

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of March 30, 2021

The following activity, as more fully described in the attached litigation report, has occurred since the report dated March 3, 2021 ("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 | Green Development DAF Charges Complaint Against National Grid (ER21-47) | Mar 23 | Green Development, SEIA answer National Grid's answer |
| 3 | NECEC/Avangrid Complaint Against NextEra/Seabrook (EL21-6) | Mar 26 | Avangrid amends its still-pending Complaint to reflect that aspects of the relief originally requested in its Complaint are no longer feasible within the timeline previously sought; Avangrid requests a FERC order on or before May 7, 2021 |

II. Rate, ICR, FCA, Cost Recovery Filings



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|------|---|-----------------------|---|
| 8 | FCA15 Results Filing (ER21-1226) | Mar 4-25
Mar 15-29 | NEPOOL, Calpine, Dominion, Exelon, MA AG, National Grid, NRG, MA DPU intervene
More than 30 private citizens submit comments
comment date Apr 12, 2021 |
| 9 | Bucksport CIP IROL (Schedule 17) Cost Recovery Period Filing (ER21-957) | Mar 17 | FERC accepts filing and rate schedule, eff. Mar 29, 2021 |
| 9 | Stonepeak Kestrel CIP IROL (Schedule 17) Cost Recovery Period Filing (ER21-956) | Mar 17 | FERC accepts filing and rate schedule, eff. Mar 29, 2021 |
| 9 | Mystic 8/9 Cost of Service Agreement (ER18-1639) | Mar 18 | CT Parties, ENECOS, Public Systems protest Feb 2021 Compliance Filing |
| * 11 | ISO Securities: Authorization for Future Drawdowns (ES21-34) | Mar 26 | ISO requests continued authorization for drawdowns under new Revolving Credit Line and Payment Default Shortfall Fund;
comment date Apr 16, 2021 |

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



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|------|--|------------------|--|
| * 11 | eTariff § I.2 Corrections (ER21-1513) | Mar 25
Mar 26 | ISO-NE submits corrections to § I.2 to remove FERC-rejected changes included in subsequent eTariff filing; comment date Apr 15, 2021
NEPOOL intervenes |
| 11 | Elimination of Price Lock and Zero-Price Offer Rule for New Entrants Starting in FCA16 (ER21-1010) | Mar 8 | MA DPU intervenes out-of-time |
| 12 | EER Exemption from PFP Settlement (ER21-943) | Mar 8 | Exelon, MA DPU intervene out-of-time |
| 12 | Updated CONE, Net Cone and PPR Values (eff. FCA16) (ER21-787) | Mar 30 | ISO-NE files responses to Mar 1 deficiency letter;
comment date Apr 20, 2021 |

V. OATT Amendments / TOAs / Coordination Agreements

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|------|---|--------|---|
| * 13 | ISO-NE/NYISO Coordination Agreement (ER21-1278) | Mar 5 | ISO-NE and NEPOOL file changes that move the ISO-NE/NYISO List of Interconnection Facilities from Schedule A of the Agreement to ISO-NE's website |
| | | Mar 25 | National Grid intervenes |

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

- | | | | |
|----|---|--------|--|
| 13 | Schedule 20A NEP-Vitol Phase I/II HVDC-TF Service Agreement (ER21-1180) | Mar 5 | FERC accepts Agreement, eff. Nov 1, 2020 |
| 14 | Schedule 21-VP: 2019 Annual Update Settlement Agreement (ER15-1434-004) | Mar 24 | Versant Power submits a letter requesting FERC action on uncontested settlement agreement filed Mar 19, 2020 |

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

- | | | | |
|------|---|---------|--|
| 15 | Capital Projects Report - 2020 Q4 (ER21-1109) | Mar 4-5 | Eversource and National Grid (out-of-time) intervene |
| * 16 | ISO-NE FERC Form 715 (undocketed) | Mar 29 | ISO-NE submits 2020 annual report of total MWh of trans. service |

IX. Membership Filings

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|------|--|--------|---|
| * 16 | Suspension Notice – Manchester Methane, LLC (not docketed) | Mar 19 | ISO-NE files notice of suspension of Manchester Methane, LLC from the New England Markets |
|------|--|--------|---|

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

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|----|---|--------|--|
| 17 | Revised Rel. Standards: CIP-013-2, CIP-005-7, CIP-010-4 (RD21-2) | Mar 18 | FERC approves revised standard, eff. Oct 1, 2022 |
| 17 | CIP Standards Development: Info. Filings on Virtualization and Cloud Computing Services Projects (RD20-2) | Mar 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) |

XI. Misc. - of Regional Interest

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|------|--|---------------------|--|
| 19 | 203 Application: Exelon Generation (EC21-57) | Mar 4, 18
Mar 18 | EDF, Old Dominion intervene
Joint PJM Consumer Advocates file protest |
| * 20 | LGIA Cancellation: CMP / Rumford Power (ER21-1457) | Mar 16 | CMP files a notice of cancellation of an expired and replaced LGIA with Rumford Power; comment date Apr 6, 2021 |
| * 19 | D&E Agreement: NSTAR/Vineyard Wind (ER21-1285) | Mar 5
Mar 23 | Vineyard Wind files D&E Agreement
MA DPU intervenes |
| * 20 | Related Facilities Agreement: PSNH / NECEC (ER21-1151) | Mar 5 | National Grid intervenes |

* 20	D&E Agreement: PSNH/NECEC (ER21-1147)	Mar 5	National Grid intervenes
20	SGIA Cancellation: CL&P/Covanta Wallingford (ER21-867)	Mar 11	FERC accepts notice of cancellation, eff. Jan 11, 2021
20	LGIA Cancellation: Mt. Tom (ER21-845)	Mar 5	FERC accepts notice of cancellation, eff. Mar 8, 2021
21	<i>Orders 864/864-A</i> (Public Util. Trans. ADIT Rate Changes): New England Compliance Filings (various)	Mar 8 Mar 8 Mar 8 Mar 12	<i>ER21-1325 (NHT)</i> . NHT submits changes to Sched. 21-NHT <i>ER21-1295 (Eversource)</i> . Eversource submits changes to Sched. 21-ES <i>ER21-1293 (NSTAR)</i> . NSTAR supplements earlier compliance filings <i>ER20-2133 (Versant Power)</i> . Versant responds to Feb 11 deficiency letter

XII. Misc. - Administrative & Rulemaking Proceedings



22	Resource Adequacy - Modernizing Electricity Mkt Design (AD21-10)	Mar 9 Mar 23 Mar 29	FERC issues supplemental notice of Mar 23, 2021 tech conf FERC holds resource adequacy tech conf; speaker materials posted in eLibrary Ohio PUC Commissioner Conway submits written comments
22	The Office of Public Participation (AD21-9)	Mar 17-25	FERC holds virtual listening sessions; workshop scheduled Apr 16, 2021
23	Offshore Wind Integration in RTOs/ISOs Tech Conf (Oct 27, 2020) (AD20-18)	Mar 11	FERC issue notice inviting post-technical conference comments; comment date May 10, 2021
25	NOPR: Cybersecurity Incentives (RM21-3)	Mar 25	Bureau of Reclamation files comments; comment date Apr 6, 2021
25	NOPR: Managing Transmission Line Ratings (RM20-16)	Mar 17-23	Over 50 parties file comments, including by ISO-NE, DC Energy, Dominion, EDF, ENEL/EnerNOC, Eversource, Exelon, NRDC, Vistra, EEI, EPRI, EPSA, New England State Agencies, NRECA/LPPC, and Potomac Economics
26	<i>Order 2222/2222-A</i> : DER Participation in ISO/RTO Markets (RM18-9)	Mar 18	FERC issues <i>Order 2222-A</i> , addressing arguments on rehearing and setting aside and clarifying in part <i>Order 2222</i>
28	<i>Order 860/860-A</i> : Data Collection for Analytics & Surveillance and MBR Purposes (RM16-17)	Mar 18	FERC issues notice seeking comments on proposed changes to the MBR Data Dictionary; delays effectiveness of <i>Order 860</i> by 3 months (to Jul 1, 2021); issues supplemental notice of tech workshop to discuss the functionality and features of the MBR Database, moving tech conf to Apr 25, 2021
32	NOI: Certification of New Interstate Natural Gas Facilities (PL18-1)	Mar 15	Joint Associations request 45-day extension of time to submit comments on NOI; NOI comment date still Apr 26, 2021

XIII. FERC Enforcement Proceedings



* 33	Rover Pipeline, LLC and Energy Transfer Partners, L.P. (IN19-4)	Mar 18 Mar 23 Mar 29	FERC issues show cause order directing Rover and ETP to show cause why they should not be found to have violated Section 157.5 of the FERC's regulations and why they should not be assessed civil penalties in the amount of \$20.16 million . Rover/ETP request 60-day extension of time to respond FERC Staff comments on request for extension of time
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XIV. Natural Gas Proceedings

34	Atlantic Bridge Project (CP16-9)	Mar 19, 22	Algonquin, NGSA/Center for Liquefied Natural Gas, America and Energy Infrastructure Council request rehearing of Briefing Order
		Mar 23	Cheniere Energy submits comments supporting requests for rehearing
		Mar 5-30	Footprint Power, Town of Weymouth, Weymouth Town Council, 5 private citizens submit comments; initial briefs due April 5, 2021 ; reply briefs, May 5, 2021

XV. State Proceedings & Federal Legislative Proceedings

37	New England States' Vision Statement / On-Line Technical Forums	Mar 18	Equity and Environmental Justice discussion held; comments due Apr 29, 2021
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XVI. Federal Courts

