

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of July 7, 2021

The following activity, as more fully described in the attached litigation report, has occurred since the report dated June 1, 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	NEPGA Net CONE Complaint (EL21-26)	Jun 28	EPSA/NEPGA request rehearing of both the <i>NEPGA Net Cone Complaint Order</i> and the <i>Updated CONE, Net Cone and PPR Values Order</i>
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II. Rate, ICR, FCA, Cost Recovery Filings



* 7	FCA16 De-List Bids Filing (ER21-2342)	Jul 1 Jul 6-7	ISO-NE submits filing describing Permanent and Retirement De-List Bids and substitution auction test prices submitted on or prior to the FCA16 Existing Capacity Retirement Deadline; comment date Jul 22 Calpine, NRG intervene
* 7	CSC CIP IROL Cost Recovery: Pre-Jun 1, 2021 Regulatory Asset Cost Recovery (ER21-2334)	Jul 1	CSC requests authorization to establish and use a regulatory asset to recover CIP IROL Costs that it incurred from Jan 2016 to May 31, 2021; comment date Jul 22, 2021
8	FCA15 Results Filing (ER21-1226)	Jun 24	FERC accepts FCA15 results filing, eff. Jun 26, 2021
9	MPD OATT 2021 Annual Informational Filing (ER20-1977)	Jun 14	Versant submits corrections to its May 3, 2021 annual update of charges under the MPD OATT
9	Mystic 8/9 Cost of Service Agreement (ER18-1639)	Jun 1 Jun 2	Mystic submits info. filing re: Fuel Supply Agreement change Mystic submits fourth compliance filing in response to requirements of the <i>April 26 Order</i>

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



* 11	Removal of Appendix B from Market Rule 1; Deletion of Assoc. Tariff Provisions (ER21-2220)	Jun 28 Jun 29-Jul 7	ISO-NE and NEPOOL file revisions to remove from the Tariff Market Rule 1 Appendix B (Imposition of Sanctions by the ISO); comment date Jul 19, 2021 Calpine, NRG, NESCOE intervene
* 11	CPower Waiver Request (determination of ARA3 Summer ARA Qualified Capacity for Demand Capacity Resources) (ER21-2135)	Jun 14 Jun 22, Jul 6	CPower requests waiver of Tariff Section III.13.4.2.1.2.2.4.1(a)(i)(2) so that the determination of the amount of capacity that CPower can offer into the monthly reconfiguration auctions for CPower's Summer-only On-Peak Demand Resources is not based audit values significantly lower than its most recent audit NEPOOL, National Grid intervene
11	eTariff § III.13.7 Corrections (ER21-1883)	Jun 28	FERC accepts eTariff corrections, eff. Apr 1, 2021
12	eTariff § III.13.1 Corrections (ER21-1766)	Jun 22	FERC accepts eTariff corrections, eff. as requested

12	Waiver Request: FCA16 Qual. Req. (CMEEC, MMWEC, Pascoag, VT DPS) (ER21-1726)	Jun 4	FERC grants waiver request; executed versions of completed NYPA agreements must be submitted as soon as practicable after the close of the submission window, and prior to Oct 1, 2021
12	ISO-NE IMM Ethical Standards Changes (ER21-1666)	Jun 3	FERC accepts changes, eff. Jun 12, 2021
12	FCA16 ORTP Jump Ball Filing (ER21-1637)	Jun 7	FERC accepts in part, and rejects in part, pieces of NEPOOL's and ISO-NE's ORTP jump ball proposals, eff. June 8, 2021
		Jun 22	ISO-NE submits compliance filing that combines the alt. proposals as accepted by the FERC
		Jul 7	Clean Energy Advocates request reh'g of <i>ORTP Jump Ball Order</i>
13	Updated CONE, Net Cone and PPR Values (eff. FCA16) (ER21-787)	Jun 11	ISO-NE files updated CONE, Net Cone and PPR values, \$12,400, \$7.468 and \$9,337, respectively, to reflect gas compression cost
		Jun 28	EPSA/NEPGA request rehearing of both the <i>NEPGA Net Cone Complaint Order</i> and the <i>Updated CONE, Net Cone and PPR Values Order</i>

V. OATT Amendments / TOAs / Coordination Agreements

* 14	BTM Generation Proposal (ER21-2337)	Jul 1 Jul 2-7	PTO AC and ISO-NE file proposal; comment date Jul 22, 2021 IECG, NESCOE, NRG intervene
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V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

* 14	Schedule 21-VP 2021 Annual BHD Informational Filing (ER20-2119)	Jun 15 Jun 30	Versant submits annual update to its local transmission service rates for its Bangor Hydro District Versant files revised calculation of charges to reflect a settlement in principle reached with the MPUC
* 15	Schedule 21-GMP: Annual True Up Calculation Informational Filing (ER12-2304)	Jun 1	GMP submits annual info filing containing true-up calculation of its actual costs for the Jan 1, 2020 through Dec 31, 2020 period
* 15	Schedule 21-NSTAR Annual Informational Filing (ER09-1243; ER07-549)	Jun 1 Jun 30	NSTAR submits an info. filing containing the true-up of billings under Sched. 21-NSTAR for the Jan 1, 2020 through Dec 31, 2020 period NSTAR submits CWIP supplement to Jun 1 annual info. filing
* 16	Schedule 21-CMP Annual Informational Filing (ER09-938)	Jun 30	CMP files updated formula rates reflecting actual 2019 cost data and estimated 2020 cost data

