)**

Also on December 3, 2020, the FERC issued an “Allegheny Order”⁷⁷ addressing arguments raised in requests for rehearing and/or clarification of the *Mystic Waiver Order*⁷⁸ by NEPGA, Connecticut Parties,⁷⁹ ENECOS, MA AG, MPUC, New England EDCs,⁸⁰ PIOs,⁸¹ and AWEA/NGSA. The *Mystic Waiver Allegheny Order* modified the discussion in the *Mystic Waiver Order* and reached the same result.⁸² The *Mystic Waiver Allegheny Order* also

⁷¹ *ISO New England Inc.*, 173 FERC ¶ 61,204 (Dec. 3, 2020) (“*Fuel Security Retention Proposal Allegheny Order*”).

⁷² *ISO New England Inc.*, 165 FERC ¶ 61,202 (Dec. 3, 2018), *reh’g requested* (“*Fuel Security Retention Proposal Order*”). In accepting the ISO-NE Proposal, the FERC, among other things: (i) found ISO-NE’s trigger and assumptions for the fuel security reliability review for retention of resources be reasonable, but required ISO-NE at the end of each winter to “to submit an informational filing comparing the study assumptions and triggers from the modeling analysis to actual conditions experienced in the winter of 2018/19; (ii) found cost allocation on a regional basis to Real-Time Load Obligation just and reasonable and consistent with precedent regarding the past Winter Reliability Programs; (iii) found that entering retained resources into the FCAs as price takers would be just and reasonable to ensure that they clear and are counted towards resource adequacy so that customers do not pay twice for the resource; and (iv) found that it was appropriate to include FCAs 13, 14 and 15 in the term. The FERC agreed that it is necessary to implement a longer-term market solution as soon as possible, and required ISO-NE to file its longer-term market solution no later than June 1, 2019. The FERC declined to provide guidance on what the long-term solution(s) should be.

⁷³ “PIOs” for purposes of this proceeding are Sierra Club, NRDC, Sustainable FERC Project, and Acadia Center.

⁷⁴ *Fuel Security Retention Proposal Allegheny Order* at P 2.

⁷⁵ *Id.* at Ordering Paragraphs (A) and (B).

⁷⁶ *Id.* at P 34.

⁷⁷ *ISO New England Inc.*, 173 FERC ¶ 61,205 (Dec. 3, 2020) (“*Mystic Waiver Allegheny Order*”).

⁷⁸ *ISO New England Inc.*, 164 FERC ¶ 61,003 (July 2, 2018) (“*Mystic Waiver Order*”) (denying ISO-NE’s request for waiver of certain Tariff provisions that would have permitted ISO-NE to retain Mystic 8 & 9 for fuel security purposes (ER18-1509); and (ii) instituting an FPA Section 206 proceeding (EL18-182), finding preliminarily that the ISO-NE Tariff may be unjust and unreasonable in that it fails to address specific regional fuel security concerns identified in the record that could result in reliability violations as soon as year 2022).

⁷⁹ “Connecticut Parties” are CT PURA and CT DEEP.

⁸⁰ The “EDCs” are the National Grid companies (Mass. Elec. Co., Nantucket Elec. Co., and Narragansett Elec. Co.) and Eversource Energy Service Co. (on behalf of its electric distribution companies – CL&P, NSTAR and PSNH).

⁸¹ “PIOs” are the Sierra Club, Natural Resources Defense Council (“NRDC”), and Sustainable FERC Project.

⁸² *Mystic Waiver Allegheny Order* at P 2.

terminated the FPA section 206 proceeding instituted in Docket No. EL18-182.⁸³ Unless the *Mystic Waiver Orders* are challenged in Federal Court, this proceeding will be terminated. If you have any questions concerning this proceeding, please contact Dave Doot (860-275-0102; dtadoot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

IV. OATT Amendments / TOAs / Coordination Agreements

No Activities to Report

V. Financial Assurance/Billing Policy Amendments

- **FAP Info Disclosure/KYC Requirements (ER21-816)**

On January 6, 2021, ISO-NE and NEPOOL jointly filed revisions to the Financial Assurance Policy (“FAP”) that (i) update FAP information disclosure requirements; (ii) update risk management disclosure requirements; and (iii) add a provision regarding prior uncured payment defaults and entry into the New England Markets (collectively, the “FAP Info Disclosure/KYC Requirements”). A March 9, 2021 effective date was requested. The changes were unanimously supported by the Participants Committee at its November 5 meeting (Agenda Item #5). Comments on this filing will be due on or before January 27, 2021. Thus far, Brookfield submitted a doc-less intervention. If you have any questions concerning this matter, please contact Paul Belval (pnbelval@daypitney.com; 860-275-0381).

VI. Schedule 20/21/22/23 Changes

- **Schedule 21-VP: 2019 Annual Update Settlement Agreement (ER15-1434-004)**

Emera Maine’s (now Versant Power) joint offer of settlement, filed March 19, 2020, between itself and the MPUC to resolve all issues raised by the MPUC in response to Emera Maine’s 2019 annual charges update filed, as previously reported, on June 10, 2019 (the “Emera 2019 Annual Update Settlement Agreement”). Under Part V of Attachment P, “Interested Parties shall have the opportunity to conduct discovery seeking any information relevant to implementation of the [Attachment P] Rate Formula. . . .” and follow a dispute resolution procedure set forth there. In accordance with those provisions, the MPUC identified certain disputes with the 2019 Annual Update, all of which are resolved by the Emera 2019 Annual Update Settlement Agreement. Comments on the Emera 2019 Annual Update Settlement Agreement were due on or before April 9, 2020; none were filed. This matter continues to be pending before the FERC. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-VP: Recovery of Bangor Hydro/Maine Public Service Merger-Related Costs (ER15-1434-001 et al.)**

The MPS Merger Cost Recovery Settlement, filed by Emera Maine on May 8, 2018 to resolve all issues pending before the FERC in the consolidated proceedings set for hearing in the *MPS Merger-Related Costs*

⁸³ *Id.*

Order,⁸⁴ and certified by Settlement Judge Dring⁸⁵ to the Commission,⁸⁶ remains pending before the FERC. As previously reported, under the Settlement, permitted cost recovery over a period from June 1, 2018 to May 31, 2021 will be \$390,000 under Attachment P of the BHD OATT and \$260,000 under the MPD OATT. If you have any questions concerning these matters, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

- **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 ISO-NE in compliance with *Opinions No. 531-A*⁸⁷ and *531-B*⁸⁸ also remains pending. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **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 | ◆ National Grid | ◆ United Illuminating |
| ◆ Emera Maine | ◆ NHT | ◆ VTransco |
| ◆ Eversource | ◆ NSTAR | |

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

⁸⁴ *Emera Maine and BHE Holdings*, 155 FERC ¶ 61,230 (June 2, 2016) ("*MPS Merger-Related Costs Order*"). In the *MPS Merger-Related Costs Order*, the FERC accepted, but established hearing and settlement judge procedures for, filings by Emera Maine seeking authorization to recover certain merger-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"). 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 an 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. The *MPS Merger-Related Costs Order* set resolution of the issues of material fact for hearing and settlement judge procedures, consolidating the separate compliance filing dockets.

⁸⁵ ALJ John Dring was the settlement judge for these proceedings. There were five settlement conferences -- three in 2016 and two in 2017. With the Settlement pending before the FERC, settlement judge procedures, for now, have not been terminated.

⁸⁶ *Emera Maine and BHE Holdings*, 163 FERC ¶ 63,018 (June 11, 2018).

⁸⁷ *Martha Coakley, Mass. Att'y Gen.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) ("*Opinion 531-A*").

⁸⁸ *Martha Coakley, Mass. Att'y Gen.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) ("*Opinion 531-B*").

- **Capital Projects Report - 2020 Q3 (ER21-108)**

On December 15, 2020, the FERC accepted ISO-NE's Capital Projects Report and Unamortized Cost Schedule covering the third quarter ("Q3") of calendar year 2020 (the "Report").⁸⁹ ISO-NE was required to file the Report under Section 205 of the FPA pursuant to Section IV.B.6.2 of the Tariff. Report highlights included the following new projects: (i) nGEM Market Clearing Engine Implementation (\$13,900,500); and (ii) CELT Report Automation Phase I (\$155,500). The following four projects had significant changes: (i) ESI (2020 Budget decrease of \$1 million); (ii) 2020 Issue Resolution Project Part II (2020 Budget decrease of \$540,000); (iii) Energy Management Platform 3.2 Upgrade Part II (2020 Budget increase of \$250,000); and (iv) Enterprise Application Integration Replacement Phase I (2020 Budget increase of \$100,000). The Q3 Report was accepted effective as of October 1, 2020, as requested. Unless the December 15 order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

IX. Membership Filings

- **January 2021 Membership Filing (ER21-769)**

On December 29, 2020, NEPOOL requested that the FERC accept: (i) the memberships of the following: Cassadaga Wind LLC (Supplier Sector); Centrica Business Solutions Optimize, LLC (Supplier Sector); Pilot Power Group, LLC (Supplier Sector); and SmartestEnergy US LLC (Supplier Sector); and the termination of the Participant status of Wheelabrator Bridgeport, LP. Comments on this filing are due on or before January 20, 2021.

- **December 2020 Membership Filing (ER21-499)**

On November 30, 2020, NEPOOL requested that the FERC accept the termination of the Participant status of the following: Eagle's View Partners, Ltd.; Goose River Hydro, Inc.; Patriot Partnership LLC; SFE Energy Connecticut, Inc., and Emera Energy Services Subsidiary No. 9 LLC. This filing is pending before the FERC.

- **November 2020 Membership Filing (ER21-260)**

On December 17, 2020, the FERC accepted the membership of Nautilus Solar Energy, LLC (AR Sector, RG Sub-Sector, Large AR RG Group Seat).⁹⁰ Unless the December 17 order is challenged, this proceeding will be concluded.

- **Invenia Additional Conditions Informational Filing (ER20-2001)**

Still pending before the FERC is the June 5, 2020 informational filing submitted by ISO-NE pursuant to Section II.A.1(b) of the FAP identifying the additional condition (supplemental financial assurance) required of Invenia for participation in the New England Markets. The additional condition was supported, and made a condition of Invenia's membership, by the Participants Committee at its June 4 meeting. A doc-less intervention was submitted by Public Citizen. This informational filing is still pending before the FERC.

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).

⁸⁹ *ISO New England Inc.*, Docket No. ER21-108 (Dec. 15, 2020).

⁹⁰ *New England Power Pool Participants Comm.*, Docket No. ER21-260 (Dec. 17, 2020).

- **Joint Staff White Papers on Notices of Penalty for Violations of CIP Standards (AD19-18)**

On September 23, 2020, following review of the comments submitted on their First White Paper,⁹¹ FERC and NERC staff ("Joint Staffs") issued their second White Paper on Notices of Penalty Pertaining to Violations of Critical Infrastructure Protection ("CIP") Reliability Standards ("Second White Paper"). Having determined based on those comments that the First White Paper proposal was insufficient to protect the security of the BPS, Joint Staffs modified the prior proposal. Going forward, CIP noncompliance submissions⁹² will be filed or submitted by NERC with a request that the *entire* filing or submittal be designated as Critical Energy/Electric Infrastructure Information ("CEII") and FERC staff will designate the entire filing or submittal accordingly. Because of the risk associated with the disclosure of CIP noncompliance information, NERC will no longer publicly post redacted versions of CIP noncompliance filings and submittals.

- **NERC Annual Report on FFT & Compliance Exception Programs (RC11-6-011)**

On December 30, 2020, NERC filed its annual report on Find, Fix, and Track ("FFT") and Compliance Exception programs, in accordance with prior FERC Orders.⁹³ In the report, NERC stated that the ERO Enterprise appropriately handles noncompliance posing a minimal or moderate risk through these programs and that the results of the annual report show consistent improvement in program implementation. The report also demonstrates, NERC suggests, significant alignment across the ERO Enterprise, particularly in the processing and understanding of the risk associated with individual noncompliance. Comments on the annual report are due on or before January 21, 2021.

- **Revised Reliability Standards: CIP-013-2, CIP-005-7, CIP-010-4 (RD21-2)**

On December 14, 2020, NERC filed for approval proposed changes to Reliability Standards CIP-013-2, CIP-005-7, and CIP-010-4 (the "Supply Chain Standards"). The Supply Chain Standards address supply chain cybersecurity risk management, broadening requirements to include Electronic Access Control or Monitoring Systems ("EACMS") and Physical Access Control Systems ("PACS") as applicable systems. NERC asked that the Supply Chain Standards become effective (and the currently effective versions be retired) on the first day of the first calendar quarter that is 18 months following FERC approval. As of the date of this Report, a comment date has not yet been noticed.