38	CIP IROL Cost Recovery Rules (20-1389)	Mar 8	Cogentrix and Vistra submit corrected Petitioners' Brief
38	Mystic 8/9 Cost of Service Agreement (20-1343; 20-1361, 20-1362; 20-1365, 20-1368) (consolidated)	Mar 25	Court issues order returning this proceeding to its active docket
		Mar 26	Court grants MMWEC, NHEC, NESCOE and ENECOS interventions
39	CASPR (20-1333, 20-1331) (consolidated)	Mar 24	Court grants NEPOOL's intervention in this case; established briefing schedule
		Mar 26	Petitioners request that this case be held in abeyance for 180 days
40	2013/14 Winter Reliability Program Order on Compliance and Remand (20-1289, 20-1366)	Mar 12	FERC files Respondent Brief
40	ISO-NE's Inventoried Energy Program (Chapter 2B) Proposal (19-1224) (consol.)	Mar 30	Petitioners file Reply Brief
41	Order 872 (20-72788) (consol.)	Mar 5	SEIA moves to lift the stay in this proceeding
		Mar 25	Court grants SEIA motion and establishes briefing schedule
41	PennEast Project (18-1128)	Mar 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"
42	Opinion 569/569-A: FERC's Base ROE Methodology (16-1325) (consol.)	Mar 10	Petitioners' Briefs filed
		Mar 17	New England Parties file motion to participate as amicus curiae
		Mar 17	New England Parties file amicus brief in support of Transmission Owning Petitioners
		Mar 24	Intervenors in Support of Petitioners filed their Brief

M E M O R A N D U M

TO: NEPOOL Participants Committee Members and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: March 30, 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 March 30, 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 remains 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)**

On January 22, 2021, the waiver of FERC regulations that require that filings with the FERC be notarized or supported by sworn declarations was further **extended through July 30, 2021**.⁵ The January 25 notice extended the waiver first noticed in May⁶ and extended on August 20, 2020.⁷ 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.⁸

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

On January 25, 2021, the extension of the blanket waivers of ISO/RTO Tariff *in-person*⁹ meeting and notarization requirements was further **extended through July 30, 2021**.¹⁰ The January 25 order extended the blanket waivers first granted in the FERC’s April 2, 2020 order and extended in an August 20, 2020 order.¹¹

I. Complaints/Section 206 Proceedings

- **Green Development DAF Charges Complaint Against National Grid (EL21-47)**

On February 10, 2021, Green Development, LLC (“Green Development”) filed a Complaint against New England Power Company and Narragansett Electric Company (together, “National Grid” or “Grid”) requesting a finding that Grid’s assessment of Direct Assignment Facility (“DAF”) charges for Green Development’s projects is unauthorized under the ISO-NE Tariff. Summarizing at highest level, Green Development asserts that the upgrades associated with the interconnection of its distribution-level, state jurisdictional projects are not DAF as defined in the ISO-NE Tariff. Grid’s answer, as well as comments and interventions with respect to the Green Development DAF Complaint were due March 2, 2021. Grid filed its answer on March 2. Solar Energy Industries Association (“SEIA”) and Dry Bridge Solar submitted comments supporting the Complaint. Doc-less interventions were filed by Avangrid, Energy Development Partners and New York Transmission Owners (“NY TOs”). On March 23, Green Development and SEIA answered National Grid’s March 2 answer. This matter remains pending before the FERC. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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 (Jan. 25, 2021).

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

⁷ See *Extension of Non-Statutory Deadlines*, Docket No. AD20-11-000 (Aug. 20, 2020).

⁸ *Extension of Non-Statutory Deadlines*, Docket No. AD20-11-000 (Apr. 2, 2020).

⁹ 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).

¹⁰ *Temporary Action to Facilitate Social Distancing*, 174 FERC ¶ 61,047 (Jan. 25, 2021).

¹¹ *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); *Temporary Action to Facilitate Social Distancing*, 172 FERC ¶ 61,151 (Aug. 20, 2020) (extending the waivers through Jan. 29, 2021).

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

Still pending before the FERC is NEPGA's December 11, 2020 complaint against ISO-NE. The Complaint alleged 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 sought 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 [NESCOE](#), [NECOS/ENE](#)¹² and [CT State Agencies](#).¹³ [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. On January 8, 2021, NEPGA answered ISO-NE's Answer and the comments and protests filed in response to its Complaint. ISO-NE answered NEPGA's answer on January 25, 2021. 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 March 26, 2021, NECEC Transmission LLC ("NECEC") and Avangrid Inc. (together, "Avangrid") amended their still-pending October 13, 2020 complaint ("Complaint") against NextEra,¹⁴ to reflect that aspects of the relief originally requested in the Complaint are no longer feasible within the timeline previously sought. Avangrid continues to seek expeditious FERC action, requesting in its March 26 filing a FERC order on or before May 7, 2021. As previously reported, the Complaint requested FERC action "to stop NextEra from unlawfully interfering with the interconnection of the New England Clean Energy Connect transmission project ("NECEC Project")." The Complaint sought, among other things, an initial, expedited order that would grant certain relief¹⁵ and direct NextEra to immediately commence engineering, design, planning and procurement activities that are necessary

¹² "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").

¹³ "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")

¹⁴ 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").

¹⁵ 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.

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, and 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 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 also 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)**

Still pending is the New England Generators'¹⁶ August 25, 2020 complaint against Exelon.¹⁷ 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

¹⁶ "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.

¹⁷ 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.").

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 Systems¹⁸ and Connecticut Parties.¹⁹ On September 28, NEPGA answer Exelon's answer. Calpine, ENE, Eversource, Massachusetts Attorney General ("MA AG") National Grid, and Public Citizen filed doc-less interventions. 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).

- **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.

- **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,²⁰ 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*).²¹ However, the FERC's orders were challenged, and in *Emera Maine*,²² 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)²³ and third (EL14-86)²⁴ 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%

¹⁸ "Public Systems" are Mass. Municipal Wholesale Elec. Co. ("MMWEC") and New Hampshire Elec. Coop., Inc. ("NHEC").

¹⁹ "Connecticut Parties" are CT PURA, CT DEEP, and the CT OCC.

²⁰ 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*").

²¹ *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*").

²² *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).

²³ 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%.

²⁴ 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.

and 10.90%, respectively.²⁵ 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 proceeding²⁶ also went to hearing before an ALJ, Judge Glazer, who issued his initial decision on March 27, 2017.²⁷ The *Base ROE IV Initial Decision* concluded that the currently-filed base ROE of 10.57%, which may reach a 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.²⁸ 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.²⁹ 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*³⁰ (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.³¹

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

²⁵ *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”).

²⁶ 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.

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

²⁸ *Id.* at P 2.; Finding of Fact (B).

²⁹ *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (Oct. 18, 2018) (“Order Directing Briefs” or “Coakley”).

³⁰ *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*.

³¹ *Id.* at P 19.

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%.³² 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 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 Customers³³ 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, 2019. 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*³⁴ 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).

³² *Id.* at P 59.

³³ For purposes of the motion seeking clarification, "Customers" are CT PURA, MA AG and EMCOS.

³⁴ *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).

II. Rate, ICR, FCA, Cost Recovery Filings

- **FCA15 Results Filing (ER21-1226)**

On February 26, 2021, ISO-NE filed the results of the fifteenth FCA (“FCA15”) held February 8, 2021. ISO-NE reported the following highlights:

- ◆ FCA15 Capacity Zones were the Southeastern New England (“SENE”) Capacity Zone (the Northeastern Massachusetts (“NEMA”)/Boston, Southeastern Massachusetts, and Rhode Island Load Zones), the Northern New England (“NNE”) Capacity Zone (the Maine, New Hampshire and Vermont Load Zones), the Maine Capacity Zone (the Maine Load Zone) and the Rest-of-Pool (“ROP”) Capacity Zone (the Connecticut and Western/Central Massachusetts Load Zones). NNE was modeled as an export-constrained Capacity Zone. The Maine Load Zone was modeled as a separate nested export-constrained Capacity Zone within NNE.
- ◆ FCA15 commenced with a starting price of \$13.932/kW-mo. and concluded for all Capacity Zones after five rounds.
- ◆ Capacity Clearing Prices were as follows (prices expressed per kw-mo.): SENE - \$3.980; NNE and Maine - \$2.477; ROP - \$2.611; imports over the NY AC Ties (684 MW) and the Phase I/II HQ Excess external interface (517 MW) - \$2.611; imports over Highgate (60 MW) and New Brunswick (226 MW) - \$2.477.
- ◆ There were no active demand bids for the substitution auction and, accordingly, the substitution auction was not conducted.
- ◆ No resources cleared as Conditional Qualified New Generating Capacity Resources.
- ◆ No Long Lead Time Generating Facilities secured a Queue Position to participate as a New Generating Capacity Resource.
- ◆ No de-list bids were rejected for reliability reasons.

ISO-NE asked the FERC to accept the FCA15 rates and results, effective June 26, 2021.

Comments on this filing are due on or before April 12, 2021. Thus far, NEPOOL, NESCOE, Calpine, Dominion, Exelon, MA AG, National Grid, NRG, MA DPU, and Public Citizen have filed doc-less interventions. Comments from more than 30 individual citizens have also been filed, largely focused on environmental issues, and the Merrimack Generating Station in particular. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Essential Power Newington CIP IROL (Schedule 17) Cost Recovery Period Filing (ER21-1171)**

On February 18, 2021, Essential Power Newington, LLC (“EP Newington”) requested FERC acceptance of a proposed rate schedule to allow EP Newington to begin the recovery period for certain Interconnection Reliability Operating Limits Critical Infrastructure Protection costs under Schedule 17 of the ISO-NE Tariff (“CIP-IROL Costs”). EP Newington stated that the rate schedule will provide interested parties notice of EP Newington’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 February 18, 2021 effective date was requested. Comments on this filing were due on or before March 11, 2021; none were filed. NESCOE filed a doc-less intervention. 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).

- **Bucksport CIP IROL (Schedule 17) Cost Recovery Period Filing (ER21-957)**

On March 17, 2021, the FERC accepted, effective March 29, 2021, the rate schedule filed by Bucksport Generation LLC (“Bucksport”) to allow it to begin the recovery period for certain CIP-IROL Costs.³⁵ Unless the March 17 Bucksport order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Stonepeak Kestrel CIP IROL (Schedule 17) Cost Recovery Period Filing (ER21-956)**

Also on March 17, 2021, the FERC accepted effective March 29, 2021, the rate schedule filed by Stonepeak Kestrel Energy Marketing LLC to allow it to begin the recovery period for certain CIP-IROL Costs.³⁶ Unless the March 17 Stonepeak Kestrel order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **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 (“Use Agreement”)³⁷ 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 were due on or before January 8, 2021; none were filed. Avangrid, ENE, NESCOE, and Eversource (out-of-time) filed doc-less interventions. This matter is still pending before the FERC. If you have any questions concerning these matter, please contact Eric Runge (617-345-4735; ekrunge@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”)³⁸ 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

³⁵ *Bucksport Generation LLC*, Docket No. ER21-957 (Mar. 17, 2021) (unpublished letter order).

³⁶ *Stonepeak Kestrel Energy Marketing LLC*, Docket No. ER21-956 (Mar. 17, 2021) (unpublished letter order).

³⁷ 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 IRH Management Committee.

³⁸ 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.

17 Orders³⁹ (and the earlier, underlying orders) have been appealed to the DC Circuit. Three aspects of this proceeding are pending before the FERC:

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, CT Parties,⁴⁰ ENECOS,⁴¹ 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,⁴² 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, 2021, Mystic answered the CT Parties' and ENECOS' protests. The September compliance filing remains pending before the FERC.

Feb 2021 Compliance Filing (-008). On February 25, 2021, Mystic filed a revised COS Agreement in a third compliance filing, this time in response to the requirements of the FERC's *Dec 21, 2020 Third Compliance Order*.⁴³ The Feb 2021 Compliance Filing proposes changes to section 2.4 of the COS Agreement to align that section with the FERC's direction that the Agreement's clawback mechanism apply to costs "that are incurred" rather than those that "that were expensed." Comments on the third compliance filing were due on or before March 18, 2021. CT Parties, ENECOS and Public Systems⁴⁴ filed protests of the third compliance filing, which is also pending before the FERC.

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

³⁹ 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).

⁴⁰ "CT Parties" are: Conn. Pub. Utils. Regulatory Authority ("CT PURA"), the Conn. Dept. of Energy and Envir. Protection ("CT DEEP"), and the Conn. Office of Consumer Counsel ("CT OCC").

⁴¹ "ENECOS" are: Braintree, Concord, Georgetown, Hingham, Littleton, Middleborough, Middleton, Norwood, Pascoag, Reading, Taunton, and Wellesley.

⁴² *Constellation Mystic Power, LLC*, 172 FERC ¶ 61,093 (July 28, 2020), *order addressing arguments on reh'g*, 173 FERC ¶ 61,261 (Dec. 21, 2020).

⁴³ *Constellation Mystic Power, LLC*, 173 FERC ¶ 61,261 (2020) ("*Dec 21, 2020 Third Compliance Order*")

⁴⁴ "Public Systems" are Mass. Mun. Wholesale Electric Co. ("MMWEC") and New Hampshire Elec. Coop. ("NHEC").

(“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”).⁴⁵ Initial comments and reply comments were due January 18 and 27, 2021, respectively; none were filed. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **ISO Securities: Authorization for Future Drawdowns (ES21-34)**

On March 26, 2021, ISO-NE requested the necessary FERC authorization for drawdowns under a new \$20 million Revolving Credit Line and a new \$4 million line of credit supporting the Payment Default Shortfall Fund, each of which are with TD Bank, are for a term of three years ending June 30, 2024, and replace similar arrangements that will expire June 30, 2021.⁴⁶ Comments on this filing are due on or before April 18. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

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

- **eTariff § I.2 Corrections (ER21-1513)**

On March 25, 2021, ISO-NE filed corrections to its eTariff to remove from Section I.2 previously-rejected changes (proposed in the April 15, 2020 Energy Security (“ESI”) Initiatives filing (ER20-1567)) that were also included as part of an April 16, 2020 filing accepted by the FERC that extended the implementation date of the Settlement-Only Generator Dispatchability Changes (ER20-1582). Comments on this filing are due on or before April 15, 2021. Thus far, NEPOOL has intervened doc-lessly. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Elimination of Price Lock and Zero-Price Offer Rule for New Entrants Starting in FCA16 (ER21-1010)**

In response to the requirements of the *December 2 Order*,⁴⁷ ISO-NE submitted on February 1, 2021, Tariff revisions eliminating the price lock and associated zero-price offer rule for new entrants starting in FCA16. The ISO-NE’s proposed compliance changes were supported by the Participants Committee at its February 4 meeting (Consent Agenda Item No. 4). Comments on ISO-NE’s filing were due on or before February 22, 2021. Comments supporting the Tariff revisions were filed by NEPOOL (February 9) and NEPGA (February 23). No adverse comments were filed. Doc-less interventions were filed by BSW ProjectCo, Calpine, Eversource, National Grid, NESCOE, and NRG. On March 8, the MA DPU intervened out-of-time. This matter is pending before the FERC.

As described in previous Reports, 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”),⁴⁸ found preliminarily that ISO-NE’s new entrant

⁴⁵ 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).

⁴⁶ See *ISO New England Inc.*, 139 FERC ¶ 62,248 (June 22, 2012) (initially authorizing borrowings through June 30, 2014); *ISO New England Inc.*, 147 FERC ¶ 62,091 (May 6, 2014) (continuing authorization through June 30, 2015); *ISO New England Inc.*, 151 FERC ¶ 62,185 (June 15, 2015) (continuing authorization through June 30, 2017); *ISO New England Inc.*, 159 FERC ¶ 62,143 (May 9, 2017) (continuing authorization through June 30, 2019); *ISO New England Inc.*, 163 FERC ¶ 62,144 (June 1, 2018) (continuing authorization through May 31, 2020); *ISO New England Inc.*, 172 FERC ¶ 62,017 (July 13, 2020) (continuing authorization through July 12, 2022).

⁴⁷ *ISO New England Inc.*, 173 FERC ¶ 61,198 (Dec. 2, 2020) (“*December 2 Order*”) (finding the price-lock mechanism and zero-price offer rule (“New Entrant Rules”) no longer just and reasonable and directing ISO-NE to remove the New Entrant Rules from the Tariff).

⁴⁸ *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).

rules may be unjust and unreasonable.⁴⁹ The FERC established paper hearing procedures, which included one round of briefs and reply briefs submitted in the late summer and early fall of 2020.⁵⁰ The *December 2 Order* found the New Entrant Rules no longer just and reasonable and directed ISO-NE to remove them from the Tariff.⁵¹

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).

- **EER Exemption from PFP Settlement (ER21-943)**

On January 26, 2021, ISO-NE filed revisions to the Tariff (including related revisions to the FAP) to exclude energy efficiency resources (“EERs”) from Pay-for-Performance (“PFP”) obligations and settlement in all hours. EER capacity base payments are unaffected. The EER Exemption was considered, but not supported, by the Participants Committee at its October 2, 2020 meeting. The related FAP revisions were considered but were supported by the Participants Committee at the same meeting. An April 1, 2021 effective date was requested.⁵² Comments on this filing were due on or before February 16, 2021. Comments supporting the revisions were filed by: NEPOOL; the ISO-NE Internal Market Monitor (“IMM”); LS Power Development, Helix Maine Wind Development, Ocean State Power, and Wallingford Energy (collectively, the “LS Power companies”); and NEPGA. AEE filed comments protesting the revisions, which ISO answered on March 3, 2021. Doc-less interventions were filed by Calpine, Dominion; Eversource, MA AG, National Grid, NESCOE, NRG, and Vistra. On March 8, Exelon and the MA DPU intervened out-of-time. 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).

- **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 were due on or before January 21, 2021. Comments were filed by [NEPOOL](#), [MMWEC](#), [NESCOE](#), and [CT Agencies](#). Protests were filed by [CPV Towantic](#), [Dominion](#), [FirstLight](#), [NEPGA](#),

⁴⁹ *ISO New England Inc.*, 172 FERC ¶ 61,005 (July 1, 2020) (“FCM Pricing Rules Complaints Remand Order”).

⁵⁰ 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.

⁵¹ *December 2 Order* at PP 1, 77.

⁵² ISO-NE requested in the alternative, that the revisions be accepted effective with FCA16 (June 1, 2025) should the FERC not grant an Apr. 1, 2021 effective date.

and [NEI](#). Doc-less interventions were filed by Avangrid, Brookfield, BSW Project Co, Calpine, Cogentrix, Dominion, Eversource, CT AG, CT OCC, CT DEEP, CT PURA, LS Power, MA AG, National Grid (out-of-time), NESCOE, NHEC, NRG, Vistra, EPSA, and MA DPU (out-of-time). On February 12, ISO-NE answered the protests filed. On February 16 and 17, answers to ISO-NE's February 12 answer were filed by EPSA, NEPGA and CPV Towantic.

March 1, 2021 Deficiency Letter. On March 1, 2021, the FERC issued a deficiency letter, directing ISO-NE to provide within 30 days additional information, including the following: (i) an example of a potential site for the reference unit (in or near New London County, CT) that is two miles from both a main natural gas transmission line and the point of interconnection to the electric grid; (ii) an estimate of NOx emissions limit and whether those limits affect the reference unit's revenues; and (iii) additional support for the assumption that the reference unit always runs on natural gas rather than oil in the dispatch model. The responses to the Deficiency Letter were due on or before March 31, 2021 and were filed by ISO-NE on March 30, 2021. ISO-NE's submission of the additional information re-set the 60-day deadline for FERC action on this filing.

If you have any questions concerning this proceeding, please contact Dave Doot (dtdoot@daypitney.com; 860-275-0102), Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Rosendo Garza (860-275-0660; rgarza@daypitney.com).

IV. OATT Amendments / TOAs / Coordination Agreements

- **ISO-NE/NYISO Coordination Agreement (ER21-1278)**

On March 5, 2021, ISO-NE and NEPOOL jointly filed changes to the ISO-NE/NYISO Coordination Agreement to move the ISO-NE/NYISO Interconnection Facilities List, including associated descriptions of the Interties and common metering points, from Schedule A of the ISO-NE/NYISO Coordination Agreement to ISO-NE's public website. The Participants Committee unanimously supported the Coordination Agreement changes at its November 5, 2020 meeting (Consent Agenda Item No. 2). Comments on this filing were due on or before March 26, 2021; none were filed. National Grid filed a doc-less motion to intervene. 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).

- **Order 676-I Compliance Filing (ER21-941)**

On January 26, 2021, ISO-NE and NEPOOL, in response to *Order 676-I*, jointly filed changes to incorporate by reference in Schedule 24 of the OATT the latest version (Version 003.2) of certain Standards for Business Practices and Communication Protocols for Public Utilities adopted by the Wholesale Electric Quadrant ("WEQ") of the North American Energy Standards Board ("NAESB"). The Participants Committee unanimously supported the *Order 676-I* revisions at its May 7, 2020 meeting. Comments on this filing were due on or before February 16, 2021; none were filed. 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).