- **CIP Standards Development: Informational Filings on Virtualization and Cloud Computing Services Projects (RD20-2)**

On March 19, 2020, NERC submitted, as directed by the FERC,⁹⁴ an informational filing describing the activity of two NERC CIP standard drafting projects pertaining to virtualization and cloud computing services,

⁹¹ The first White Paper, prepared jointly by FERC and NERC staff, was issued on August 27, 2019. The First White Paper set out a proposed new format for NERC Notices of Penalty ("NOP") involving violations of CIP Reliability Standards. The First White Paper explained that the revised format was intended to improve the balance between security and transparency in the filing of NOPs. Specifically, NERC CIP NOP submissions would consist of a proposed public cover letter that discloses the name of the violator, the Reliability Standard(s) violated (but not the Requirement), and the penalty amount. NERC would submit the remainder of the CIP NOP filing containing details on the nature of the violation, mitigation activity, and potential vulnerabilities to cyber systems as a nonpublic attachment, along with a request for the designation of such information as CEII.

Few commenters supported the First Joint White Paper proposal without seeking modifications to either expand or reduce the amount of information that would be publicly disclosed. Comments submitted by private citizens, state representatives, and consumer advocate offices supported more disclosure of CIP noncompliance information. By contrast, most industry commenters and trade organizations raised concerns with at least some of the proposed disclosures because of the increased risk to the security of the Bulk-Power System ("BPS").

⁹² Non-compliance submissions include Notices of Penalty ("NOPs"), Spreadsheet NOPs ("SNOPs"), Find, Fix and Track submissions ("FFTs") and Compliance Exceptions ("CEs").

⁹³ See *N. Am. Elec. Rel. Corp.*, 138 FERC 61,193 (2012) ("March 2012 Order"); *N. Am. Elec. Rel. Corp.*, 143 FERC 61,253 (2013) ("June 2013 Order"); *N. Am. Elec. Rel. Corp.*, 148 FERC 61,214 (2014) ("September 2014 Order"); and *N. Am. Elec. Rel. Corp.*, Docket No. RC11-6-004 (Nov. 13, 2015) (unpublished letter order) ("November 2015 Order").

⁹⁴ *N. Am. Elec. Rel. Corp.*, 170 FERC ¶ 61,109 (Feb. 20, 2020).

including a schedule for Project 2016-02 (Modifications to CIP Standards) and Project 2019-02 (BES Cyber System Information Access Management) (collectively, the “NERC Projects”). Comments were submitted by a private citizen (Barry Jones) and VMware, Inc. on April 21 and 27, 2020, respectively. The FERC took no action on the March 19 informational filing.

In addition, NERC is required to file on an information basis quarterly status updates, until such time as new or modified Reliability Standards are filed with the FERC. NERC filed its fourth informational filing on December 15, 2020, reporting no change in schedule for either project from that reported in its supplemental November 2020 filing -- filing of proposed Reliability Standards in December 2021 for both Projects (2019-02 and 2016-02).

- **Revised Reliability Standard: CIP-002-6 (RM20-17)**

On June 12, 2020, NERC filed for approval a revised Reliability Standard -- CIP-002-6 (Cyber Security – BES Cyber System Categorization), and associated implementation plan, VRFs and VSLs (together, the “CIP-002 Changes”). NERC stated that the CIP-002 Changes improve upon the currently effective standard by clarifying the criterion for Transmission Owner Control Centers and tailoring the language to better reflect the risk posed by these Control Centers if unavailable or compromised. As of the date of this Report, the FERC has still not noticed a proposed rulemaking proceeding or otherwise invited public comment.

- **NOI: Enhancements to CIP Standards (RM20-12)**

On June 18, 2020, the FERC issued a notice of inquiry (“NOI”) seeking comments on certain potential enhancements to the currently-effective CIP Reliability Standards. In particular, the FERC asked for comments on whether the CIP Standards adequately address: (i) cybersecurity risks pertaining to data security, (ii) detection of anomalies and events, and (iii) mitigation of cybersecurity events. In addition, the FERC asked for comments on the potential risk of a coordinated cyberattack on geographically distributed targets and whether FERC action including potential modifications to the CIP Standards would be appropriate to address such risk.

Comments were filed by NERC, the ISO/RTO Council (“IRC”), APPA/LPPC, Canadian Electricity Assoc. (“CEA”), Cogentrix, EEI/EPSCA, Forescout Technologies, MISO TOs, NJ BPU, NRECA, Reliable Energy Analytics, Southwestern Power Administration, Solar Energy Industries Association (“SEIA”), Siemens Energy, Southern Companies, TAPS, U.S. Bureau of Reclamation, U.S. Corp of Army Engineers, Western Area Power Administration (“WAPA”), Wolverine Power Supply Cooperative, XTec, and J. Applebaum, J. Christopher/T. Conway, and J. Cotter. No reply comments were filed. This matter is pending before the FERC.

- **NOI: Virtualization and Cloud Computing Services in BES Operations (RM20-8)**

On February 20, 2020, the FERC issued a NOI seeking comments on (i) the potential benefits and risks associated with the use of virtualization and cloud computing services in association with bulk electric system (“BES”) operations; and (ii) whether the CIP Reliability Standards impede the voluntary adoption of virtualization or cloud computing services.⁹⁵ On March 25, 2020, Joint Associations⁹⁶ requested an extension of time to submit comments and reply comments. On April 2, the FERC granted Joint Associations’ request and extended the deadline for initial comments on the NOI to July 1, 2020; the deadline for reply comments, July 31, 2020. Comments were filed by NERC, the IRC, Accenture, Amazon Web Services (“Amazon”), Bonneville, the Bureau of Reclamation, Barry Jones, Georgia System Operations, GridBright, Idaho Power, Microsoft, MISO, MISO Transmission Owners, Siemens Energy Management, Tri-State Generation and Transmission Association, VMware, Inc., AEE, American Association for Laboratory Accreditation (“A2LA”), APPA, Canadian Electricity Assoc., EEI, NRECA, and Waterfall Security Solutions. Reply comments were due on or before July 31, 2020, and were filed by AEE, Amazon and Microsoft.

⁹⁵ *Virtualization and Cloud Computing Services*, 170 FERC ¶ 61,110 (Feb. 20, 2020).

⁹⁶ “Joint Associations” are for purposes of this proceeding: EEI, APPA, NRECA, and LPPC.

In part in response the comments filed, the FERC in a December 17, 2020 order⁹⁷ directed NERC to begin a formal process to assess, and to make an informational filing in a little over one year (January 1, 2022) that addresses, the feasibility of voluntarily conducting BES operations in the cloud in a secure manner, as well as the status and schedule for any plans to modify the standards.

- **Order 873 - Retirement of Reliability Standard Requirements (Standards Efficiency Review) (RM19-17; RM19-16)**

On September 17, 2020, the FERC approved the retirement of the 18 Reliability Standard requirements through the retirement of four Reliability Standards and the modification of five Reliability Standards,⁹⁸ concluding that the 18 requirements “(1) provide little or no reliability benefit; (2) are administrative in nature or relate expressly to commercial or business practices; or (3) are redundant with other Reliability Standards.”⁹⁹ The FERC also approved the associated violation risk factors, violation severity levels, implementation plan, and effective dates proposed by NERC. Because it was not persuaded by NERC’s justification for the retirement of FAC-008-4 requirement R8, the FERC remanded the retirement of requirements R7 and R8 to NERC for further consideration.¹⁰⁰

The FERC left for another day its final action on the remaining 56 requirements for which the FERC proposed to approve retirement in the *Retirements NOPR*¹⁰¹ (the “MOD A Reliability Standards”). The FERC intends to coordinate the effective dates for the retirement of the MOD A Reliability Standards with successor North American Energy Standards Board (“NAESB”) business practice standards (v. 003.3) that include Modeling business practices pending in the *NAESB WEQ v. 003.3 Standards NOPR* (see Section XII below).¹⁰²

- **Amended and Restated NERC Bylaws (RR21-1)**

NERC’s October 14, 2020 petition for FERC approval of its amended and restated Bylaws remains pending. As previously reported, NERC stated that the amendments (i) address governance matters relating to the composition of NERC’s membership Sectors, certain rules relating to the Member Representatives Committee, as well as the qualification of independent trustees for the Board; (ii) update certain provisions to conform with applicable state law; and (iii) improve internal consistency and introduce ministerial changes within the Bylaws with respect to capitalizing defined terms consistently and removing inoperative provisions. Comments, if any, on

⁹⁷ *Virtualization and Cloud Computing Services*, 173 FERC ¶ 61,243 (Dec. 17, 2020) (“*Order Directing Jan 2022 Info. Filing*”).

⁹⁸ *Elec. Rel. Org. Proposal to Retire Reqs. in Rel. Standards Under the NERC Standards Efficiency Review*, Order No. 873, 172 FERC ¶ 61,225 (Sep. 17, 2020) (“*Order 873*”). The four Reliability Standards being eliminated in their entirety are FAC-013-2 (Assessment of Transfer Capability for the Near-term Transmission Planning Horizon), INT-004-3.1 (Dynamic Transfers), INT-010-2.1 (Interchange Initiation and Modification for Reliability), MOD-020-0 (Providing Interruptible Demands and Direct Control Load Management Data to System Operations and Reliability Coordinators). The five modified Reliability Standards are INT-006-5 (Evaluation of Interchange Transactions), INT-009-3 (Implementation of Interchange) and PRC-004-6 (Protection System Misoperation Identification and Correction), IRO-002-7 (Reliability Coordination—Monitoring and Analysis), TOP-001-5 (Transmission Operations).

⁹⁹ *Order 873* at P 2.

¹⁰⁰ *Order 873* at P 5. Pursuant to FPA section 215(d)(4), if the FERC disapproves a modification to a Reliability Standard in whole or in part, it must remand the entire Reliability Standard to NERC for further consideration. Accordingly, although it was satisfied here with the justification for the retirement of R7, the FERC was required to remand both R7 and R8 so that its concerns with the retirement of Requirement R8 could be addressed.

¹⁰¹ *Electric Reliability Organization Proposal to Retire Requirements in Rel. Standards Under the NERC Standards Efficiency Review*, 170 FERC ¶ 61,032 (Jan. 23, 2020) (“*Retirements NOPR*”) (proposing to approve the retirement of 74 of 77 Reliability Standard requirements requested to be retired by NERC in these two dockets in connection with the first phase of work under NERC’s Standards Efficiency Review, an initiative begun in 2017 that reviewed the body of NERC Reliability Standards to identify those Reliability Standards and requirements that were administrative in nature, duplicative to other standards, or provided no benefit to reliability). As previously reported, NERC withdrew its proposed changes to VAR-001-6 on May 14, 2020, reducing to 76 the number of requirements proposed to be retired.

¹⁰² *Standards for Business Practices and Communication Protocols for Public Utilities*, 85 Fed. Reg. 55201 (September 4, 2020).

the Amended and Restated Bylaws were due on or before November 4, 2020; none were filed. This matter remains pending before the FERC.

- **Report of Comparisons of Budgeted to Actual Costs for 2019 for NERC and the Regional Entities (RR20-3)**

On November 24, 2020, the FERC accepted the NERC's comparisons of actual to budgeted costs for 2019 for NERC and the seven Regional Entities operating in 2019, including NPCC, filed by NERC on May 29, 2020.¹⁰³ The Report included comparisons of actual funding received and costs incurred, with explanations of significant actual cost-to-budget variances, audited financial statements, and tables showing metrics concerning NERC and Regional Entity administrative costs in their 2019 budgets and actual results. The November 24 order was not challenged and is final and unappealable.

XI. Misc. - of Regional Interest

- **203 Application: CPV Towantic (EC21-16)**

On December 17, 2020, the FERC authorized CPV Group LP to indirectly acquire all of the indirect voting securities owned by GIP II CPV Intermediate Holdings Partnership, L.P. ("GIP II CPV") in, among others, CPV Towantic, LLC ("CPV Towantic").¹⁰⁴ Upon consummation, Clearway Power Marketing and GenConn Energy will no longer be CPV Related Persons. Pursuant to the December 17 order, notice must be filed within 10 days of consummation of the transaction, which as of the date of this Report has not yet occurred.

- **203 Application: Millennium Power Partners (EC20-103)**

On November 18, 2020, the FERC authorized a transaction whereby Beal Bank USA, Beal Bank, SSB or their designee(s) ("Beal Bank") will acquire all of the membership interests in Millennium Power Partners, L.P. ("Millennium") and New Athens Generating Company, LLC (which owns facilities in New York) from Talen. Pursuant to the November 18 order, notice must be filed within 10 days of consummation of the transaction, which as of the date of this Report has not yet occurred.

- **203 Application: NRG/Direct (EC20-96)**

On November 24, 2020, the FERC authorized NRG's acquisition of, among others, Direct Energy Business and Direct Energy Business Marketing (together, "Direct").¹⁰⁵ The transaction was consummated on January 5, 2021. Pursuant to the November 24 order, notice must be filed within 10 days of consummation of the transaction (of January 15, 2021), which as of the date of this Report has not yet occurred.

- **203 Application: CMP/NECEC (EC20-24)**

On March 13, 2020, the FERC authorized CMP to transfer to NECEC Transmission LLC 7 TSAs, executed on June 13, 2018, that provide the rates, terms, and conditions under which transmission service will be provided over the New England Clean Energy Connect ("NECEC") Transmission Line to the participants that are funding construction of the Line.¹⁰⁶ Pursuant to the March 13 order, notice must be filed within 10 days of consummation of the transaction, which as of the date of this Report has not yet occurred.