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

- **Schedule 20A NEP-Vitol Phase I/II HVDC-TF Service Agreement (ER21-1180)**

On February 19, 2021, New England Power Company ("NEP") submitted a new Phase I/II HVDC-TF Service Agreement between NEP and Vitol Inc. ("Vitol"). The Service Agreement, based on the *pro forma* Phase I/II HVDC-TF Service Agreement set forth in Schedule 20A-Common Attachment A, provides for firm point-to-point transmission service over the Phase I/II HVDC transmission facilities ("Phase I/II HVDC-TF") for the November 1,

2020 to November 1, 2025 period. The Agreement was filed separately because it contains potentially non-conforming terms that provide Vitol a right to terminate the Agreement if it finds unacceptable the terms and conditions of the Amended and Restated IRH Support and Use Agreements pending in ER21-712 (see Section II above). NEP requested a November 1, 2020 effective date for Agreement. Comments on this filing were due on or before March 12, 2021; none were filed. Vitol submitted a doc-less intervention. This matter is pending before the FERC. If there are questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Schedule 20A-VP: Versant Power-Vitol Phase I/II HVDC-TF Service Agreement (ER21-827)**

On March 5, the FERC accepted the non-conforming Phase I/II HVDC-TF Service Agreement for firm service under Schedule 20A-VP between Versant Power and Vitol Inc. ("Vitol").⁵³ The Agreement was accepted effective as of November 1, 2020, as requested. Unless the March 5 order is challenged, this proceeding will be concluded. If there are questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Schedule 21-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. Since the last Report, on March 24, 2021, Versant Power filed a letter requesting FERC action. 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 Order*,⁵⁴ and certified by Settlement Judge Dring⁵⁵ to the Commission,⁵⁶ 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

⁵³ *Versant Power*, Docket No. ER21-827 (Mar. 5, 2021) (unpublished letter order).

⁵⁴ *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.

⁵⁵ 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.

⁵⁶ *Emera Maine and BHE Holdings*, 163 FERC ¶ 63,018 (June 11, 2018).

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

- **Schedule 21-GMP Annual True Up Calculation Forecast Info Report (ER12-2304)**

On January 15, 2021, pursuant to Section 4 of Schedule 21-GMP, Green Mountain Power (“GMP”) supplemented its annual informational filing containing the forecast of its costs for the January 1, 2021 through December 31, 2021 time period. The supplement does not change the 2021 forecasted rates previously filed, but does contain a material accounting change to adjust the 2021 charges billed under the Formula Rate in connection with the sale of its share of the Highgate facility. GMP also disclosed that it is not using historical ADIT for this forecast. The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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*⁵⁷ and *531-B*⁵⁸ 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).

- **Capital Projects Report - 2020 Q4 (ER21-1109)**

On February 11, 2021, ISO-NE filed its Capital Projects Report and Unamortized Cost Schedule covering the fourth quarter (“Q4”) of calendar year 2020 (the “Report”). ISO-NE is required to file the Report under section 205 of the FPA pursuant to Section IV.B.6.2 of the Tariff. Report highlights include the following new projects: (i) nGEM software development part II (\$4.79 million); (ii) Integrated Market Simulator Phase 1 (\$1.6 million); (iii) FCM Qualification Enhancements (\$1.2 million); (iv) CIP Electronic Security Perimeter Redesign (\$1.1 million); (v) Sub-accounts for FTR Market (\$0.98 million); (vi) Enterprise Phone System Upgrade (\$701,300); (vii) Wireless Infrastructure Upgrade (\$548,900); (viii) Time Entry System Upgrade (\$398,200); (ix) Ownership Transfer & External Registration (\$382,700); (x) PI Historian for Short-term PMU Data Repository (\$368,800); (xi) Annual Maintenance

⁵⁷ *Martha Coakley, Mass. Att’y Gen.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) (“*Opinion 531-A*”).

⁵⁸ *Martha Coakley, Mass. Att’y Gen.*, *Opinion No. 531-B*, 150 FERC ¶ 61,165 (Mar. 3, 2015) (“*Opinion 531-B*”).

Schedule Automation (\$315,800); and (xii) FERC Form 1, 3-Q and 714 Project (\$162,400). There were no significant changes for Chartered Projects in 2020 Q4. Comments on this filing are due on or before March 4, 2021. NEPOOL filed comments on February 17 supporting the Q4 Report. Eversource and National Grid (out-of-time) submitted doc-less interventions. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **ISO-NE FERC Form 715 (not docketed)**

On March 29, ISO-NE submitted its 2020 Annual Transmission Planning and Evaluation Report. These filings are not noticed for public comment.

IX. Membership Filings

- **March 2021 Membership Filing (ER21-1228)**

On February 26, 2021, NEPOOL requested that the FERC accept: (i) the membership of Trafigura Trading LLC (Supplier Sector); (ii) the termination of Axon Energy (Supplier Sector) and Springfield Power [Related Person to Stored Solar J&WE, LLC (AR Sector)]; and (iii) to reflect Titan Gas LLC's d/b/a as CleanSky Energy. Comments on this filing were due on or before February 19, 2021; none were filed. This matter is pending before the FERC.

- **February 2021 Membership Filing (ER21-1008)**

On January 29, 2021, NEPOOL requested that the FERC accept: (i) the memberships of the following: Axpo U.S. LLC (Supplier Sector); Catalyst Power & Gas, LLC (Supplier Sector); Palm Energy LLC (Provisional Member); Madison ESS, LLC [Related Person to Madison BTM and New England Battery Storage (Generation Group Seat)]; Rumford ESS, LLC [Related Person to Madison BTM and New England Battery Storage (Generation Group Seat)]; Vineyard Reliability LLC (Generation Group Seat); West Medway II, LLC [Related Person to Exelon Generation Company and Constellation NewEnergy, Inc. (Supplier Sector)]; and Dick Brooks (End User Sector, Governance Only Member); (ii) the termination of the Participant status of: Energy Federation Inc. ("EFI") (AR Sector, LR Sub-Sector, Small LR Group Seat); Great American Power, LLC (Supplier Sector); Oasis Power, LLC d/b/a Oasis Energy [Related Person to Spark Energy et al., (Supplier Sector)]; Praxair, Inc. (End User Sector); Rubicon NYP Corp. (Supplier Sector); and Verde Group, LLC (Provisional Member); and (iii) the Name change of Utility Services of Vermont (f/k/a Utility Services, Inc.). Comments on this filing were due on or before February 22, 2021; none were filed. This matter is pending before the FERC.

- **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, 2020 meeting. A doc-less intervention was submitted by Public Citizen. This informational filing is still pending before the FERC.

- **Suspension Notice (not docketed)**

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

<i>Date of Suspension/ FERC Notice</i>	<i>Participant Name</i>	<i>Default Type</i>	<i>Date Reinstated</i>
Mar 17/19	Manchester Methane, LLC	Financial Assurance	--

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

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

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

- **Revised Reliability Standard: FAC-008-5 (RD21-4)**

On February 19, 2021, NERC filed for approval proposed changes to Reliability Standard FAC-008-5 (Facility Ratings). FAC-008-5 reflects the retirement of Requirement R7, recommended as part of NERC's Standards Efficiency Review because of its redundancy with requirements in other Reliability Standards. NERC asked that FAC-008-5 become effective (and the currently effective versions be retired) on the first day of the first calendar quarter that is three months following FERC approval. Comments on FAC-008-5 were due on or before March 22, 2021; none were filed. This matter is pending before the FERC.

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

On March 18, 2021, the FERC approved changes to Reliability Standards CIP-013-2, CIP-005-7, and CIP-010-4 (the "Supply Chain Standards").⁵⁹ 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. The Supply Chain Standards will become effective (and the currently effective versions be retired) on October 1, 2022 (the first day of the first calendar quarter that is 18 months following FERC approval). Unless the March 18 order is challenged, this proceeding will be concluded.

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

As previously reported, NERC is required to file on an informational basis quarterly status updates regarding the development of new or modified Reliability Standards pertaining to virtualization and cloud computing services (resulting from Projects 2016-02 (Modifications to CIP Standards) and 2019-02 (BES Cyber System Information Access Management)). NERC filed its fifth informational filing on March 15, 2021, 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).

- **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, 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

⁵⁹ *N. Am. Elec. Rel. Corp.*, 174 FERC ¶ 61,193 (Mar. 18, 2021).

("BES") operations; and (ii) whether the CIP Reliability Standards impede the voluntary adoption of virtualization or cloud computing services.⁶⁰ On March 25, 2020, Joint Associations⁶¹ 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.

In part in response the comments filed, the FERC, in a December 17, 2020 order,⁶² 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,⁶³ 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."⁶⁴ 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.⁶⁵

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*⁶⁶ (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

⁶⁰ *Virtualization and Cloud Computing Services*, 170 FERC ¶ 61,110 (Feb. 20, 2020).

⁶¹ "Joint Associations" are for purposes of this proceeding: EEI, APPA, NRECA, and LPPC.

⁶² *Virtualization and Cloud Computing Services*, 173 FERC ¶ 61,243 (Dec. 17, 2020) ("*Order Directing Jan 2022 Info. Filing*").

⁶³ *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).

⁶⁴ *Order 873* at P 2.

⁶⁵ *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.

⁶⁶ *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.

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).⁶⁷

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

Still pending is NERC’s October 14, 2020 petition for FERC approval of its amended and restated Bylaws. 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. No comments on the Amended and Restated Bylaws were filed. As noted, this matter remains pending before the FERC.

XI. Misc. - of Regional Interest

- **203 Application: Exelon Generation (EC21-57)**

On February 25, 2021, Exelon Generation Company, LLC (“ExGen”), on behalf of its public utility subsidiaries, requested authorization for a “spin” transaction in which, after completion of an internal reorganization, the ownership of Applicants’ intermediate holding company owner, HoldCo, will be distributed to the shareholders of Applicants’ current ultimate upstream owner, Exelon Corporation (the “Transaction”). Following the Transaction, Exelon Corporation and its remaining subsidiaries will retain no interest in or affiliation with ExGen or the ExGen Utility Subsidiaries; Exelon Corporation and HoldCo will be separate publicly-traded companies. Comments on this filing were due on or before March 18, 2021. Joint PJM Consumer Advocates⁶⁸ filed a protest requesting, among other things, that the FERC direct Applicants to file supplemental materials that include a market power analysis and addresses the vertical market power concerns that Joint PJM Consumer Advocates raised in its comments. Doc-less interventions only were filed by PJM, PJM IMM, EDF, Old Dominion, and Public Citizen. 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).