- **LGIA: NSTAR / MMWEC (Stony Brook) (ER21-777)**

On December 31, 2020, NSTAR filed an LGIA with MMWEC for the continued interconnection of MMWEC'S Stony Brook Generating Station located in Ludlow, Massachusetts to NSTAR's transmission system. The LGIA replaces the original 1992 Stony Brook interconnection agreement which, as previously reported,

¹⁰³ *N. Amer. Elec. Rel. Corp.*, Docket No. RR20-3 (Nov. 24, 2020) (unpublished letter order).

¹⁰⁴ *CPV Fairview, LLC et al.*, 173 FERC ¶ 62,149 (Dec. 17, 2020).

¹⁰⁵ *NRG Energy, Inc. et al.*, 173 FERC ¶ 62,103 (Nov. 24, 2020).

¹⁰⁶ *Central Maine Power Co.*, 170 FERC 62,145 (Mar. 13, 2020).

had been extended three times¹⁰⁷ and expired on December 31, 2020. Since the LGIA covers an existing, interconnected facility, and does not set forth any terms or conditions that would otherwise modify the interconnection services provided under the original IA, NSTAR states that a new three-party interconnection agreement (that would include ISO-NE) was not required. A December 31, 2020 effective date was requested. Comments on this filing are due on or before January 21, 2021. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **LGIA: CMP / ReEnergy Stratton (ER21-769)**

On December 30, 2020, CMP filed an LGIA to renew and replace the terms of the original interconnection agreement entered into between CMP and ReEnergy Stratton's predecessor in interest (Stratton Energy Associates). Since the LGIA covers an existing, interconnected facility, and does not set forth any terms or conditions that would otherwise modify the interconnection services provided under the original IA, CMP states that a new *three*-party LGIA (that would include ISO-NE) was not required. A December 21, 2020 effective date was requested, and includes a discussion of how charges for service provided from the expiration of the original IA (August 31, 2019) to the requested effective date have been and are to be administered. Comments on this filing are due on or before January 20, 2021. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Interim Distribution Wheeling Agreement: Unitil / Briar Hydro (ER21-759)**

On December 29, 2020, Unitil filed an Interim Distribution Wheeling Service Agreement between Unitil Energy Systems ("UES") and Briar Hydro Associates ("Briar") to provide for Briar's ongoing receipt of distribution wheeling services for the Penacook Lower Falls Resource¹⁰⁸ (pending UES' filing of a distribution wheeling rate in early 2021). Briar intends to sell the output of the facility into the New England Market. A December 28, 2020 effective date was requested. Comments on this filing are due on or before January 19, 2021. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **D&E Agreement Cancellation: NSTAR / SEMASS (ER21-676)**

On December 17, 2020, NSTAR filed a notice of cancellation of a Design and Engineering Agreement ("D&E Agreement") with SEMASS Partnership ("SEMASS"). The D&E Agreement set forth the terms and conditions under which NSTAR undertook preliminary engineering, design and construction activities on its interconnection facilities to accommodate SEMASS's planned construction activity at its switchyards within its generation station. The D&E Agreement terminated by its terms on July 1, 2020 and all billing reconciliations under the D&E Agreement have been completed. A December 17, 2020 effective was requested. Comments on this filing are due on or before January 7, 2021. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **SGIA: CL&P / ECRRA (ER21-651)**

On December 15, 2020, CL&P filed a Small Generator Interconnection Agreement ("SGIA") between the itself and Eastern Connecticut Resource Recovery Authority ("ECRRA") to allow for the continued interconnection of ECRRA's refuse-to-energy municipal solid waste facility. ECRRA, through Wheelabrator North Andover, intends to sell the output of the facility into the New England Market. Since the SGIA covers an existing, interconnected facility, and does not set forth any terms or conditions that would otherwise modify the interconnection services provided under the original IA, CL&P states that a new three-party SGIA (that would include ISO-NE) was not required. A December 15, 2020 effective date was requested. Comments

¹⁰⁷ See *NSTAR Elec. Co.*, Docket No. ER19-2303 (Feb. 22, 2019) (unpublished letter order) (1st extension); *NSTAR Elec. Co.*, Docket No. ER19-2303 (Aug. 22, 2019) (unpublished letter order) (2nd extension); *NSTAR Electric Co.*, Docket No. ER19-2897 (Nov. 5, 2019) (unpublished letter order) (3rd extension).

¹⁰⁸ The Penacook Lower Falls Resource is a 4.5 MW hydro unit located in Boscawen, New Hampshire on the southern bank of the Contoocook River.

on this filing were due on or before January 5, 2021; 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).

- **VTransco Rate Schedule 2 Cancellation (ER21-256)**

On December 18, 2020, the FERC accepted the notice of cancellation of the Vermont Yankee Transmission Agreement, which is no longer in use, filed by Vermont Transco.¹⁰⁹ The cancellation notice was accepted effective December 28, 2020, as requested. Unless the December 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).

- **D&E Agreement: NSTAR/Ocean State Power (ER21-192)**

On December 11, 2020, the FERC accepted a Preliminary Agreement for Design, Engineering and Construction services (the “D&E Agreement”) between NSTAR and Ocean State Power, effective October 23, 2020.¹¹⁰ The D&E Agreement sets forth the terms and conditions under which NSTAR will undertake preliminary design and engineering activities to increase the real power capacity of Ocean State Power’s large generating facility. Unless the December 11 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).

- **NECEC TSAs: NECEC Transmission Notices of Succession and CMP Notice of Cancellation (ER21-12 et al.)**

On November 30, 2020 and December 18, 2020, the FERC accepted notices addressing the transfer of the 7 transmission service agreements (“TSAs”) with the participants that will fund the construction, operation and maintenance of the NECEC Transmission Line.¹¹¹ Once the transfer of the TSAs from CMP to NECEC Transmission is consummated (see EC20-24 above), NECEC will succeed to CMP’s position in the TSAs and CMP will no longer be a party to the TSAs. As a result, NECEC filed notices of succession to the TSAs¹¹² and CMP filed a notice cancelling the TSAs as CMP Rate Schedules in the FERC’s eTariff database.¹¹³ The notices are to be effective as of the date the transaction is consummated. If you have any questions concerning these matters, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

¹⁰⁹ *Vermont Transco LLC*, Docket No. ER21-256 (Dec. 18, 2020) (unpublished letter order).

¹¹⁰ *NSTAR Electric Co.*, Docket No. ER21-192 (Dec. 11, 2020) (unpublished letter order).

¹¹¹ *NECEC Transmission LLC*, Docket No. ER21-12-000 (Nov. 30, 2020).

¹¹² The NECEC Transmission succession notices to the 7 TSAs were separately docketed as follows: Eversource (ER21-12); National Grid (ER20-13); Unitil (ER21-14); HQ US/Eversource (ER21-15); HQ US/National Grid (ER21-17); HQ US/Unitil (ER21-18); and HQ US Additional (ER21-19).

¹¹³ See *Central Maine Power Co.*, Docket No. ER21-20 (Dec. 18, 2020) (accepting CMP notice of cancellations; effective date to be identified in a subsequent compliance filing).

- **Orders 864/864-A (Public Util. Trans. ADIT Rate Changes): New England Compliance Filings (various)**

In accordance with *Order 864*¹¹⁴ and *Order 864-A*,¹¹⁵ and extensions of time granted, New England's public utilities with transmission have submitted their *Order 864* compliance filings, with the specific dockets and filing dates identified in the following table (all remain pending):

Date Filed	Docket	Transmission Provider	Date Accepted
Oct 30, 2020	ER21-311	Green Mountain Power	pending
Aug 5, 2020	ER20-2614	New England Power Support Agreement	pending
Aug 5, 2020	ER20-2610	CL&P	pending
Aug 5, 2020	ER20-2609	NSTAR	pending
Aug 5, 2020	ER20-2608	PSNH	pending
Aug 4, 2020	ER20-2607	NEP – Seabrook Transmission Support Agreement	pending
Jul 31, 2020	ER20-2594	VTransco	pending
Jul 30, 2020	ER20-2551	New England Power	pending
Jul 30, 2020	ER20-2553	NEP – LSA with MECO/Nantucket	pending
Jul 30, 2020	ER20-2572	New England TOs	pending
Jul 15, 2020	ER20-2429	CMP	pending
Jun 29, 2020	ER20-2219	New England Power	pending
Jun 23, 2020	ER20-2133	Versant Power	pending
May 18, 2020	ER20-1839	VETCO	Pending
Feb 26, 2020 Dec 11, 2020	ER20-1089	New England Elec. Trans. Corp.	pending
Feb 26, 2020 Dec 11, 2020	ER20-1088	New England Hydro Trans. Elec. Co.	pending
Feb 26, 2020 Dec 11, 2020	ER20-1087	New England Hydro Trans. Corp.	pending

- **FERC Enforcement Action: Algonquin Power Windsor Locks (IN21-2)**

On January 5, 2021, the FERC approved a Stipulation and Consent Agreement with Algonquin Power Windsor Locks LLC¹¹⁶ ("Windsor Locks") that resolved OE's investigation into whether Windsor Locks complied with its ISO-NE Tariff offer obligations during the period July 1, 2012 through September 24, 2013. Enforcement determined that Windsor Locks' failure to make required offers into the ISO-NE energy markets violated provisions of the ISO-NE Tariff related to the Forward Capacity and Forward Reserve Markets and section 35.41(a) of the Commission's regulations. Under the Settlement, in which Windsor Locks neither admits nor denies the alleged violations, Windsor Locks must **disgorge \$1,119,073.15** (which includes interest) to ISO-NE, to be allocated by ISO-NE in its discretion for the benefit of load and upon approval by Enforcement of ISO-NE's plan for doing so, and **pay a \$1 million civil penalty** to the United States Treasury. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

¹¹⁴ *Public Util. Trans. Rate Changes to Address Accumulated Deferred Income Taxes*, Order No. 864, 169 FERC ¶ 61,139 (Nov. 21, 2019), *reh'g denied and clarification granted in part*, 171 FERC ¶ 61,033 (Apr. 16, 2020) ("Order 864"). Order 864 requires all public utility transmission providers with transmission rates under an OATT, a transmission owner tariff, or a rate schedule to revise those rates to account for changes caused by the 2017 Tax Cuts and Jobs Act ("2017 Tax Law"). Specifically, for transmission formula rates, Order 864 requires public utilities (i) to deduct excess ADIT from or add deficient ADIT to their rate bases and adjust their income tax allowances by amortized excess or deficient ADIT; and (ii) to incorporate a new permanent worksheet into their transmission formula rates that will annually track ADIT information.

¹¹⁵ *Public Util. Trans. Rate Changes to Address Accumulated Deferred Income Taxes*, 171 FERC ¶ 61,033, Order No. 864-A (Apr. 16, 2020) ("Order 864-A").

¹¹⁶ *Algonquin Power Windsor Locks LLC*, 174 FERC ¶ 61,001 (Jan. 5, 2021).

XII. Misc. - Administrative & Rulemaking Proceedings

- **ISO/RTO Credit Principles and Practices (AD21-6)**

On November 4, 2020, the FERC issued a notice that staff will convene a February 25-26, 2021 technical conference to discuss principles and best practices for credit risk management in ISO/RTOs. The conference may address the following aspects of credit policy: ISO/RTO credit and risk management infrastructure; best practices and principles underlying capitalization requirements, financial security requirements, and unsecured credit allowances; the applicability of Know Your Customer (“KTC”) protocols and other counterparty risk management tools; considerations for implementing FTR-specific credit policies, such as a mark-to-auction mechanism; and the relationship between credit policy and wholesale electric market design. Commissioners may participate in the technical conference. The conference will be open for the public to attend. Supplemental notice(s) will be issued prior to the technical conference with further details regarding the agenda and organization of the conference.

Recall that, as previously reported, Energy Trading Institute¹¹⁷ requested that the FERC hold a technical conference and conduct a rulemaking to update the requirements adopted in *Order 741*¹¹⁸ and Section 35.47 of the FERC’s regulations addressing credit and risk management in the markets operated by ISO/RTOs. The FERC issued a notice of and received comments on ETI’s request (AD20-6) in early 2020. The February technical conference is responsive to that request. Reporting on developments in this proceeding will continue under AD21-6 in future reports.

- **Offshore Wind Integration in RTOs/ISOs Tech Conf (Oct 27, 2020) (AD20-18)**

On October 27, 2020, the FERC convened a staff-led technical conference to consider whether and how existing RTO and ISO interconnection, merchant transmission and transmission planning frameworks can accommodate anticipated growth in offshore wind generation in an efficient or cost-effective manner that safeguards open access transmission principles. The conference also provided an opportunity for participants to discuss possible changes or improvements to the current regulatory frameworks that may accommodate such growth. Speaker materials and a transcript of the technical conference are posted in eLibrary.

- **Carbon Pricing in RTO/ISO Markets Tech Conf (Sep 30, 2020) (AD20-14)**

On September 30, 2020, the FERC convened a Commissioner-led technical conference to discuss considerations related to state adoption of mechanisms to price carbon dioxide emissions, commonly referred to as carbon pricing, in regions with FERC-jurisdictional organized wholesale electricity markets. The September 30 conference was a response to (i) the April 14, 2020 request by Interest Parties,¹¹⁹ who asserted that a technical conference “would be helpful to the Commission and stakeholders in the electric energy industry in deciding how best to move forward at the state and regional levels on these issues and in the relevant organized markets” complementing “state, regional, and national discussions currently taking place” as well as to (ii) the more than 30 sets of comments on the request that were filed. Speaker opening remarks (including those of [Gordon van Welie](#),

¹¹⁷ In its request, The Energy Trading Institute (“ETI”) describes itself generally as “represent[ing] a diverse group of energy market participants, all with substantial interests in wholesale electricity transactions in Commission-jurisdictional markets. ETI members provide important services to a wide variety of wholesale energy market participants. They act as intermediaries between producers and consumers of electric energy that have mismatched quantity, timing, and contract type needs. In addition, they provide liquidity by engaging in energy related commercial transactions with a variety of market entities including, but not limited to, generation owners, project developers, load-serving entities, and investors. ETI members advocate for markets that are open, transparent, competitive and fair - all necessary attributes for markets ultimately to benefit electricity consumers.”

¹¹⁸ *Credit Reforms in Organized Wholesale Elec. Mkts.*, 75 Fed. Reg. 65942 (2010), FERC Stats. & Regs. ¶ 31,317 (2010) (“*Order 741*”); *order on reh’g*, 76 Fed. Reg. 10492 (2011), FERC Stats. & Regs. ¶ 31,320 (2011) (“*Order 741-A*”); *order on reh’g*, 135 FERC ¶ 61,242 (2011) (“*Order 741-B*”); 18 C.F.R. § 35.47.

¹¹⁹ “Interested Parties” are AEE, the American Council on Renewable Energy, the American Wind Energy Association, Brookfield Renewable, Calpine, CPV, EPSA, the Independent Power Producers of New York (“IPPNY”), LS Power Associates (“LS Power”), the Natural Gas Supply Association (“NGSA”), NextEra, PJM Power Providers Group, R Street Institute, and Vistra Energy Corp.

[Matt White](#), and other New England stakeholders), and comments are posted in eLibrary, as is a [transcript of the conference](#).

Notice of Proposed Policy Statement. Following the technical conference, on October 15, 2020, the FERC issued a Notice of Proposed Policy Statement.¹²⁰ The FERC stated that the *Proposed Policy Statement* is “to clarify the Commission’s jurisdiction over RTO/ISO market rules that incorporate a state-determined carbon price and to encourage RTO/ISO efforts to explore and consider the benefits of potential [FPA] section 205 filings to establish such rules.” Specifically, the FERC proposed “to make it the policy of this Commission to encourage efforts by RTOs/ISOs and their stakeholders—including States, market participants, and consumers—to explore establishing wholesale market rules that incorporate state-determined carbon prices in RTO/ISO markets.”¹²¹ The FERC solicited comment on whether the following information and considerations it identified are “germane to the Commission’s evaluation of a section 205 filing to determine whether an RTO/ISO’s market rules that incorporate a state-determined carbon price in RTO/ISO markets are just, reasonable and not unduly discriminatory or preferential” or whether different or additional considerations may be or must be taken into account:

- a. How, if at all, do the relevant market design considerations change depending on the manner in which the state or states determine the carbon price (e.g., price-based or quantity-based methods)? How will that price be updated?
- b. How does the FPA section 205 proposal ensure price transparency and enhance price formation?
- c. How will the carbon price or prices be reflected in LMP?
- d. How will the incorporation of the state-determined carbon price into the RTO/ISO market affect dispatch? Will the state-determined carbon price affect how the RTO/ISO co-optimizes energy and ancillary services? Are any reforms to the co-optimization rules necessary in light of the state-determined carbon price?
- e. Does the proposal result in economic or environmental leakage? How does the proposal address any such leakage?

Comments on the *Proposed Policy Statement* were due by November 16, 2020 and were filed by, among others: NEPOOL, NESCOE, AEE, Brookfield, Calpine, Eversource, HQUS, LSP Power, MA AG, National Grid, NEPGA, and NRG. Reply comments were due by December 1, 2020, and were filed by 12 parties, including Covanta, Exelon, EPSA, NRG, the NY PSC. This matter is pending before the FERC.

- **Hybrid Resources Technical Conference Tech Conf (Jul 23, 2020) (AD20-9)**

On July 23, 2020, the FERC convened a technical conference to discuss technical and market issues prompted by growing interest in projects that are comprised of more than one resource type at the same plant location (“hybrid resources”). The focus was on generation resources and electric storage resources paired together as hybrid resources. Speaker materials and a transcript of the technical conference have been posted to the FERC’s eLibrary.

On August 10, 2020, the FERC invited interested persons to file post-technical conference comments to address issues raised during the technical conference and identified in the Supplemental Notice of Technical Conference issued July 13, 2020. Post-technical conference comments were filed by ISO-NE, CAISO, MISO, NYISO,

¹²⁰ *Carbon Pricing in Organized Wholesale Electricity Markets*, 173 FERC ¶ 61,062 (Oct. 15, 2020) (“*Proposed Policy Statement*”).

¹²¹ *Id.* at P 15.

PJM, Enel, American Council on Renewable Energy, AWEA, EEI, EPRI, R Street institute, Savion, and SEIA. This matter is pending before the FERC.

- **RTO/ISOs Common Performance Metrics (AD19-16)**

With Office of Management and Budget (“OMB”) approval, FERC staff has reinstated and revised its information collection form, FERC-922, on the Performance Metrics for ISOs, RTOs, and Regions Outside ISOs and RTOs. FERC staff expects to collect Common Metrics information every two years. The revised data collection, after additions and deletions, consists of twenty-nine Common Metrics.¹²² RTO/ISOs were encouraged to submit responsive information by October 30, 2020. ISO-NE submitted its information on October 30, 2020. The ISO-NE submittal will not be noticed for public comment.

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

On January 8, 2018, the FERC initiated a Grid Resilience in RTO/ISOs proceeding (AD18-7)¹²³ and terminated the DOE NOPR rulemaking proceeding (RM18-1).¹²⁴ In terminating the DOE NOPR proceeding, the FERC 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. On February 7, Foundation for Resilient Societies (“FRS”) requested rehearing of the January 8 order terminating the DOE NOPR proceeding. The FERC issued a tolling order on March 8, 2018 to afford it additional time to consider the FRS request for rehearing, which remains pending.

Grid Resilience Administrative Proceeding (AD18-7). AD18-7 was initiated to evaluate the resilience of the bulk power system in RTO/ISO regions. The FERC 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 were due on or before March 9, 2018.

ISO-NE Response. In its response, ISO-NE identified fuel security¹²⁵ as the most significant resilience challenge facing the New England region. ISO-NE reported that it has established a process to discuss market-based solutions to address this risk, and indicated that it believed it will need through the second quarter of 2019

¹²² There are seven **Group 1 metrics**: Reserve Margins, Average Heat Rates, Fuel Diversity, Capacity Factor by Technology Type, Energy Emergency Alerts (“EEA”) Level 1 or Higher, Performance by Technology Type during EEA Level 1 or Higher, and Resource Availability (Equivalent Forced Outage Rate Demand (“EFORD”)). There are 12 **Group 2 metrics**: Number and Capacity of Reliability Must-Run Units, Reliability Must-Run Contract Usage, Demand Response Capability, Unit Hours Mitigated, Wholesale Power Costs by Charge Type, Price Cost Markup, Fuel Adjusted Wholesale Energy Price, Energy Market Price Convergence, Congestion Management, Administrative Costs, New Entrant Net Revenues, and Order No. 825 Shortage Intervals and Reserve Price Impacts; There are 10 **Group 3 metrics**: Net Cost of New Entry (“Net CONE”) Value, Resource Deliverability, New Capacity (Entry), Capacity Retirement (Exit), Forecasted Demand, Capacity Market Procurement and Prices, Capacity Obligations and Performance Assessment Events, Capacity Over-Performance, Capacity Under-Performance, and Total Capacity Bonus Payments and Penalties. The update metrics eliminate previously-collected metrics on reliability, RTO/ISO billing controls and customer satisfaction, interconnection and transmission processes, and system lambda.

¹²³ *Grid Rel. and Resilience Pricing*, 162 FERC ¶ 61,012 (Jan. 8, 2018), *reh’g requested*.

¹²⁴ 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 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.

¹²⁵ ISO-NE defined fuel security as “the assurance that power plants will have or be able to obtain the fuel they need to run, particularly in winter – especially against the backdrop of coal, oil, and nuclear unit retirements, constrained fuel infrastructure, and the difficulty in permitting and operating dual-fuel generating capability.”

to develop a solution and test its robustness through the stakeholder process. In the meantime, ISO-NE indicated that it would continue to independently assess the level of fuel-security risk to reliable system operation and, if circumstances dictate, would take, with FERC approval when required, actions it determines to be necessary to address near-term reliability risks. ISO-NE's response was broken into three parts: (i) an introduction to fuel-security risk; (ii) background on how ISO-NE's work in transmission planning, markets, and operations support the New England bulk power system's resilience; and (iii) answers to the specific questions posed in the January 8 order.

Industry Comments. Following a 30-day extension issued on March 20, 2018, reply comments were due on or before May 9, 2018. NEPOOL's comments, which were approved at the May 4 meeting, were filed May 7, and were among over 100 sets of initial comments filed. A summary of the comments that seemed most relevant to New England and NEPOOL was circulated to the Participants Committee on May 15 and is posted on the [NEPOOL website](#). On May 23, NEPOOL submitted a limited response to four sets of comments, opposing the suggestions made in those pleadings to the extent that the suggestions would not permit full use of the Participant Processes. Supplemental comments and answers were also filed by FirstEnergy, MISO South Regulators, NEI, and EDF. Exelon and American Petroleum Institute filed reply comments. FirstEnergy included in this proceeding its motion for emergency action also filed in ER18-1509 (ISO-NE Waiver Filing: Mystic 8 & 9), which Eversource answered (in both proceedings). Reply comments were filed by APPA and AMP and the Nuclear Energy Institute ("NEI") moved to lodge presentations by the National Infrastructure Advisory Council. On December 6, the Harvard Electricity Law Initiative filed a comment suggesting that, as a matter of law, "Commissioner McNamee cannot be an impartial adjudicator in these proceedings" and "any proceeding about rates for 'fuel-secure' generators" and should recuse himself. Similarly, on December 18, "Clean Energy Advocates"¹²⁶ requested Commissioner McNamee recuse himself from these proceedings. These matters remain pending before the FERC.

FirstEnergy DOE Application for Section 202(c) Order. In a related but separate matter, FirstEnergy Solutions ("FirstEnergy") asked the Department of Energy ("DOE") in late March to issue an emergency order to provide cost recovery to coal and nuclear plants in PJM, saying market conditions there are a "threat to energy security and reliability". FirstEnergy made the appeal under Section 202(c) of the FPA, which allows the DOE to issue emergency orders to keep plants operating, but has previously been exercised only in response to natural disasters. Action on that 2018 request is pending.

- **NOPR: Managing Transmission Line Ratings (RM20-16)**

On November 19, 2020, the FERC issued a NOPR¹²⁷ proposing to reform both the *pro forma* OATT and its regulations to improve the accuracy and transparency of transmission line ratings. Specifically, the NOPR proposes to require: transmission providers to implement ambient-adjusted ratings on the transmission lines over which they provide transmission service; ISO/RTOSs to establish and implement the systems and procedures necessary to allow transmission owners to electronically update transmission line ratings at least hourly; and transmission owners to share transmission line ratings and transmission line rating methodologies with their respective transmission provider(s) and, in ISO/RTOs, with their respective market monitor(s). Comments on the *Managing Transmission Line Ratings NOPR* are due [60 days after the publication date of the *Managing Transmission Line Ratings NOPR* in the *Federal Register*].¹²⁸

¹²⁶ For purposes of these proceedings, "Clean Energy Advocates" are NRDC, Sierra Club and UCS.

¹²⁷ *Managing Transmission Line Ratings*, 173 FERC ¶ 61,165 (Nov. 19, 2020) ("*Managing Transmission Line Ratings NOPR*").

¹²⁸ As of the date of this Report, the *Managing Transmission Line Ratings NOPR* still has not been published in the *Federal Register*.

- **NOPR: Electric Transmission Incentives Policy (RM20-10)**

Still pending is the FERC's March 20, 2020 NOPR¹²⁹ proposing to revise its existing transmission incentives policy and corresponding regulations.¹³⁰ The proposed revisions include the following:

- ◆ A shift from risks and challenges to a **consumers' benefits test** that focuses on ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.
- ◆ **ROEs incentive for Economic Benefits.** A 50 basis point adder for transmission projects that meet an economic benefit-to-cost ratio in the top 75th percentile of transmission projects examined over a sample period and an additional 50 basis point adder for transmission projects that demonstrate *ex post* cost savings that fall in the 90th percentile of transmission projects studied over the same sample period, as measured at the end of construction.
- ◆ **ROE for Reliability Benefits.** A 50 basis point adder for transmission projects that can demonstrate potential reliability benefits by providing quantitative analysis, where possible, as well as qualitative analysis.
- ◆ **Abandoned Plant Incentive.** 100 percent of prudently incurred costs of transmission facilities selected in a regional transmission planning process that are cancelled or abandoned due to factors that are beyond the control of the applicant. Recovery from the date that the project is selected in the regional transmission planning process.
- ◆ **Eliminate Transco Incentives.**
- ◆ **RTO-Participation Incentive.** A 100-basis-point increase for transmitting utilities that turn over their wholesale facilities to an RTO, ISO, or Transmission Organization, and available regardless of whether participation is voluntary.
- ◆ **Transmission Technologies Incentives.** Eligible for both a stand-alone, 100-basis-point ROE incentive on the costs of the specified transmission technology project and specialized regulatory asset treatment. Pilot programs presumptively eligible (though rebuttable).
- ◆ **250-Basis-Point Cap.** Total ROE incentives capped at 250 basis points in place of current "zone of reasonableness" limit.
- ◆ **Updated Date Reporting Processes.** Information to be obtained on a project-by-project basis, information collection expanded, updated reporting process.