- **LGIA Cancellation: CMP / Rumford (ER21-1457)**

On March 16, 2021, CMP filed a notice of cancellation of an Interconnection Agreement between CMP and Rumford Power that expired by its own terms on October 31, 2020 and was replaced by a new, three-party Large Generator Interconnection Agreement (“Renewed LGIA”) between ISO-NE, CMP and Rumford Power. An October 22, 2020 effective date was requested. Comments on this filing are due on or before April 6, 2021. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **D&E Agreement: NSTAR/Vineyard Wind (ER21-1285)**

On March 5, 2021, NSTAR filed a Preliminary Agreement for Design, Engineering and Construction services (the “D&E Agreement”) between itself and Vineyard Wind LLC (“Vineyard Wind”). The D&E Agreement sets forth the terms and conditions under which NSTAR would advance certain design, engineering and cost estimating activities of the civil and below-grade and above-grade electrical substation work at NSTAR’s new proposed Bourne 345 kV substation plus the associated line work and substation upgrades at West Barnstable Station to interconnect two new underground 345 kV lines at West Barnstable Station. NSTAR requested that the D&E Agreement be accepted for filing as of the day after the filing, or March 6, 2021. Comments on this filing were due on or before March 26, 2021; none were filed. MA DPU filed a doc-

⁶⁷ *Standards for Bus. Practices and Communication Protocols for Pub. Utils.*, 85 Fed. Reg. 55201 (Sep. 4, 2020).

⁶⁸ “Joint PJM Consumer Advocates” are: the Office of the People’s Counsel for the District of Columbia, Citizens Utility Board, the Delaware Division of the Public Advocate, Maryland Office of the People’s Counsel, New Jersey Division of Rate Counsel, and the Pennsylvania Office of Consumer Advocate.

less intervention. 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).

- **Related Facilities Agreement: PSNH / NECEC (ER21-1151)**

On February 16, 2021, Public Service Company of New Hampshire ("PSNH") filed a Related Facilities Agreement ("RFA") between PSNH and NECEC for the purpose of providing the terms and conditions governing NSTAR's activities, and NECEC's associated cost responsibility, in completing the Related Facilities.⁶⁹ A February 16, 2021 effective date was requested. Comments on this filing were due on or before March 9, 2021; none were filed. National Grid and NECEC filed doc-less interventions. This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **D&E Agreement: PSNH/NECEC (ER21-1147)**

On February 16, 2021, PSNH filed a Preliminary Agreement for Design, Engineering and Construction services (the "D&E Agreement") between itself and NECEC. The D&E Agreement sets forth the terms and conditions under which PSNH will undertake certain design, engineering and procurement activities for the mitigation of violations identified in the preliminary initial interconnection analysis summary for Queue Position #979, and other services as may be requested in writing by NECEC to support engineering, design, and procurement activities related to Affected System upgrades needed on the PSNH system for reliable interconnection of the Project. PSNH requested that the D&E Agreement be accepted for filing as of the day of the filing, or February 16, 2021. Comments on this filing were due on or before March 9, 2021; none were filed. Doc-less interventions were filed by NECEC and National Grid. 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).

- **SGIA Cancellation: CL&P/Covanta Wallingford (ER21-867)**

On March 11, 2021, the FERC accepted a notice of cancellation of the Small Generator Interconnection Agreement ("SGIA") between CL&P and Covanta Projects of Wallingford, L.P. ("Covanta Wallingford") (designated as service agreement IA-NU-16 and accepted in Docket No. ER10-1654), reflecting the request of Covanta Wallingford, whose Non-Price Retirement request notice was accepted by ISO-NE on December 17, 2014.⁷⁰ The SGIA notice of cancellation was accepted effective as of January 11, 2021, as requested. Unless the March 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).

- **LGIA Cancellation: Mt. Tom (ER21-845)**

On March 5, 2021, the FERC accepted the notice of cancellation of the Large Generator Interconnection Agreement ("LGIA") governing the interconnection of Mt. Tom Station.⁷¹ As previously reported, Engie Energy Marketing NA, Inc. formally retired the Mt. Tom Station from the New England Markets on June 1, 2018. Decommissioning work on the facility began in 2018 and was substantially completed as of February 2020. The interconnection rights for Mt. Tom Station terminated upon the date of its retirement. This filing terminated the Original Service Agreement. The notice of cancellation was accepted as of March 8, 2021, as requested. Unless the March 5 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).

⁶⁹ The "Related Facilities" are certain upgrades of facilities on PSNH's electric transmission system needed to support the construction by NECEC of a 1,200 MW unidirectional +/- 320 kV, symmetrical monopole High Voltage Direct Current line from the 735 kV Appalaches Substation in Quebec to CMP's 345 kV Larrabee Road Substation in Lewiston, ME.

⁷⁰ *The Conn. Light and Power Co.*, Docket No. ER21-867-000 (Mar. 11, 2021) (unpublished letter order).

⁷¹ *ISO New England Inc. and Eversource Energy Service Co.*, Docket No. ER21-845 (Mar. 5, 2021) (unpublished letter order).

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

In accordance with *Order 864*⁷² and *Order 864-A*,⁷³ 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
Mar 11, 2021	ER21-1325	NHT	pending
Mar 8, 2021	ER21-1295	Eversource (CL&P, PSNH, NSTAR)	pending
Feb 16, 2021	ER21-1154	Fitchburg Gas & Electric ("FG&E")	pending
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 ER21-1130	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
Mar 22, 2021	-001		
May 18, 2020 Jan 7, 2021	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

Since the last Report, *Order 864*-related activity included:

♦ **ER21-1325 (NHT).** New Hampshire Transmission ("NHT") submits a compliance filing to supplement the TO's July 30 Compliance Filing in ER20-2572 with respect to local service provided by NHT under Schedule 21-NHT of the ISO-NE OATT during the January 1, 2020 to December 31, 2021 period.

⁷² *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.

⁷³ *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*").

♦ **ER21-1295 (Eversource).** Eversource supplemented its earlier compliance filings (ER20-2608, ER20-2609, ER20-2610) with changes to Schedule 21-ES reflecting the FERC's order approving RNS/LNS Rates and Rate Protocols Settlement Agreement II.⁷⁴

♦ **ER21-1293 (NSTAR).** NSTAR supplemented its earlier compliance filings.

♦ **ER20-2133 (Versant Power).** ON March 12, 2021, Versant Power responded to the FERC's February 11 deficiency letter.

XII. Misc. - Administrative & Rulemaking Proceedings

- **Electrification and the Grid of the Future: Apr 29 Technical Conference (AD21-12)**

On March 2, 2021, the FERC issued a notice that a Commissioner-led technical conference will be convened electronically on April 29, 2021 to discuss electrification—the shift from non-electric to electric sources of energy at the point of final consumption (e.g., to fuel vehicles, heat and cool homes and businesses, and provide process heat at industrial facilities). The purpose is to “initiate a dialog between Commissioners and stakeholders on how to prepare for an increasingly electrified future.” Specifically, the conference will address: projections, drivers, and risks of electrification in the US; the extent to which electrification may influence or necessitate additional transmission and generation infrastructure; whether and how newly electrified sources of energy demand (e.g., electric vehicles, smart thermostats, etc.) could provide grid services and enhance reliability; and the role of state and federal coordination as electrification advances. A supplemental notice will be issued prior to the conference with further details regarding the agenda and organization.

- **Resource Adequacy - Modernizing Electricity Mkt Design (Mar 23 tech conf) (AD21-10)**

A Commissioner-led technical conference was convened electronically on March 23, 2021 to provide input to the Commission on resource adequacy in the evolving electricity sector. The FERC issued on March 9 a supplemental notice that included a final conference program (with questions to be posed during panel discussion). Speaker materials from the March 23 technical conference have been posted to eLibrary. On March 29, Ohio PUC Commission Dan Conway submitted written comments. No notice or deadline for written comments has yet been published.

- **Office of Public Participation: Apr 16 Workshop (AD21-9)**

On February 22, 2021, the FERC issued a notice that a Commissioner-led workshop will be convened electronically on April 16, 2021 to provide input to the Commission on the creation of the Office of Public Participation (“OPP”). The Commission intends to establish and operate the Office of Public Participation to “coordinate assistance to the public with respect to authorities exercised by the Commission,” including assistance to those seeking to intervene in Commission proceedings, pursuant to FPA section 319. The Commission plans to hear input on the following considerations in forming the OPP, including: (1) the office's function and scope as authorized by FPA section 319; (2) the office's organizational structure and approach, including the use of equity assessment tools; (3) participation by tribes, environmental justice communities, and other affected individuals and communities, including those who have not historically participated before the Commission; and (4) intervenor compensation.

The following virtual listening sessions were held from March 17, 2021 to March 25, 2021 to solicit public input on how the Commission should establish and operate the OPP: (1) Landowners and Communities Affected by Infrastructure Development (Mar 17); (2) Environmental Justice Communities and Tribal Interests (Mar 22); (3) Tribal Governments (Mar 24); and (4) Energy Consumers and Consumer Advocates (Mar 25). Written comments may also be submitted by April 23, 2021.

⁷⁴ *ISO New England Inc., et al.*, 173 FERC ¶ 61,270 (Dec. 28, 2020).

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

On February 25-26, 2021, the FERC held a technical conference to discuss principles and best practices for credit risk management in ISO/RTOs. Panel topics included: Credit Principles and Practices in ISO/RTO Markets; RTO/ISO Comparison of Risk Management Structure, Credit Enhancements and Lessons Learned; Internal Resources and Expertise within RTOs/ISOs; Impact of Market Design on Credit Risk; Addressing Counterparty Risk: Minimum Participation Requirements and Know Your Customer Protocols; and Collateral, Initial and Variation Margining for FTR and non-FTR positions. Speaker materials are posted in the FERC's eLibrary.

Recall that, as previously reported, Energy Trading Institute⁷⁵ requested that the FERC hold a technical conference and conduct a rulemaking to update the requirements adopted in *Order 741*⁷⁶ 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 was held, in part, in response to that request.