A more detailed summary of the NOPR was distributed to the Transmission Committee and discussed at the TC's March 25, 2020 meeting. Over 80 sets of comments on the proposed revisions were filed on or before the July 1, 2020¹³¹ comment date, including comments by: Avangrid, EDF Renewables, EMCOS, Eversource, Exelon, LS Power, MMWEC/NHEC/CMEEC, National Grid, NESOCE, NextEra, UCS, CT PURA, and Potomac Economics. Reply comments were filed by AEP, ITC Holding, the N. California Transmission Agency, and WIRES. The NOPR remains pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Order 872-A: Pricing and Eligibility Changes to PURPA Regulations (RM19-15)**

As previously reported, the FERC issued on July 16, 2020 its final rule¹³² approving pricing and eligibility revisions to its long-standing regulations implementing sections 201 and 210 of the Public Utility Regulatory

¹²⁹ *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, 170 FERC ¶ 61,204 (Mar. 20, 2020) ("Electric Transmission Incentives NOPR").

¹³⁰ 18 CFR 35.35 (2020).

¹³¹ The *Electric Transmission Incentives* NOPR was published in the *Fed. Reg.* on Apr. 2, 2020 (Vol. 85, No. 64) pp. 18,784-18,810. Requests for extension of time to file comments were filed by American Manufacturers, APPA/TAPS, and State Entities; WIRES and EEI each opposed the requested extensions. No extension of time to file comments was granted.

¹³² *Qualifying Facility Rates and Requirements; Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, Order No. 872, 172 FERC ¶ 61,041 (July 16, 2020) ("Order 872").

Policies Act of 1978 (“PURPA”).¹³³ Requests for rehearing and/or clarification of *Order 872* were filed by California Utilities, EPSA, Northwest Coalition, One Energy Enterprises, Public Interest Organizations, SEIA, and Thomas Mattson. On September 17, 2020, the FERC issued a “Notice of Denial of Rehearings by Operation of Law and Providing for Further Consideration”.¹³⁴ The Notice confirmed that the 60-day period during which a petition for review of *Order 872* can be filed with an appropriate federal court was triggered when the FERC did not act on the requests for rehearing of *Order 872*. The Notice also indicated that the FERC would address, as is its right, the rehearing requests in a future order, and may modify or set aside its orders, in whole or in part, “in such manner as it shall deem proper.”

Consistent with its September 17, 2020 notice, the FERC issued on November 19, 2020 an order addressing arguments raised on rehearing.¹³⁵ *Order 872-A* modified the discussion in *Order 872*, reached the same result, but clarified, in part, *Order 872*. Specifically, *Order 872-A* provided clarification on (1) states’ use of tiered avoided cost pricing; (2) states’ use of variable energy rates in QF contracts and availability of utility avoided cost data; (3) the role of independent entities overseeing competitive solicitations; (4) the circumstances under which a small power production QF needs to recertify; (5) application of the rebuttable presumption of separate sites for the purpose of determining the power production capacity of small power production facilities; and (6) the PURPA section 210(m) rebuttable presumption of nondiscriminatory access to markets and accompanying regulatory text.

Thus far, petitions for the review of *Order 872* have been filed with the 9th Circuit Court of Appeals by SEIA and Montana Environmental Information Center (see Section XV below). If you have any questions, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Order 2222: DER Participation in RTO/ISO Markets (RM18-9)**

On September 17, 2020, the FERC issued a final rule (“*Order 2222*”)¹³⁶ adopting reforms to remove what it found were barriers to the participation of distributed energy resource (“DER”)¹³⁷ aggregations in the RTO/ISO markets. *Order 2222* requires each RTO/ISO to revise its tariff to ensure that its market rules facilitate the participation of DER aggregations. Specifically, the tariff provisions addressing distributed energy resource aggregations must:

- (1) allow distributed energy resource aggregations to participate directly in RTO/ISO markets and establish distributed energy resource aggregators as a type of market participant;
- (2) allow distributed energy resource aggregators to register distributed energy resource aggregations under one or more participation models that accommodate the physical and operational characteristics of the distributed energy resource aggregations;
- (3) establish a minimum size requirement for distributed energy resource aggregations that does not exceed 100 kW;

¹³³ 16 U.S.C. § 2601 et seq. (2018). PURPA was enacted to help lessen the dependence on fossil fuels and promote the development of power generation from non-utility power producers.

¹³⁴ *Qualifying Facility Rates and Requirements; Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, Order No. 872, 172 FERC ¶ 62,154 (Sep. 11, 2020), *clarif. granted in part*, 173 FERC ¶ 61,158 (Nov. 19, 2020).

¹³⁵ *Qualifying Facility Rates and Requirements; Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, Order 872-A, 173 FERC ¶ 61,158 (Nov. 19, 2020) (“*Order 872-A*”).

¹³⁶ *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 172 FERC ¶ 61,247 (Sep. 17, 2020).

¹³⁷ The FERC defined a DER as “any resource located on the distribution system, any subsystem thereof or behind a customer meter. These resources may include, but are not limited to, electric storage resources, distributed generation, demand response, energy efficiency, thermal storage, and electric vehicles and their supply equipment.”

- (4) address locational requirements for distributed energy resource aggregations;
- (5) address distribution factors and bidding parameters for distributed energy resource aggregations;
- (6) address information and data requirements for distributed energy resource aggregations;
- (7) address metering and telemetry requirements for distributed energy resource aggregations;
- (8) address coordination between the RTO/ISO, the distributed energy resource aggregator, the distribution utility, and the relevant electric retail regulatory authorities;
- (9) address modifications to the list of resources in a distributed energy resource aggregation;
- (10) address market participation agreements for distributed energy resource aggregators; and
- (11) Accept bids from a DER aggregator if its aggregation includes DERs that are customers of utilities that distributed more than 4 million MWh in the previous fiscal year. An RTO/ISO must not accept bids from a DER aggregator if its aggregation includes DERs that are customers of utilities that distributed 4 million MWhs or less in the previous fiscal year, unless the relevant electric retail regulatory authority permits such customers to be bid into RTO/ISO markets by a DER aggregator.

Each RTO/ISO must file the tariff changes needed to implement the requirements of *Order 2222* on or before July 19, 2021.¹³⁸ To the extent that an RTO/ISO proposes to comply with any or all of the requirements in *Order 2222* using its currently effective requirements for distributed energy resources, it must demonstrate on compliance that its existing approach meets *Order 2222*'s requirements.

Requests for Rehearing Denied by Operation of Law. Requests for clarification and/or rehearing of *Order 2222* were filed by Excel Energy Services, the Kansas Corporation Commission, AEE and AEMA, and Public Interest Organizations.¹³⁹ On November 19, 2020, the FERC issued a "Notice of Denial of Rehearings by Operation of Law and Providing for Further Consideration".¹⁴⁰ The Notice confirmed that the 60-day period during which a petition for review of *Order 2222* can be filed with an appropriate federal court was triggered when the FERC did not act on the requests for rehearing of *Order 2222*. The Notice also indicated that the FERC would address, as is its right, the rehearing requests in a future order, and may modify or set aside its orders, in whole or in part, "in such manner as it shall deem proper."

- **Order 860/860-A: Data Collection for Analytics & Surveillance and MBR Purposes (RM16-17)**

As previously reported, *Order 860*,¹⁴¹ issued three years after the FERC's *Data Collection NOPR*,¹⁴² (i) revises the FERC's MBR regulations by establishing a relational database of ownership and affiliate information for MBR Sellers (which, among other uses, will be used to create asset appendices and indicative screens), (ii) reduces the scope of information that must be provided in MBR filings, modifies the information required in, and format of, a MBR Seller's asset appendix, (iii) changes the process and timing of the requirements to advise the FERC of changes in status and affiliate information, and (iv) eliminates the requirement adopted in

¹³⁸ *Order 2222* was published in the *Fed. Reg.* on Oct. 21, 2020 (Vol. 85, No. 204) pp. 67,094-6,158.

¹³⁹ For purposes of this proceeding, "Public Interest Organizations" are Sierra Club, Sustainable FERC Project and NRDC.

¹⁴⁰ *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Indep. Sys. Operators*, 173 FERC ¶ 62,090 (Nov. 19, 2020).

¹⁴¹ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 168 FERC ¶ 61,039 (July 18, 2019) ("*Order 860*"), order on reh'g and clarif., 170 FERC ¶ 61,129 (Feb. 20, 2020).

¹⁴² *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (July 21, 2016) ("*Data Collection NOPR*").

Order 816 that MBR Sellers submit corporate organization charts. In addition, the FERC stated that it will not adopt the *Data Collection NOPR* proposal to collect Connected Entity data from MBR Sellers and entities trading virtuals or holding FTRs. The FERC will post on its website high-level instructions that describe the mechanics of the relational database submission process and how to prepare filings that incorporate information that is submitted to the relational database. As recently extended (*see below*), *Order 860* will become effective April 1, 2021, and submitters will have until close of business on August 2, 2021 to make their initial baseline submissions. Submitters will be required to obtain in Spring 2021 FERC-generated IDs for reportable entities that do not have CIDs or LEIs, as well as Asset IDs for reportable generation assets without an EIA code so that every ultimate upstream affiliate or other reportable entity has a FERC-assigned company identifiers ("CID"), Legal Entity Identifier,¹⁴³ or FERC-generated ID and that all reportable generation assets have an code from the Energy Information Agency ("EIA") Form EIA-860 database or a FERC-assigned Asset ID. Requests for rehearing and/or clarification of *Order 860* were denied,¹⁴⁴ other than TAPS' request that the FERC clarify that the public will be able to access the relational database. On that point, the FERC clarified "that we will make available services through which the public will be able to access organizational charts, asset appendices, and other reports, as well as have access to the same historical data as Sellers, including all market-based rate information submitted into the database. We also clarify that the database will retain information submitted by Sellers and that historical data can be accessed by the public."

MBR Database. On January 10, 2020, the FERC issued a notice that updated versions of the XML, XSD, and MBR Data Dictionary are available on the FERC's [website](#) and that the test environment for the MBR Database is now available and can be accessed on the [MBR Database webpage](#).

Effective Date Extended by 6 Months. On May 6, 2020, EEI requested a four-month extension of implementation of *Order 860*. EPSA supported that request on May 13, 2020. On May 20, the FERC issued a notice extending the effective and associated implementation dates of *Order 860* by six months. The new *Order 860* effective date will be April 1, 2021, and the deadline for baseline submissions to and including August 2, 2021. First change in status filings under these new timelines will be due August 31, 2021.

- **NOPR: NAESB WEQ Standards v. 003.3 - Incorporation by Reference into FERC Regs (RM05-5-029, -030)**

On July 16, 2020, the FERC issued a NOPR proposing to incorporate by reference, with certain enumerated exceptions, the latest version (Version 003.3) of certain Standards for Business Practices and Communication Protocols for Public Utilities adopted by the NAESB Wholesale Electric Quadrant ("WEQ").¹⁴⁵ Despite having only recently incorporated Version 003.2 in its regulations, the FERC proposed to move forward on Version 003.3 because this Version contains a number of major initiatives whose incorporation by reference "will improve the security and the efficiency of business transactions. These include enhanced cybersecurity standards resulting from an assessment by Sandia, improved methodologies for resolving transmission loading relief, and standards for determining available transfer capacity."¹⁴⁶ Comments on the *NAESB WEQ v. 003.3 Standards NOPR* were due on or before November 3, 2020¹⁴⁷ and were filed by Bonneville Power Administration ("BPA"), EEI, the IRC, and Open Access Technology International. The *NAESB WEQ v. 003.3 Standards NOPR* is pending before the FERC.

¹⁴³ An LEI is a unique 20-digit alpha-numeric code assigned to a single entity. They are issued by the Local Operating Units of the Global LEI System.

¹⁴⁴ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, Order No. 860-A, 170 FERC ¶ 61,129 (Feb. 20, 2020) ("*Order 860-A*").

¹⁴⁵ *Standards for Business Practices and Communication Protocols for Public Utilities*, 172 FERC ¶ 61,047 (July 16, 2020) ("*NAESB WEQ v. 003.3 Standards NOPR*").

¹⁴⁶ The *NAESB WEQ v. 003.3 NOPR* at P.

¹⁴⁷ The *NAESB WEQ v. 003.3 NOPR* was published in the *Fed. Reg.* on Sep. 4, 2020 (Vol. 85, No. 173) pp. 55,201-55,219.

- **Waiver of Tariff Requirements (PL20-7)**

On May 21, 2020, the FERC issued a Proposed Policy Statement that would clarify its policy regarding requests for waiver of tariff provisions.¹⁴⁸ The *Proposed Policy Statement* sets forth the approach the FERC would take going forward to ensure compliance with the filed rate doctrine and the rule against retroactive making. The proposed policy will both clarify and modify waiver standards, and in some instances, make it harder to obtain waivers.

Specifically, the FERC proposed the following guidance on filing procedures to implement its new approach for granting waivers of tariff provisions and to no longer grant retroactive waivers except as consistent with the *Proposed Policy Statement*:

1. *Style Requests as Requests for Remedial Relief.* Filings seeking relief in connection with actions or omissions that have already occurred prior to the date relief is sought from the FERC would be characterized as a request for remedial relief (rather than as a request for a waiver). In response to such a request, the FERC will focus on what remedy, if any, is required to cure acknowledged or alleged deviations from a filed tariff. "Waiver" is to be limited to (a) requests for prospective relief when a requested future deviation from the filed tariff has not yet occurred at the time a request is filed; or (b) petitions for remedial relief when a tariff expressly authorizes regulated entities to seek a remedial waiver from the FERC for past non-compliance with the filed tariff.
2. *Form of Filing.* When the entity requesting remedial relief is the entity that acted (or believes it may have acted) in a manner inconsistent with the tariff, such requests should be filed as petitions for declaratory order under Rule 207 of the FERC's Rules of Practice and Procedure. When the filing entity alleges a different entity has acted in a manner inconsistent with the tariff, such requests should be filed as complaints under Rule 206. Given the filing fees associated with petitions for declaratory order, the industry was encouraged to directly address this aspect of the proposal.
3. *Expressly Request FERC Action pursuant to FPA section 309 or NGA section 16.4.* These provisions have been found to afford the FERC the latitude to remedy past non-compliance "provided the agency's action conforms with the purposes and policies of Congress and does not contravene any terms of the Act."

The FERC acknowledged that this Policy would represent a change from its past approach, particularly in situations where inadvertent failures to comply with ministerial tariff requirements have not been protested. The FERC suggested a few ways tariffs may be modified to avoid what may appear by comparison to be harsh outcomes, including expressly stating in the tariff that a failure to comply with a certain deadline may be waived by order of the FERC or by allowing various kinds of errors to be cured within a reasonable period of time after a default has occurred or an error has been discovered, but is difficult to imagine how feasible or how well these options might work in practice.

The FERC proposed to incorporate its current four-part analysis¹⁴⁹ in considering both requests for prospective waiver and petitions for remedial relief, but cautioned that it would apply that analysis only in those limited circumstances where the request for remedial relief would not violate the filed rate doctrine or

¹⁴⁸ *Waiver of Tariff Requirements*, 171 FERC ¶ 61,156 (May 21, 2020) ("*Proposed Policy Statement*").

¹⁴⁹ Under current practice, the FERC grants tariff provision waivers where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.

the rule against retroactive ratemaking due to adequate prior notice, or the requested relief is within the FERC's authority to grant under FPA section 309 or NGA section 16.

Finally, the FERC proposed requiring a stronger showing when a petitioner is seeking remedial relief for its own failure to comply with a tariff – petitions will be more compelling when the failure to comply was due to something more than inadvertent error or administrative oversight. Petitions for remedial relief will generally be denied when a protestor credibly contends, or the FERC independently determines, that the requested remedial relief will result in undesirable consequences (e.g. harm to third parties).

With respect to prospective requests to waive the 60-day prior notice requirement under FPA section 205(d) (or the 30-day prior notice requirement under NGA section 4(d)), which the FERC has discretion to waive “for good cause shown,” the FERC proposes to leave in effect its policy of generally granting such waivers,¹⁵⁰ to the extent that entities seek an effective date no earlier than the day *after* the date a rate change is submitted to the FERC.

Comments on the Proposed Policy Statement were due on or before June 18, 2020 and were filed by the IRC, AEE, APPA, AWEA/SEIA, EEI, EPSA, Indicated Generators,¹⁵¹ INGAA, Kansas Electric Power Coop. (“KEPC”), NGA, NGSA, NRECA, Public Citizen, Sunflower Electric Power, and TAPS. Reply comments were filed by APPA, Joint Trade Associations,¹⁵² KEPC, and the Sustainable FERC Project. The proposed Policy Statement is pending before the FERC.

- **FERC’s ROE Policy for Natural Gas and Oil Pipelines (PL19-4)**

On May 21, 2020, the FERC issued a Policy Statement that applies to natural gas and oil pipelines, with certain exceptions to account for the statutory, operational, organizational and competitive differences among the electric, natural gas and oil pipeline industries, the FERC’s ROE methodology adopted in *Opinion No. 569-A*.¹⁵³ Specifically, the FERC revised its policy and will determine natural gas and oil pipeline ROEs by averaging the results of the DCF and CAPM, but will not use the risk premium model discussed in *Opinion 569/569-A* (“Risk Premium”).¹⁵⁴ In addition, the FERC clarified its policies governing the formation of proxy groups and the treatment of outliers in proceedings addressing natural gas and oil pipeline ROEs. Finally, the FERC encouraged oil pipelines to file revised FERC Form No. 6, page 700s for 2019 reflecting the revised ROE policy. This Policy Statement became effective May 27, 2020.¹⁵⁵ On July 7, the FERC issued a notice that pipelines choosing to file updated FERC Form No. 6, page 700 data consistent with the ROE Policy Statement should file such data on or before July 21, 2020.

¹⁵⁰ See *Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, order on reh’g, 61 FERC ¶ 61,089 (1992) (“*Central Hudson*”). Factors that will generally support a waiver of prior notice include: (1) uncontested filings that do not change rates; (2) filings that reduce rates and charges; and (3) filings that increase rates as prescribed by a previously accepted contract or settlement on file with the FERC.

¹⁵¹ “Indicated Generators” are Vistra, NRG, FirstLight, Cogentrix, and LS Power.

¹⁵² “Joint Trade Associations” are AEE, AWEA, EEI, EPSA, INGAA, NGSA, NRECA and SEIA.

¹⁵³ *Inquiry Regarding the Commission’s Policy for Determining Return on Equity*, 171 FERC ¶ 61,155 (May 21, 2020) (“*Natural Gas and Oil Pipeline ROE Policy Statement*”).

¹⁵⁴ As previously reported, the FERC issued a notice of inquiry on March 21, 2019 seeking information and views to help the FERC explore whether, and if so how, it should modify its policies concerning the determination of ROE to be used in designing jurisdictional rates charged by public utilities.¹⁵⁴ The FERC also sought comment on whether any changes to its policies concerning public utility ROEs should be applied to interstate natural gas and oil pipelines. This NOI followed *Emera Maine*, which reversed *Opinion 531*, and seeks to engage interests beyond those represented in the *Emera Maine* proceeding (see EL11-66 *et al.* in Section I above).

¹⁵⁵ The *Natural Gas and Oil Pipeline ROE Policy Statement* was published *Fed. Reg.* on May 27, 2020 (Vol. 85, No. 102) pp. 31,760-31,773.

Complainant-Aligned Parties¹⁵⁶ answered the New England TO's May 10 supplemental comments. On June 15, 2020, Joint Parties¹⁵⁷ submitted supplemental comments arguing that the FERC should use the midpoint, rather than the median, as the measure of central tendency for public utilities that file individually to establish a ROE. Joint Parties' comments were opposed by Six Cities.¹⁵⁸ WIRES submitted supplemental comments on June 18, 2020 requesting that the FERC take further action in this proceeding to "resolve the uncertainty surrounding its base ROE methodology and establish a policy consistent with the recommendations made in these comments" (recommending a framework that employs all four of the previously proposed ROE models, including the Expected Earnings model, along with certain modifications, to ensure that ROEs attract capital investment in needed transmission infrastructure). On June 24, EEI and WIRES requested the FERC issue a NOI regarding the FERC's policy for determining base ROE applicable to the electric industry as a whole. Six Cities answered Joint Parties on June 30. APPA answered EEI and WIRES' June 24 motion.

- **NOI: Certification of New Interstate Natural Gas Facilities (PL18-1)**

On April 19, 2018, the FERC announced its intention to revisit its approach under its 1999 Certificate Policy Statement to determine whether a proposed jurisdictional natural gas project is or will be required by the present or future public convenience and necessity, as that standard is established in NGA Section 7. Specifically, the NOI¹⁵⁹ seeks comments from interested parties on four broad issue categories: (1) project need, including whether precedent agreements are still the best demonstration of need; (2) exercise of eminent domain; (3) environmental impact evaluation (including climate change and upstream and downstream greenhouse gas emissions); and (4) the efficiency and effectiveness of the FERC certificate process. Pursuant to a May 23 order extending the comment deadline by 30 days,¹⁶⁰ comments were due on or before July 25, 2018. Literally thousands of individual and mass-mailed comments were filed. This matter remains pending before the FERC.

XIII. Natural Gas Proceedings

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

- **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 December 17, 2020, the FERC issued *Opinion 549-A*,¹⁶¹ a 159-page decision addressing arguments raised on rehearing requested of *Opinion 549*.¹⁶² *Opinion 549-A* modifies the discussion in *Opinion 549*,

¹⁵⁶ For this purpose, "Complainant-Aligned Parties" are: Connecticut Public Utilities Regulatory Authority, Connecticut Office of the Attorney General, Connecticut Department of Energy and Environmental Protection, Connecticut Office of Consumer Counsel, Massachusetts Office of the Attorney General, Massachusetts Department of Public Utilities, Massachusetts Municipal Wholesale Electric Company, and New Hampshire Electric Cooperative.

¹⁵⁷ "Joint Parties" are: AEP, Avista, Evergy Companies, Entergy Services, Exelon, FirstEnergy, Portland Gen. Elec., PG&E, Corporation, Puget Sound Energy, PacifiCorp, Idaho Power, PSEG, So. Cal. Edison, and San Diego Gas & Elec.

¹⁵⁸ "Six Cities" are the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California.

¹⁵⁹ The NOI was published in the *Fed. Reg.* on Apr. 26, 2018 (Vol. 83, No. 80) pp. 18,020-18,032.

¹⁶⁰ *Certification of New Interstate Natural Gas Facilities*, 163 FERC ¶ 61,138 (May 23, 2018).

¹⁶¹ *BP America Inc. et al.*, Opinion No. 549-A, 173 FERC ¶ 61,239 (Dec. 17, 2020) ("*BP Penalties Allegheny Order*")

¹⁶² *BP America Inc.*, Opinion No. 549, 156 FERC ¶ 61,031 (July 11, 2016) ("*BP Penalties Order*") (affirming Judge Cintron's Aug. 13, 2015 Initial Decision finding that BP America Inc., BP Corporation North America Inc., BP America Production Company, and BP Energy

but reaches the same the result (ultimately requiring BP to pay a **\$20.16 million civil penalty (roughly \$24.4 million with accrued interest) and disgorge \$207,169**). Of note, *Opinion 549-A* denied BP's motion to dismiss this enforcement action as time barred (by the five-year statute of limitations set forth in 28 U.S.C. § 2462), finding BP waived any statute of limitations defense by failing to raise it earlier in this proceeding.¹⁶³ *Opinion 549-A* revised Ordering Paragraph (C) to direct the disgorged profits to non-profits that disburse the Low Income Home Energy Assistance Program of Texas funds, rather than to the Texas Department of Housing.¹⁶⁴ On December 29, BP filed a notice that it intends to appeal *Opinion 549-A* to the Fifth Circuit Court of Appeals and paid the civil penalty amount on December 28, 2020, under protest and with full reservation of rights pending the outcome of judicial review of that Opinion.

Total Gas & Power North America, Inc. et al. (IN12-17). On April 28, 2016, the FERC issued a show cause order¹⁶⁵ 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 a scheme to manipulate the price of natural gas at four locations in the southwest United States between June 2009 and June 2012.¹⁶⁶

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.

- **New England Pipeline Proceedings**

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

- **Iroquois ExC Project (CP20-48)**

- ▶ 125,000 Dth/d of incremental firm transportation service to ConEd and KeySpan by building and operating new natural gas compression and cooling facilities at the sites of four existing Iroquois compressor stations in Connecticut (Brookfield and Milford) and New York (Athens and Dover)
 - ▶ Three-year construction project; service request by November 1, 2023
 - ▶ Application for a certificate of public convenience and necessity pending.

Company (collectively, "BP") violated Section 1c.1 of the FERC's regulations ("Anti-Manipulation Rule") and NGA Section 4A (*BP America Inc. et al*, 152 FERC ¶ 63,016 (Aug. 13, 2015) ("*BP Initial Decision*").

¹⁶³ *BP Penalties Allegheny Order* at P 1.

¹⁶⁴ *Id.* at P 319.

¹⁶⁵ *Total Gas & Power North America, Inc.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) ("*TGPNA Show Cause Order*").

¹⁶⁶ 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.