- **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. Since the last Report, Advanced Power Alliance filed comments requesting that the FERC issue a notice providing an opportunity for interested persons to submit post-conference comments and to thereafter "take action to facilitate transmission planning and interconnection policies that will enable construction of the cost-effective, efficient, resilient and environmentally-sound transmission infrastructure needed to connect new offshore wind generation to the onshore grid."

On March 11, 2021, the FERC issued a notice inviting interested persons to file, on or before May 10, 2021, post-technical conference comments on the questions listed in the attachment to its Notice or to the questions outlined in the October 22, 2020 supplemental notice of technical conference.

- **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,⁷⁷ 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"

⁷⁵ 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."

⁷⁶ *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.

⁷⁷ "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.

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](#), [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.⁷⁸ 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.”⁷⁹ 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 NYPSC. This matter is pending before the FERC.

- **Hybrid Resources (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. Post-technical conference comments were filed by ISO-NE, CAISO, MISO, NYISO, PJM, Enel, American Council on Renewable Energy, AWEA, EEI, EPRI, R Street Institute, Savion, and SEIA.

On January 19, 2021, the FERC issued an order directing each ISO/RTO to submit, within 6 months (or before July 19, 2021), a report that provides: (a) a description of its current practices related to each of the

⁷⁸ *Carbon Pricing in Organized Wholesale Electricity Markets*, 173 FERC ¶ 61,062 (Oct. 15, 2020) (“*Proposed Policy Statement*”).

⁷⁹ *Id.* at P 15.

following four hybrid resource issues: (1) terminology; (2) interconnection; (3) market participation; and (4) capacity valuation (collectively, the Issues); (b) an update on the status of any ongoing efforts to develop reforms related to each of the Issues; and (c) responses to the specific requests for information contained in the order. Public comments in response to the RTO/ISO reports may be submitted within 30 days of the filing of the reports. The FERC will use the reports and comments to determine whether further action is appropriate.

- **NOPR: Cybersecurity Incentives (RM21-3)**

On December 17, 2020, the FERC issued a NOPR⁸⁰ proposing to establish rules for incentive-based rate treatment for voluntary cybersecurity investments by a public utility for or in connection with the transmission or sale of electric energy subject to FERC jurisdiction, and rates or practices affecting or pertaining to such rates for the purpose of ensuring the reliability of the Bulk-Power System (“BPS”). Comments on the *Cyber security Incentives NOPR* are due on or before April 6, 2021; reply comments, May 6, 2021.⁸¹ Thus far, comments have been submitted jointly by aDolus Inc., Bureau of Reclamation, Fortress Information Security, GMO GlobalSign Inc., Ion Channel, ReFirm Labs and Reliable Energy Analytics LLC; and George Cotter, Esq.

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

On November 19, 2020, the FERC issued a NOPR⁸² 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* were due on or before March 22, 2021.⁸³ Comments were submitted by over 50 parties, including by ISO-NE, DC Energy, Dominion, EDF, ENEL/EnerNOC, Eversource, Exelon, NRDC, Vistra, EEI, EPRI, EPSA, New England State Agencies,⁸⁴ NRECA/LPPC, and Potomac Economics.

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

Still pending is the FERC’s March 20, 2020 NOPR⁸⁵ proposing to revise its existing transmission incentives policy and corresponding regulations.⁸⁶ 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.

⁸⁰ *Cybersecurity Incentives*, 173 FERC ¶ 61,240 (Dec. 17, 2020) (“*Cybersecurity Incentives NOPR*”).

⁸¹ The *Cybersecurity Incentives NOPR* was published in the *Fed. Reg.* on Feb. 5, 2021 (Vol. 86, No. 23) pp. 8,309-8,325.

⁸² *Managing Transmission Line Ratings*, 173 FERC ¶ 61,165 (Nov. 19, 2020) (“*Managing Transmission Line Ratings NOPR*”).

⁸³ The *Managing Transmission Line Ratings NOPR* was published in the *Fed. Reg.* on Jan. 21, 2021 (Vol. 86, No. 12) pp. 6,420-6,444.

⁸⁴ “New England State Agencies” are for purposes of this proceeding: CT Att’y Gen. William Tong, MA AG Maura Healey, the CT Dept. of Energy and Environ. Protection, the CT OCC, MOPA, NH OCA, Peter F. Neronha, RI AG, and Thomas J. Donovan, Jr., VT AG. The Feb 1 comments by the New England State Agencies broadly supported the FERC’s proposals.

⁸⁵ *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, 170 FERC ¶ 61,204 (Mar. 20, 2020) (“*Electric Transmission Incentives NOPR*”).

⁸⁶ 18 CFR 35.35 (2021).

- ◆ **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, 2020⁸⁷ 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 2222/2222-A: DER Participation in RTO/ISO Markets (RM18-9)**

On September 17, 2020, the FERC issued a final rule (“Order 2222”)⁸⁸ adopting reforms to remove what it found were barriers to the participation of distributed energy resource (“DER”)⁸⁹ 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 DER aggregations must:

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

⁸⁷ 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.

⁸⁸ *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 172 FERC ¶ 61,247 (Sep. 17, 2020).

⁸⁹ 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 DER aggregations;
- (5) address distribution factors and bidding parameters for DER aggregations;
- (6) address information and data requirements for DER aggregations;
- (7) address metering and telemetry requirements for DER aggregations;
- (8) address coordination between the RTO/ISO, the DER aggregator, the distribution utility, and the relevant electric retail regulatory authorities;
- (9) address modifications to the list of resources in a DER aggregation;
- (10) address market participation agreements for DER 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, 2021.⁹⁰ 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 DERs, it must demonstrate on compliance that its existing approach meets *Order 2222*'s requirements. Requests for extension of time to comply with *Order 2222* have been filed by MISO, SPP and PJM. Those requests are pending before the FERC. ISO-NE has signaled that it, too, plans to request an extension of time to February 2022 to comply with *Order 2222*.

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.⁹¹ On November 19, 2020, the FERC issued a "Notice of Denial of Rehearings by Operation of Law and Providing for Further Consideration".⁹² 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 2222-A. On March 18, 2021, the FERC issued *Order 2222-A*,⁹³ which addressed arguments on rehearing and set aside and clarified *Order 2222* in part. Specifically, as is its right under *Allegheny*, the FERC modified the discussion in *Order 2222* and set aside *Order 2222*, in part, by finding that the participation of demand response in DER aggregations is subject to the opt-out and opt-in requirements of *Orders 719* and *719-A*, providing further clarification on the FERC's interconnection policies pertaining to Qualifying Facilities ("QFs"), and

⁹⁰ *Order 2222* was published in the *Fed. Reg.* on Oct. 21, 2020 (Vol. 85, No. 204) pp. 67,094-6,158.

⁹¹ For purposes of this proceeding, "Public Interest Organizations" are Sierra Club, Sustainable FERC Project and NRDC.

⁹² *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Indep. Sys. Operators*, Order No. 2222, 173 FERC ¶ 62,090 (Nov. 19, 2020) (the "Notice").

⁹³ *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Indep. Sys. Operators*, Order No. 2222-A, 174 FERC ¶ 61,197 (Mar. 18, 2021).

modifying § 35.28(g)(12)(i) to make a non-substantive ministerial correction. Challenges, if any, to *Order 2222-A* are due on or before April 19, 2021.

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

As previously reported, *Order 860*,⁹⁴ issued three years after the FERC's *Data Collection NOPR*,⁹⁵ (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 *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 has posted 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 July 1, 2021, and submitters will have until close of business on November 2, 2021 to make their initial baseline submissions. Submitters will be required to obtain 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,⁹⁶ 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,⁹⁷ 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](#).

Notice Seeking Comments on Change to MBR Database. On March 18, 2021, the FERC issued a notice seeking comments on proposed changes to the MBR Data Dictionary to reflect the affiliations, or lack of affiliation, among Sellers for which their ultimate upstream affiliate is an institutional investor who acquired their securities pursuant to a section 203(a)(2) blanket authorization.⁹⁸ Specifically, the FERC proposes to update the MBR Data Dictionary and add the following three new attributes to the Entities table: the blanket authorization docket number, and the utility ID types and the utility IDs of the utilities whose securities were purchased under the corresponding blanket authorization docket number. Appropriate Sellers would be required to submit the docket number of the proceeding in which the FERC granted the section 203(a)(2)

⁹⁴ *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).

⁹⁵ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (July 21, 2016) ("*Data Collection NOPR*").

⁹⁶ 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.

⁹⁷ *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*").

⁹⁸ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 174 FERC ¶ 61,214 (Mar. 18, 2021).

blanket authorization and the upstream affiliate whose securities were acquired pursuant to the section 203(a)(2) blanket authorization. Comments on the Notice are due on or before [60 days after date of publication in the *Federal Register*].⁹⁹ In light of the proposed changes, the FERC deferred by three months the effective date of *Order 860* and its associated deadlines.

Effective Date Extended a Second Time by 3 Months. On March 18, 2021, the FERC issued a notice extending the effective and associated implementation dates of *Order 860* by an additional *three* months. The new *Order 860* effective date will be July 1, 2021, and the deadline for baseline submissions to and including November 2, 2021. First change in status filings under these new timelines will be due November 30, 2021.

April 22, 2021 Technical Workshop. On March 19, 2021, the FERC issued a supplemental notice of a technical workshop to discuss the functionality and features of the MBR Database. The workshop will now be held electronically on April 22, 2021 from 10 a.m. to 3 p.m. Individuals who are interested in registering for the conference can do so here:

<https://ferc.webex.com/ferc/j.php?MTID=e6dd18def200b281ff165e57325102ee0>.

- **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”).¹⁰⁰ 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.”¹⁰¹ Comments on the *NAESB WEQ v. 003.3 Standards NOPR* were due on or before November 3, 2020¹⁰² 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.

- **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.¹⁰³ 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

⁹⁹ The Notice has not yet been published in the *Federal Register*.

¹⁰⁰ *Standards for Business Practices and Communication Protocols for Public Utilities*, 172 FERC ¶ 61,047 (July 16, 2020) (“*NAESB WEQ v. 003.3 Standards NOPR*”).

¹⁰¹ The *NAESB WEQ v. 003.3 NOPR* at P .

¹⁰² 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.

¹⁰³ *Waiver of Tariff Requirements*, 171 FERC ¶ 61,156 (May 21, 2020) (“*Proposed Policy Statement*”).