- **Non-New England Pipeline Proceedings**

The following pipeline projects could affect ongoing pipeline proceedings in New England and elsewhere:

- **Northern Access Project (CP15-115)**

- ▶ The New York State Department of Environmental Conservation (“NY DEC”) and the Sierra Club requested rehearing of the *Northern Access Certificate Rehearing Order* on August 14 and September 5, 2018, respectively. On August 29, National Fuel Gas Supply Corporation and Empire Pipeline (“Applicants”) answered the NY DEC’s August 14 rehearing request and request for stay. On April 2, 2019, the FERC denied the NY DEC and Sierra Club requests for rehearing.¹⁶⁷ Those orders have been challenged on appeal to the US Court of Appeals for the Second Circuit (19-1610).
- ▶ As previously reported, the August 6, 2018 *Northern Access Certificate Rehearing Order* dismissed or denied the requests for rehearing of the *Northern Access Certificate Order*.¹⁶⁸ Further, in an interesting twist, the FERC found that a December 5, 2017 “Renewed Motion for Expedited Action” filed by National Fuel Gas Supply Corporation and Empire Pipeline, Inc. (the “Companies”), in which the Companies asserted a separate basis for their claim that the NY DEC waived its authority under section 401 of the Clean Water Act (“CWA”) to issue or deny a water quality certification for the Northern Access Project, served as a motion requesting a waiver determination by the FERC,¹⁶⁹ and proceeded to find that the NY DEC was obligated to act on the application within one year, failed to do so, and so waived its authority under section 401 of the CWA.
- ▶ The FERC authorized the Companies 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 an order issued February 3, 2017.¹⁷⁰ The Allegheny Defense Project and Sierra Club (collectively, “Allegheny”) requested rehearing of the *Northern Access Certificate Order*.
- ▶ Despite the FERC’s *Northern Access Certificate Order*, the project remained 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 under Section 401 of the Clean Water Act, 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. National Fuel appealed the NY DEC’s decision to the 2nd Circuit on the grounds that the denial was improper.¹⁷¹ On February 2, 2019, the 2nd Circuit vacated the decision of the NY DEC and remanded the case with instructions for the NY DEC to more clearly articulate its basis for the denial and how that basis is connected to information in the existing administrative record. The matter is again before the NY DEC.
- ▶ On November 26, 2018, the Applicants filed a request at FERC for a 3-year extension of time, until February 3, 2022, to complete construction and to place the certificated facilities into service. The Applicants cited the fact that they “do not anticipate

¹⁶⁷ *Nat’l Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 167 FERC ¶ 61,007 (Apr. 2, 2019).

¹⁶⁸ *Nat’l Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 164 FERC ¶ 61,084 (Aug. 6, 2018) (“*Northern Access Rehearing & Waiver Determination Order*”), *reh’g denied*, 167 FERC ¶ 61,007 (Apr. 2, 2019).

¹⁶⁹ The DC Circuit has indicated that project applicants who believe that a state certifying agency has waived its authority under CWA section 401 to act on an application for a water quality certification must present evidence of waiver to the FERC. *Millennium Pipeline Co., L.L.C. v. Seggos*, 860 F.3d 696, 701 (D.C. Cir. 2017).

¹⁷⁰ *Nat’l Fuel Gas Supply Corp.*, 158 FERC ¶ 61,145 (2017) (“*Northern Access Certificate Order*”), *reh’g denied*, 164 FERC ¶ 61,084 (Aug 6, 2018) (“*Northern Access Certificate Rehearing Order*”).

¹⁷¹ *Nat’l Fuel Gas Supply Corp. v. NYSDEC et al.* (2d Cir., Case No. 17-1164).

commencement of Project construction until early 2021 due to New York's continued legal actions and to time lines required for procurement of necessary pipe and compressor facility materials." The extension request was granted on January 31, 2019.

- ▶ On August 8, 2019, the NY DEC again denied Applicants request for a Water Quality Certification, and as directed by the Second Circuit,¹⁷² provided a "more clearly articulate[d] basis for denial."
- ▶ On August 27, 2019, Applicants requested an additional order finding on additional grounds that the NY DEC waived its authority over the Northern Access 2016 Project under Section 401 of the CWA, even if the NY DEC and Sierra Club prevail in their currently pending court petitions challenging the basis for the Commission's Waiver Order.¹⁷³
- ▶ On October 16, 2020, Applicants requested, due to ongoing legal and regulatory delays, an additional 2-year extension of time, until December 1, 2024, to complete construction of the Project and enter service. More than 50 sets of comments on the requested extension were filed and on December 1, 2020, the FERC dismissed, without prejudice, Applicants' request for an extension of time,¹⁷⁴ finding the request premature. The FERC reiterated its encouragement that pipeline applicants requesting extensions "file their requests no more than 120 days before the deadline to complete construction", so that the FERC has the relevant information available to determine whether good cause exists to grant an extension of time and whether the FERC's prior findings remain valid.¹⁷⁵

XIV. State Proceedings & Federal Legislative Proceedings

- **New England States' Vision Statement**

In October 2020, the six New England states released their "[Vision Statement](#)", outlining their vision for "a clean, affordable, and reliable 21st century regional electric grid" and committing to engage in a collaborative and open process, supported by NESCOE, intended to advance the principles discussed in the Vision Statement. As part of that effort, a series of online technical forums to discuss the issues presented in the Vision Statement have been announced by certain State Agencies.¹⁷⁶ Thus far, the following on-line technical sessions have been announced:

Jan 13, 2021	9:00 am - 2:00 pm	Wholesale Market Reform
Jan 25, 2021	1:00 pm - 6:00 pm	Wholesale Market Reform
Feb 2, 2021	1:00 pm - 6:00 pm	Transmission Planning
Feb TBD, 2021	TBD	Governance Reform

Draft notices, proposed agendas, and additional information on these sessions are available on the New England States' Vision Statement website (<https://newenglandenergyvision.com/>). Specific details are supposed to follow in subsequent announcements.

¹⁷² Summary Order, *Nat'l Fuel Gas Supply Corp. v. N.Y. State Dep't of Env'tl. Conservation*, Case 17-1164 (2d Cir. issued Feb. 5, 2019).

¹⁷³ See *Sierra Club v. FERC*, No. 19-01618 (2d Cir. filed May 30, 2019); *NYSDEC v. FERC*, No. 19-1610 (2d Cir. filed May 28, 2019) (consolidated).

¹⁷⁴ *National Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 173 FERC ¶ 61,197 (Dec. 1, 2020).

¹⁷⁵ *Id.* at P 10.

¹⁷⁶ "State Agencies" jointly announcing the technical forums are identified as: CT DEEP, ME Governor's Energy Office, MA Executive Office of Energy and Environmental Affairs, NH PUC, RI Office of Energy Resources, and VT DPS.

- **Executive Order on Securing the United States Bulk-Power System**

On May 1, 2020, President Trump signed an Executive Order that authorizes U.S. Secretary of Energy Dan Brouillette to work with the Cabinet and energy industry to secure America's BPS. The Executive Order prohibits Federal agencies and U.S. persons from "acquiring, transferring, or installing BPS equipment in which any foreign country or foreign national has any interest and the transaction poses an unacceptable risk to national security or the security and safety of American citizens. Evolving threats facing our critical infrastructure have only served to highlight the supply chain risks faced by all sectors, including energy, and the need to ensure the availability of secure components from American companies and other trusted sources." The Secretary of Energy is accordingly authorized to (i) establish and publish criteria for recognizing particular equipment and vendors as "pre-qualified" (pre-qualified vendor list); (ii) identify any now-prohibited equipment already in use, allowing the government to develop strategies and work with asset owners to identify, isolate, monitor, and replace this equipment as appropriate; and (iii) work closely with the Departments of Commerce, Defense, Homeland Security, Interior; the Director of National Intelligence; and other appropriate Federal agencies to carry out the authorities and responsibilities outlined in the Executive Order. A Task Force led by Secretary Brouillette will develop energy infrastructure procurement policies to ensure national security considerations are fully integrated into government energy security and cybersecurity policymaking. The Task Force will consult with the energy industry through the Electricity and Oil and Natural Gas Subsector Coordinating Councils to further its efforts on securing the BPS. A copy of the Executive Order may be accessed [here](#).

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).

- **Exelon PP-10 Complaint (20-1509)**
Underlying FERC Proceeding: EL20-52¹⁷⁷
Petitioner: Exelon

On December 18, 2020, Constellation Mystic Power, LLC ("Exelon") petitioned the DC Circuit Court of Appeals for review of the FERC's orders denying Exelon's PP-10 Complaint and the denial of its request for rehearing of the *Order Denying PP-10 Complaint*.¹⁷⁸ Appearances are due January 22, 2021. Parties must file docketing statements and statement of issues to be raised also by January 22. Dispositive motions, if any, and a Certified Index to the Record must be filed by February 8, 2021.

¹⁷⁷ *Constellation Mystic Power, LLC v. ISO New England Inc.*, 173 FERC ¶ 62,034 (Oct. 19, 2020); *Constellation Mystic Power, LLC v. ISO New England Inc.*, 172 FERC ¶ 61,144 (Aug. 17, 2020) ("*Order Denying PP-10 Complaint*"), *reh'g denied by operation of law*, 173 FERC ¶ 62,034 (Oct. 19, 2020).

¹⁷⁸ The PP-10 Complaint requested that ISO-NE be prohibited from (i) implementing changes to the Planning Procedure to Support the Forward Capacity Market ("PP-10"), which Exelon asserted would significantly affect the rates, terms and conditions of jurisdictional services by dramatically changing the way in which ISO-NE conducts its annual transmission security review of capacity auction retirement bids and the Network Model upon which the capacity auction is based, and (ii) violating the requirements of its Tariff for *Order 1000* competitive transmission procurements.

- **ISO-NE Implementation of Order 1000 Exemptions for Immediate Need Reliability Projects (20-1422)**
Underlying FERC Proceeding: EL19-90¹⁷⁹
Petitioner: LS Power

On October 16, 2020, LSP Transmission Holdings II, LLC (“LS Power”) petitioned the DC Circuit Court of Appeals for review of the FERC’s orders addressing ISO-NE’s implementation of the Order 1000 exemptions for immediate need reliability projects. Since the last Report, and after the Clerk granted extensions of time to file procedural and dispositive motions, the FERC on December 10, 2020 requested at least 60 days between the filing of LS Power’s opening brief and the FERC’s brief in response, and on December 28, 2020, filed a certified index to the record. On December 29, 2020, the Court granted the motions to intervene by Avangrid and MMWEC. A schedule for the filing of briefs will be established by future order.

- **CIP IROL Cost Recovery Rules (20-1389)**
Underlying FERC Proceeding: ER20-739¹⁸⁰
Petitioner: Cogentrix, Vistra

On September 25, 2020, Cogentrix and Vistra petitioned the DC Circuit Court of Appeals for review of the FERC’s orders allowing for recovery of expenditures to comply with the IROL-CIP requirements, but only those costs incurred on or after the effective date of the relevant individual FPA section 205 filing, including undepreciated costs of any such past capital expenditures to comply with the IROL-CIP requirements. On December 22, 2020, the Court adopted a proposed *revised* briefing schedule that adds roughly 45 days to each procedural deadline previously established. Revised deadlines now include the following re: Petitioners’ Brief (March 1, 2021); Respondent Brief of FERC (April 30, 2021); Intervenor for Respondent Brief (June 1, 2021); Petitioners’ Reply Briefs (June 28, 2021); Deferred Appendix (July 16, 2021); and Final Briefs (July 26, 2021).

- **Mystic 8/9 Cost of Service Agreement (20-1343; 20-1361, 20-1362; 20-1365, 20-1368)(consolidated)**
Underlying FERC Proceeding: EL18-1639¹⁸¹
Petitioners: Mystic (1343), NESCOE (1361), MA AG (1362), CT Parties (1365, 1368)

Mystic, NESCOE, MA AG, and CT Parties separately petitioned the DC Circuit Court of Appeals for review of the FERC’s orders addressing the COS Agreement among Mystic, ExGen and ISO-NE.¹⁸² The cases have been consolidated into Case No. 20-1343. Appearances were filed October 8, 2020. On October 8 (in the case of Mystic) and October 16 (in the case of the remaining Petitioners), statements of issues and docketing statements were filed. Also on October 16, the FERC filed an unopposed motion to hold this appeal in abeyance until the earlier of December 15, 2020 (60 days) or the date of the issuance by the FERC of a further order on rehearing. In addition, the FERC asked for 21 days from that day for the parties to file motions to govern further proceedings. On November 4, 2020, the Court granted the FERC’s motion and ordered that the consolidated cases be held in abeyance pending further order of the Court and that the parties file motions to govern further proceedings in these cases within 21 days of the FERC’s decision on rehearing or by January 5, 2021, whichever occurs earlier.

¹⁷⁹ *ISO New England Inc.*, 171 FERC ¶ 61,211 (June 18, 2020) (“Order Terminating Proceeding”) (finding (i) “insufficient evidence in the record to find under FPA section 206 that [ISO-NE’s] implementation of the exemption for immediate need reliability projects is unjust, unreasonable, or unduly discriminatory or preferential; (ii) “insufficient evidence in the record to find that ISO-NE implemented the immediate need reliability project exemption in a manner that is inconsistent with or more expansive than [the FERC] directed”; and (iii) that ISO-NE complies with the five criteria established for the immediate need reliability project exemption); and *ISO New England Inc.*, 172 FERC ¶ 61,293 (Sep. 29, 2020) (“Order 1000 Exemptions Allegheny Order”) (addressing arguments raised by request for rehearing denied by operation of law, modifying discussion in *Order Terminating Proceeding*, but reaching same result).