- 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 analysis¹⁰⁴ 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 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

¹⁰⁴ 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.

waivers,¹⁰⁵ 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,¹⁰⁶ INGAA, Kansas Electric Power Coop. (“KEPC”), NGA, NGS, NRECA, Public Citizen, Sunflower Electric Power, and TAPS. Reply comments were filed by APPA, Joint Trade Associations,¹⁰⁷ 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*.¹⁰⁸ 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”).¹⁰⁹ 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, 2020.¹¹⁰ 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.

Complainant-Aligned Parties¹¹¹ answered the New England TO’s May 10 supplemental comments. On June 15, 2020, Joint Parties¹¹² 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.¹¹³ 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

¹⁰⁵ 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.

¹⁰⁶ “Indicated Generators” are Vistra, NRG, FirstLight, Cogentrix, and LS Power.

¹⁰⁷ “Joint Trade Associations” are AEE, AWEA, EEI, EPSA, INGAA, NGS, NRECA and SEIA.

¹⁰⁸ *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*”).

¹⁰⁹ 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.¹⁰⁹ 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).

¹¹⁰ 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.

¹¹¹ 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.

¹¹² “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.

¹¹³ “Six Cities” are the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California.

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)**

Since the last Report, on February 18, 2021, the FERC issued a new notice of inquiry ("NOI") in which it seeks new information and additional stakeholder perspectives to help it explore whether it should revise its approach under the currently effective policy statement on the certification of new natural gas transportation facilities to determine whether a proposed natural gas project is or will be required by the public convenience and necessity, as that standard is established in section 7 of the Natural Gas Act.¹¹⁴ The 2021 NOI is to provide an opportunity for stakeholders to refresh the record and provide updated information and additional viewpoints to help the FERC assess its policy.¹¹⁵ The FERC strongly urged stakeholders to not resubmit previously filed comments, which remain in the record of this proceeding.¹¹⁶ Comments on the 2021 NOI are due on or before April 26, 2021.¹¹⁷ On March 15, 2021, Joint Associations¹¹⁸ moved for a 45-day extension of time to submit comments in response to the NOI. That request is pending before the FERC.

XIII. FERC Enforcement Proceedings

Electric-Related Enforcement Actions

- **Alliance NYGT (IN21-4)**

On February 8, 2021, the FERC approved a Stipulation and Consent Agreement ("Agreement") with Alliance NYGT LLC ("NYGT")¹¹⁹ that resolved OE's investigation into whether NYGT violated the FERC's Unit Operation and Communications Market Behavior Rules¹²⁰ and several provisions of the NYISO Tariff, related to its submission of offers and information to NYISO. Specifically, Enforcement found that NYGT failed to timely notify NYISO that its generators, after completion of gas equipment upgrades in 2012, had the ability to operate on gas, a less expensive fuel than kerosene. As a result, NYGT received inflated make-whole payments. Under the Agreement, NYGT must **disgorge \$369,264.19 plus interest**, and pay a **civil penalty of \$420,000**. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

¹¹⁴ *Certification of New Interstate Natural Gas Facilities*, 174 FERC ¶ 61,125 (Feb. 18, 2021) ("2021 NOI").

¹¹⁵ *Id.* at P 3.

¹¹⁶ The 2021 NOI follows an April 19, 2018 NOI that sought comments 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. Literally thousands of individual and mass-mailed comments were filed on the 2018 NOI.

¹¹⁷ The 2021 NOI was published in the *Fed. Reg.* on Feb. 24, 2021 (Vol. 86, No. 35) pp. 11,268-11,274.

¹¹⁸ "Joint Associations" are: the American Forest & Paper Association ("AF&PA"), American Gas Association ("AGA"), the American Petroleum Institute ("API"), the American Public Gas Association ("APGA"), the Center for LNG ("CLNG"), the Energy Infrastructure Council ("EIC"), GPA Midstream Association ("GPA"), the Industrial Energy Consumers of America ("IECA"), Independent Petroleum Association of America ("IPAA"), Interstate Natural Gas Association of America ("INGAA"), the Natural Gas Supply Association ("NGSA"), and the Process Gas Consumers ("PGC").

¹¹⁹ *Alliance NYGT LLC*, 174 FERC ¶ 61,086 (Feb. 8, 2021).

¹²⁰ 18 C.F.R. § 35.41(a)-(b) (2021).

Natural Gas-Related Enforcement Actions

- **Rover Pipeline, LLC and Energy Transfer Partners, L.P. (IN19-4)**

On March 18, 2021, the FERC issued a show cause order¹²¹ in which it directed Rover Pipeline, LLC (“Rover”) and Energy Transfer Partners, L.P. (“ETP” and together with Rover, “Respondents”) to show cause why they should not be found to have violated Section 157.5 of the FERC’s regulations by misleading the FERC in its Application for Certificate of Public Convenience and Necessity under section 7(c) of the Natural Gas Act (“NGA”).¹²² The FERC directed Respondents to show cause why they should not be assessed civil penalties in the amount of **\$20.16 million**. On March 23, Respondents asked for a 60-day extension of time, to June 18, 2021, to file their answer. On March 29, FERC staff responded to Respondent’s motion, not opposing the extension of time, but clarifying points made in Respondent’s request.

- **BP (IN13-15)**

On December 17, 2020, the FERC issued *Opinion 549-A*,¹²³ a 159-page decision addressing arguments raised on rehearing requested of *Opinion 549*.¹²⁴ *Opinion 549-A* modifies the discussion in *Opinion 549*, 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.¹²⁵ *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.¹²⁶

On December 29, 2020, 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. On January 19, BP filed a notice that it disgorged \$250,295 (\$207,169 principal plus interest), divided equally (\$83,431.67) among the following 3 entities identified in the “2016 Comprehensive Energy Assistance Program Subrecipient List”: Dallas County Dept. of Health and Human Services (serving Dallas); El Paso Community Action, Project Bravo (Serving El Paso); and Panhandle Community Services (serving Armstrong and numerous other counties), again under protest and with full reservation of rights pending the outcome of judicial review of *Opinion 549/549-A*.

¹²¹ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 174 FERC ¶ 61,208 (Mar. 18, 2021) (“*Rover/ETP Show Cause Order*”).

¹²² Specifically, Rover stated that it was “committed to a solution that results in no adverse effects” to the Stoneman House, an 1843 farmstead located near Rover’s largest proposed compressor station. In truth, the OE Staff Report alleges, Rover was simultaneously planning to purchase the house with the intent to demolish it, if necessary, to complete its pipeline. The OE Staff Report alleges that Rover purchased the house in May 2015 and demolished the house in May 2016. The OE Staff Report further finds that despite taking these actions during the year and a half that Rover’s application was pending before the FERC, Rover did not notify the FERC that it purchased the Stoneman House, intended to destroy the Stoneman House, and did destroy the Stoneman House. The OE Staff Report therefore concludes that Rover violated section 157.5’s requirement for full, complete and forthright applications, through its misrepresentations and omissions, when it decided not to tell FERC that it had purchased the house and was considering demolishing it, and when Rover demolished it in May 2016 without notifying FERC.

¹²³ *BP America Inc. et al.*, Opinion No. 549-A, 173 FERC ¶ 61,239 (Dec. 17, 2020) (“*BP Penalties Allegheny Order*”).

¹²⁴ *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 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*”))).

¹²⁵ *BP Penalties Allegheny Order* at P 1.

¹²⁶ *Id.* at P 319.

- **Total Gas & Power North America, Inc. et al. (IN12-17)**

On April 28, 2016, the FERC issued a show cause order¹²⁷ 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 2012.¹²⁸

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.

XIV. Natural Gas Proceedings

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

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
 - ▶ February 2, 2020 application for a certificate of public convenience and necessity pending; Iroquois requests on January 26, 2021 that the FERC act promptly and issue the certificate
- **Atlantic Bridge Project (CP16-9)**
 - ▶ On February 24, 2020, the FERC authorized Algonquin Gas Transmission, LLC (“Algonquin”) and Maritimes & Northeast Pipeline, LLC (“Maritimes”) to place facilities associated with the Atlantic Bridge Project into service.¹²⁹ Rehearing of the Authorization Order was timely requested, but denied by operation of law.

¹²⁷ *Total Gas & Power North America, Inc.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) (“TGPNA Show Cause Order”).

¹²⁸ 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.

¹²⁹ *Algonquin Gas Transmission, LLC*, Docket No. CP16-9 at 1 (Sep. 24, 2020) (delegated order) (“Authorization Order”).

- ▶ In a fairly unprecedented order issued February 18, 2021,¹³⁰ the FERC, expressing concerns regarding operation of the project, established briefing on the following matters:
 - In light of the concerns expressed regarding public safety, is it consistent with the FERC's responsibilities under the Natural Gas Act ("NGA") to allow the Weymouth Compressor Station to enter and remain in service?
 - Should the Commission reconsider the current operation of the Weymouth Compressor Station in light of any changed circumstances since the project was authorized? For example, are there changes in the Weymouth Compressor Station's projected air emissions impacts or public safety impacts the Commission should consider? We encourage parties to address how any such changes affect the surrounding communities, including environmental justice communities.
 - Are there any additional mitigation measures the Commission should impose in response to air emissions or public safety concerns?
 - What would the consequences be if the Commission were to stay or reverse the Authorization Order?
- ▶ Requests for rehearing of the Briefing Order were filed by Algonquin, NGSA and Center for Liquefied Natural Gas, and by America and Energy Infrastructure Council. Cheniere Energy submitted comments in support of the requests for rehearing. The requests for rehearing are pending, with FERC action required on or before April 19, 2021, or the requests will be deemed denied by operation of law.
- ▶ Initial briefs in response to the Briefing Order are due April 5, 2021; reply briefs, May 5, 2021. Comments have thus far been filed by Footprint Power, the Town of Weymouth, the Town of Weymouth Town Council, and 5 private citizens.
- ▶ The FERC noted that the facilities placed in service pursuant to the Authorization Order may remain in service while it considers the issues set for briefing.

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.¹³¹ 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*.¹³² 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

¹³⁰ *Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, LLC*, 174 FERC ¶ 61,126 (Feb. 18, 2021) ("Briefing Order").

¹³¹ *Nat'l Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 167 FERC ¶ 61,007 (Apr. 2, 2019).

¹³² *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).