¹⁸⁰ *ISO New England Inc.*, 171 FERC ¶ 61,160 (May 26, 2020) (“CIP IROL Cost Recovery Order”) and *ISO New England Inc.*, 172 FERC ¶ 61,251 (Sep. 17, 2020) (“CIP IROL Allegheny Order”, and together with the CIP IROL Cost Recover Order, the “CIP IROL Orders”).

¹⁸¹ *July 2018 Order; July 2018 Rehearing Order; Dec 2018 Order; Dec 2018 Rehearing Order; Jul 17 Compliance Order.*

¹⁸² The COS Agreement is to provide compensation for the continued operation of the Mystic 8 & 9 units from June 1, 2022 through May 31, 2024.

- **CASPR (20-1333)**

Underlying FERC Proceeding: ER18-619¹⁸³

Petitioners: Sierra Club, NRDC, RENEW Northeast, and CLF

On August 31, 2020, the Sierra Club, NRDC, RENEW Northeast, and CLF petitioned the DC Circuit Court of Appeals for review of the FERC's order accepting ISO-NE's CASPR revisions (which, under *Allegheny*, is ripe for review). On October 2, 2020, appearances, docketing statements, a statement of issues to be raised, and a statement of intent to utilize deferred joint appendix were filed. On October 19, 2020, the FERC moved to dismiss the case for a lack of jurisdiction (arguing that Petitioners missed their opportunity to timely file their Petition for review in 2018, and filing within 60 days of *Allegheny* did not make their Petition timely). Alternatively, the FERC asked that the case be held in abeyance for 60 days pending issuance of a further FERC order on this matter. On October 29, Petitioners opposed the FERC's motion. On November 5, 2020, the FERC filed a reply, indicated that an order on rehearing would be issued imminently and suggested that, if the Court declines to dismiss the petition, it should be held in abeyance until the Commission issues an order on rehearing. As noted above, the FERC issued the *CASPR Allegheny Order* on November 19, modifying the discussion in the *CASPR Order*, but reaching the same the result. The Sierra Club, NRDC and CLF also requested rehearing of the November 19 order. The FERC's October 19 motion is still pending before the Court.

- **Opinion 531-A Compliance Filing Undo (20-1329)**

Underlying FERC Proceeding: ER15-414¹⁸⁴

Petitioners: TOs' (CMP et al.)

On August 28, 2020, the TOs¹⁸⁵ petitioned the DC Circuit Court of Appeals for review of the FERC's October 6, 2017 order rejecting the TOs' filing that sought to reinstate their transmission rates to those in place prior to the FERC's orders later vacated by the DC Circuit's *Emera Maine*¹⁸⁶ decision. On September 22, 2020, the FERC submitted an unopposed motion to hold this proceeding in abeyance for four months to allow for the Commission to "a future order on petitioners' request for rehearing of the order challenged in this appeal, and the rate proceeding in which the challenged order was issued remains ongoing before the Commission." On October 2, 2020, the Court granted the FERC's motion, and directed the parties to file motions to govern future proceedings in this case by February 2, 2021.

- **2013/14 Winter Reliability Program Order on Compliance and Remand (20-1289, 20-1366) (consol.)**

Underlying FERC Proceeding: ER13-2266¹⁸⁷

Petitioner: TransCanada

On July 30, 2020, TransCanada Power Marketing ("Petitioner" or "TransCanada") again petitioned the DC Circuit Court of Appeals for review of the FERC's action on the 2013/2014 Winter Reliability Program, this time in the FERC's April 1, 2020 *2013/14 Winter Reliability Program Order on Compliance and Remand*.¹⁸⁸ NEPGA intervened on October 15, 2020 (and its intervention granted on October 28). On October 16, TransCanada filed a docketing statement and statement of issues. On October 29, the FERC filed a certified index to the record and an unopposed motion for a 60-day briefing period. On December 2, 2020, the Court granted the FERC's October 29

¹⁸³ *ISO New England Inc.*, 162 FERC ¶ 61,205 (Mar. 9, 2018) ("*CASPR Order*").

¹⁸⁴ *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) ("*Order Rejecting Filing*").

¹⁸⁵ The "TOs" are CMP; Eversource Energy Service Co., on behalf of its affiliates CL&P, NSTAR and PSNH; National Grid; New Hampshire Transmission; UI; Unitil and Fitchburg; VTransco; and Versant Power.

¹⁸⁶ *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*").

¹⁸⁷ 171 FERC ¶ 61,003 (Apr. 1, 2020) ("*2013/14 Winter Reliability Program Order on Compliance and Remand*") (accepting ISO-NE's January 23, 2017 compliance filing, finding that the bid results from the 2013/14 Winter Reliability Program were just and reasonable, and providing for this finding the further reasoning requested by the DC Circuit in *TransCanada Power Mktg. Ltd. v. FERC*, 811 F.3d 1 (DC Cir. 2015) ("*TransCanada*").)

¹⁸⁸ In *TransCanada*, the DC Circuit granted TransCanada's prior petition in part, and directed the FERC to either better justify its determination or revise its disposition to ensure that the rates under the Program are just and reasonable. *TransCanada* at 1.

motion and set the briefing schedule, including the following: Petitioners' Brief (January 11, 2021); Respondent Brief of FERC (March 12, 2021); Intervenor's Joint Brief in Support of Respondent (March 19, 2021); Petitioners' Reply Briefs (April 9, 2021); Deferred Appendix (April 16, 2021); and Final Briefs (April 30, 2021).

- **ISO-NE's Inventoried Energy Program (Chapter 2B) Proposal (19-1224***; 19-1247; 19-1252; 19-1253)(consolidated); Underlying FERC Proceeding: ER19-1428¹⁸⁹**
Petitioners: ENECOS (Belmont et al.) (19-1224); MA AG (19-1247); NH PUC/NH OCA (19-1252); Sierra Club/UCS (19-1253)

As previously reported, at the unopposed request of the FERC, the Court issued an order suspending the previous briefing schedule and remanding the record back to the FERC. Subsequently, the FERC issued its *IEP Remand Order* (June 18, 2020) and its Notice of Denial by Operation of Law of the requests for rehearing of its *IEP Remand Order* (August 20, 2020). As previously reported, each of the Petitioners filed amended petitions for review in the consolidated proceeding in order to bring the FERC's *IEP Remand Order* and the post-remand FERC record before the DC Circuit. On November 10, the Court ordered that the cases be removed from abeyance and set a revised briefing schedule that called for the following: Petitioners' Opening Briefs (December 11, 2020); Respondent Brief of FERC (February 9, 2021); Intervenor's Joint Brief in Support of Respondent (February 16, 2021); Petitioners' Reply Briefs (March 30, 2021); Deferred Appendix (April 20, 2021); and Final Briefs (May 4, 2021). Since the last Report, Opening Briefs from Petitioners were filed on December 11, 2020. Next up will be briefs from FERC and intervenors in support of FERC.

Other Federal Court Activity of Interest

- **Order 872 (20-72788) (9th Cir.)**
Underlying FERC Proceeding: RM19-15¹⁹⁰
Petitioner: SEIA

On September 17, 2020, SEIA petitioned the 9th Circuit Court of Appeals for review of *Order 872*.¹⁹¹ On October 9, the FERC filed an unopposed motion for the Court to hold this appeal in abeyance, suspend filing of the certified index to the record, and issue a new briefing schedule after January 4, 2021. The abeyance will permit the FERC to address the pending rehearing requests in a future order. On October 26, 2020, the Court granted the FERC's motion, suspended briefing, and directed the FERC to file a status report, or a motion for appropriate relief on or before that date, with a failure to timely do so potentially resulting in the termination of the stay of proceedings.

- **PennEast Project (18-1128)**
Underlying FERC Proceeding: CP15-558¹⁹²
Petitioners: NJ DEP, DE and Raritan Canal Commission, NJ Div. of Rate Counsel

Abeyance continues of the appeal before the DC Circuit of the FERC's orders granting certificates of public convenience and necessity to PennEast Pipeline Company, LLC ("PennEast")¹⁹³ for the construction and operation of a new 116-mile natural gas pipeline from Luzerne County, Pennsylvania, to Mercer County, New Jersey, along with three laterals extending off the mainline, a compression station, and appurtenant above ground facilities

¹⁸⁹ 162 FERC ¶ 61,127 (Feb. 15, 2018) ("*Order 841*"); 167 FERC ¶ 61,154 (May 16, 2019) ("*Order 841-A*").

¹⁹⁰ *Transcontinental Gas Pipe Line Co., LLC*, 159 FERC ¶ 62,181 (Feb. 3, 2017); *Transcontinental Gas Pipe Line Co., LLC*, 161 FERC ¶ 61,250 (Dec. 6, 2017).

¹⁹¹ *Order 872* approved pricing and eligibility revisions to the FERC's long-standing regulations implementing sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), including: state flexibility in setting QF rates; a decrease (to 5 MW) to the threshold for a rebuttable presumption of access to nondiscriminatory, competitive markets; updates to the "One-Mile Rule"; clarifications to when a QF establishes its entitlement to a purchase obligation; and provision for certification challenges.

¹⁹² *PennEast Pipeline Co., LLC*, 162 FERC ¶ 61,053 (Jan. 19, 2018), *reh'g denied*, 163 FERC ¶ 61,159 (May 30, 2018).

¹⁹³ PennEast is a joint venture owned by Red Oak Enterprise Holdings, Inc., a subsidiary of AGL Resources Inc.; NJR Pipeline Company, a subsidiary of New Jersey Resources; SJI Midstream, LLC, a subsidiary of South Jersey Industries; UGI PennEast, LLC, a subsidiary of UGI Energy Services, LLC; and Spectra Energy Partners, LP.

("PennEast Project"). The cases are being held in abeyance "pending final disposition of any post-dispositional proceedings [] before the United States Supreme Court resulting from the Third Circuit's decision in No. 19-1191 (In re: PennEast Pipeline Company, LLC (3rd Cir. Sep. 10, 2019)), or other action that resolves the obstacle PennEast poses". That decision held that the Eleventh Amendment barred condemnation cases brought by PennEast in federal district court in New Jersey to gain access to property owned by the State or its agencies, thus calling into question the viability of PennEast's proposed project route, and the certificates issued in the underlying case. Until the Third Circuit case is resolved, which is in the midst of proceedings before the Supreme Court, the DC Circuit will not take up this case. The last Joint Status Report was filed on December 23, 2020, noting developments since the September 28, 2020 Status Report, and reporting that none of the events "constitute any of the conditions that [the DC Circuit] enumerated in its October 1, 2019 Order as triggering an obligation to file a motion governing future proceedings."

- **Opinion 569/569-A: FERC's Base ROE Methodology (16-1325, 20-1182, 20-1240, 20-1241, 20-1248, 20-1251, 20-1267, 20-1513)**

Underlying FERC Proceeding: EL14-12; EL15-45¹⁹⁴

Petitioners: MISO TOs, Transsource Energy, Dec 23 Petitioners et al.

The MISO Transmission Owners (TOs), Transsource and "Dec 23 Petitioners",¹⁹⁵ among others, have appealed *Opinion 569/569-A*. The MISO TOs' case has been consolidated with previous appeals that had been held in abeyance, with the lead case number assigned as 16-1325. Since the last Report, the FERC filed a certified Index to the Record (December 3), the Parties filed a joint unopposed briefing schedule (December 23) and First Energy moved to voluntarily dismiss the cases it initiated (20-1227 & 20-1275), which the Court granted on January 5, 2021. The Court also consolidated case no. 20-1513 (filed by Dec 23 Petitioners) with the lead case (16-1325). The proposed briefing schedule calls for the following: Statement of issues, procedural motions and dispositive motions (January 25, 2021); Petitioners' Briefs (February 24, 2021); Intervenors in Support of Petitioners Briefs and Amici Curiae Briefs (March 10, 2021); Intervenors in Support of FERC (June 8, 2021); Petitioners Reply Briefs (June 24, 2021); Intervenors in Support of Petitioners Reply Briefs (July 8, 2021); Joint Deferred Appendix (July 22, 2021); and Final Briefs (August 5, 2021).

¹⁹⁴ *Transcontinental Gas Pipe Line Co., LLC*, 159 FERC ¶ 62,181 (Feb. 3, 2017); *Transcontinental Gas Pipe Line Co., LLC*, 161 FERC ¶ 61,250 (Dec. 6, 2017).

¹⁹⁵ "Dec 23 Petitioners" are: Assoc. of Bus. Advocating Tariff Equity; Coalition of MISO Transmission Customers: IL Industrial Energy Consumers; IN Industrial Energy Consumers, Inc.; MN Large Industrial Group; WI Industrial Energy Group; AMP; Cooperative Energy; Hoosier Energy Rural Elec. Coop.; MS Public Service Comm.; MO Public Service Comm.; MO Joint Municipal Electric Utility Comm.; Organization of MISO States, Inc.; Southwestern Elec. Coop., Inc.; and Wabash Valley Power Assoc.

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