Northern Access Project, served as a motion requesting a waiver determination by the FERC,¹³³ 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, 2017.¹³⁴ 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.¹³⁵ 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 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,¹³⁶ 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.¹³⁷
- ▶ 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,¹³⁸ 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",

¹³³ 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).

¹³⁴ *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*").

¹³⁵ *Nat'l Fuel Gas Supply Corp. v. NYSDEC et al.* (2d Cir., Case No. 17-1164).

¹³⁶ 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).

¹³⁷ 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).

¹³⁸ *National Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 173 FERC ¶ 61,197 (Dec. 1, 2020).

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.¹³⁹

XV. 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, the following series of online technical forums to discuss the issues presented in the Vision Statement were held:

Jan 13, 2021	Wholesale Market Reform
Jan 25, 2021	Wholesale Market Reform
Feb 2, 2021	Transmission Planning
Feb 25, 2021	Governance Reform
Mar 18, 2021	Equity and Environmental Justice

Written comments on the topics and discussions addressed in the on the equity and environmental justice topics and discussions are due by April 29, 2021 and may be submitted to were claire.sickinger@ct.gov. Comments will be publicly posted on WholesaleEnergy@NewEnglandEnergyVision.com.

Recordings of the technical forums, as well as draft notices, agendas, and additional information on these sessions, are available on the New England States' Vision Statement website (<https://newenglandenergyvision.com/>). Details on an evening forum related to environmental justice issues has yet to be announced.

XVI. 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).

- **ISO-NE Implementation of Order 1000 Exemptions for Immediate Need Reliability Projects (20-1422) Underlying FERC Proceeding: EL19-90¹⁴⁰**

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

¹³⁹ *Id.* at P 10.

¹⁴⁰ *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

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.

On March 2, 2021, the Court at FERC's request, issued an amended briefing schedule to apply in this case, adding roughly one month to each deadline previously identified: Petitioner's Brief due April 5, 2021; Intervenor in Support of Petitioners Brief, April 12, 2021; FERC's brief, June 11, 2021; Intervenor in Support of FERC, July 9, 2021; Petitioner's Reply Brief, July 9, 2021; Intervenor in Support of Petitioner Reply Brief, July 9, 2021; Deferred Appendix, July 16, 2021; and Final Briefs July 30, 2021.

- **CIP IROL Cost Recovery Rules (20-1389)**
Underlying FERC Proceeding: ER20-739¹⁴¹
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 added roughly 45 days to each procedural deadline previously established. On March 1, 2021, Cogentrix and Vistra filed Petitioners' Brief (which it corrected on March 8 to remove the use of the acronym "NERC" to identify the "North American Electric Reliability Corporation). Next up are FERC's Respondent Brief (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; 21-1067; 21-1070)(consolidated)**
Underlying FERC Proceeding: EL18-1639¹⁴²
Petitioners: Mystic (20-1343), NESCOE (20-1361, 21-1067), MA AG (20-1362), CT Parties (20-1365, 20-1368, 21-1070)

Mystic, NESCOE, MA AG, and CT Parties have 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.¹⁴³ The cases have been consolidated into Case No. 20-1343. Since the last Report, on February 17 and 24, 2021, the Court consolidated with 20-1343 the most recent appeals in cases 21-1067 (NESCOE) and 21-1070 (CT Parties), respectively. On March 25, 2021, the Court issued an order returning this case to its active docket. On March 26, the Court granted the interventions by MMWEC/NHEC, NESCOE, and ENECOS and its anticipation that it will file a proposed briefing schedule in this consolidated case.

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).

¹⁴¹ *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*").

¹⁴² *July 2018 Order; July 2018 Rehearing Order; Dec 2018 Order; Dec 2018 Rehearing Order; Jul 17 Compliance Order.*

¹⁴³ 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, 20-1331) (consolidated)****

Underlying FERC Proceeding: ER18-619¹⁴⁴

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.

On January 12, 2021, the Court dismissed as moot the FERC's October 19 motion to hold this proceeding in abeyance and ordered that the motion to dismiss be referred to the merits panel (Judges Pillard, Katsas and Walker) and addressed by the parties in their briefs. On January 25 and 26, CT Parties and MMWEC and NHEC filed statements of issues and notices that they intend to participate in support of Petitioners. On January 27, the Court ordered the parties to submit by February 26, 2021, proposed formats for the briefing of these cases.

Since the last Report, the Court granted NEPOOL's intervention and established a briefing schedule that calls for the following: Petitioners' Brief (May 3, 2021); Intervenor for Petitioners' Brief (May 10, 2021); Respondent's Brief (July 9, 2021); Intervenor for Respondent's Brief (July 16, 2021); Petitioners' Reply Brief (August 6, 2021); Intervenor for Petitioners' Reply Brief (August 6, 2021); Deferred Appendix (August 13, 2021); and Final Briefs (August 27, 2021). In addition, on March 26, Petitioners moved the Court to hold this matter in abeyance for 180 days (in light of the possibility that the FERC will act, following its March 23, 2021 technical conference on capacity issues, "to reform ISO New England's capacity market and change the rules at issue in this case"). Petitioners' request is pending before the FERC.

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

Underlying FERC Proceeding: ER15-414¹⁴⁵

Petitioners: TOs' (CMP et al.)

On August 28, 2020, the TOs¹⁴⁶ 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*¹⁴⁷ 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. On January 25, 2021, the FERC requested that the Court continue to hold this petition for review in abeyance for an additional three months, with parties to file motions to govern future proceedings at the end of that period. The FERC requested continued abeyance because of its intention to issue a

¹⁴⁴ *ISO New England Inc.*, 162 FERC ¶ 61,205 (Mar. 9, 2018) ("*CASPR Order*").

¹⁴⁵ *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) ("*Order Rejecting Filing*").

¹⁴⁶ 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.

¹⁴⁷ *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*").

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 FERC. Petitioners consented to the requested abeyance. On February 11, 2021, the Court issued an order that that this case remain in abeyance pending further order of the court and directed the parties to file motions to govern future proceedings in this case by April 26, 2021.

- **2013/14 Winter Reliability Program Order on Compliance and Remand (20-1289, 20-1366) (consol.)**
Underlying FERC Proceeding: ER13-2266¹⁴⁸
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*.¹⁴⁹ 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 motion. On January 11, 2021, TransCanada submitted its initial brief. On March 12, FERC filed its Respondent Brief. Next up is Petitioner's Reply Brief due April 9, 2021. The Deferred Appendix and Final Briefs are due , April 16 and April 30, 2021, respectively.

- **ISO-NE's Inventoried Energy Program (Chapter 2B) Proposal (19-1224***; 19-1247; 19-1252; 19-1253)(consolidated); Underlying FERC Proceeding: ER19-1428¹⁵⁰**
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, 2020, the Court ordered that the cases be removed from abeyance. Opening Briefs from Petitioners were filed on December 11, 2020. The FERC filed its Respondent Brief on February 9. Intervenor for Respondent Briefs were filed on February 16 by ISO-NE and NEPGA. On February 24, the FERC filed an amended certified index to the record. Petitioners' Reply Brief was filed on March 30, 2021. The Deferred Appendix will be filed on April 20, 2021; Final Briefs are due on or before May 4, 2021.

¹⁴⁸ 171 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*").)

¹⁴⁹ 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.

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

Other Federal Court Activity of Interest

- **Order 872 (20-72788,* 21-70113; 20-73375, 21-70113) (consol.) (9th Cir.)**
Underlying FERC Proceeding: RM19-15¹⁵¹
Petitioners: SEIA et al.

On September 17, 2020, SEIA petitioned the 9th Circuit Court of Appeals for review of *Order 872*.¹⁵² 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. On January 29, 2021, SEIA requested that this case be consolidated with the others, and that the abeyance period be extended to give the parties additional time to coordinate and develop a unified, efficient briefing schedule.

Since the last Report, on March 25, 2021, the Court granted SEIA's unopposed March 5, 2021 motion to lift the stay in this proceeding. Briefing will resume as follows: Petitioners' briefs (May 27, 2021); joint brief of petitioner-intervenors (June 28, 2021); motions and associated briefs by amici curiae in support of petitioners (June 28, 2021); Respondent's brief (September 27, 2021); joint brief of respondent-intervenors (October 27, 2021); motions and associated briefs by amici curiae in support of respondent (October 27, 2021); and any optional reply briefs (December 13, 2021).

- **PennEast Project (18-1128)**
Underlying FERC Proceeding: CP15-558¹⁵³
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")¹⁵⁴ 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 ("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 March 23, 2021, noting developments since the December 23, 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."

¹⁵¹ *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).

¹⁵² *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.

¹⁵³ *PennEast Pipeline Co., LLC*, 162 FERC ¶ 61,053 (Jan. 19, 2018), *reh'g denied*, 163 FERC ¶ 61,159 (May 30, 2018).

¹⁵⁴ 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.

- **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; EL15-45¹⁵⁵

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

The MISO Transmission Owners (TOs), Transource and "Dec 23 Petitioners",¹⁵⁶ 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. The FERC filed a certified Index to the Record on December 3, 2020, the Parties filed a joint unopposed briefing schedule on December 23, 2020. Statements of issues were filed on February 8, 2021. Since the last Report, Petitioners' Briefs were filed on March 10. On March 17, 2021, a motion to participate as amicus curiae was jointly filed by NEP, CPM, Eversource, Fitchburg and Unitil, NHT, VTransco, Versant Power, and UI ("New England Parities"). On March 18, New England Parties submitted an amicus brief in support of Transmission Owning Petitioners. On March 24, 2021, Intervenors in Support of Petitioners¹⁵⁷ filed their Brief. The following deadlines remain: FERC's brief, June 8, 2021; Intervenors in Support of FERC, June 22, 2021; Petitioners Reply Briefs, July 8, 2021; Intervenors in Support of Petitioners Reply Briefs, July 22, 2021; Joint Deferred Appendix, August 6, 2021; and Final Briefs, August 19, 2021.

¹⁵⁵ *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).

¹⁵⁶ "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.

¹⁵⁷ The Intervenors for Petitioners Brief was filed by Citizens Utility Board of Wisconsin, Illinois Citizens Utility Board, Indiana Office of Utility Consumer Counselor, Iowa Office of Consumer Advocate, Louisiana Public Service Commission, Michigan Citizens Against Rate Excess, Minnesota Department of Commerce, and Missouri Office of Public Council.

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