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

16	Capital Projects Report - 2021 Q1 (ER21-1873)	Jun 17	FERC accepts 2021 Q1 Report, eff. Apr 1, 2021
* 17	IMM 2020 Annual Markets Report (ZZ21-4)	Jun 11	IMM files annual report covering calendar year 2020

IX. Membership Filings

* 18	July 2021 Membership Filing (ER21-2267)	Jun 30	NEPOOL requests that the FERC accept (i) the membership of Gridmatic Isotria, InBalance, North East Offshore, and NEPGA; (ii) the termination of Priogen Power; and (iii) WP&G Holdings' name change; comment date Jul 21, 2021
18	June 2021 Membership Filing (ER21-2026)	Jul 6	FERC accepts (i) the membership of Hydroland and Vineyard Wind 1; (ii) the termination of Convergent Power; and (iii) Millennium's name change
18	May 2021 Membership Filing (ER21-1804)	Jun 28	FERC accepts (i) the membership of Hydroland, Protor Energy, LLC; and Voltus Inc. (AR Sector, Load Response Sub-Sector); (ii) the termination of the Participant status of Great Bay Power Marketing; and (iii) the Millennium Power Company, LLC name change
18	Suspension Notice – Woods Hill Solar (not docketed)	Jun 4 Jun 10	ISO-NE files notice of suspension of Woods Hill Solar from the New England Markets Woods Hill Solar cures Financial Assurance Default; suspension lifted

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

18	CIP Standards Development: Info Filings on Virtualization and Cloud Computing Services Projects (RD20-2)	Jun 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)
* 19	Revised SOL Reliability Standards (RM21-19)	Jun 28	NERC files for approval revisions to FAC-003-5, 011-4, 014-3; IRO-008-3; PRC 002-3, 023-5, -026-2; and TOP-001-6
* 19	Revised Cold Weather Reliability Standards (RM21-16)	Jun 17	NERC files for approval revisions to EOP-011-2, IRO-010-4 and TOP-003-5
* 21	Report of Comparisons of Budgeted to Actual Costs for 2020 for NERC and the Regional Entities (RR21-5)	Jun 1	FERC files Report
* 21	Solar Winds and Related Supply Chain Compromise White Paper (not docketed)	Jul 7	FERC staff and E-ISAC release joint white paper emphasizing the need for continued vigilance by the electricity industry related to supply chain compromises and incidents and recommending specific cybersecurity mitigation actions to better ensure BPS security

XI. Misc. - of Regional Interest

21	203 Application: PPL/Narragansett (EC21-87)	Jun 17, 24 Jul 7	RI DPU and RI AG intervene out-of-time and submit comments PPL and Narragansett answer RI AG comments
22	203 Application: Seneca/Rice et al. (EC21-84)	Jun 14	FERC authorizes sale of upstream ownership interests in Seneca
22	203 Application: ReEnergy/Ember (EC21-83)	Jun 11	FERC authorizes sale of 55% of membership interests in ReEnergy Livermore Falls LLC and ReEnergy Stratton LLC to a new joint venture holding company to be owned by ReEnergy Biomass and Ember RGE Holdings, LLC
22	203 Application: Engie/Hull Street (Waterbury Generation) (EC21-75)	Jun 8	Notice filed that transaction was consummated on Jun 3, 2021
* 22	203 Application: NRG/Generation Bridge (ArcLight) (EC21-74)	Jun 24, 28	Applicants submit workpapers supporting Apr 6 application

* 23	D&E Agreement: NSTAR/Hingham Municipal Light Plant (ER21-2281)	Jun 30	NSTAR files Hingham D&E Agreement; comment date Jul 21, 2021
* 23	D&E Agreement: NSTAR/Medway Grid (ER21-2273)	Jun 30	NSTAR files Medway D&E Agreement; comment date Jul 21, 2021
* 23	Amended & Restated IRH Support & Use Agreements eTariff Compliance Filings (ER21-2163 et al.)	Jun 21	Filing Parties submit Support and Use Agreements in eTariff format; comment date Jul 9, 2021
24	D&E Agreement: NSTAR/Cranberry Point Energy Storage (ER21-1908)	Jul 6	FERC accepts Agreement, eff. May 15, 2021
24	D&E Agreement Cancellation: CL&P/Gravel Pit Solar (ER21-1740)	Jun 21	FERC accepts notice of cancellation, eff. Apr 23, 2021

XII. Misc. - Administrative & Rulemaking Proceedings



26	Climate Change, Extreme Weather, and Elec. Sys. Reliability: Jun 1-2 Tech. Conf. (AD21-13)	Jun 1-2 Jun 3	FERC holds tech conf Speaker materials posted to eLibrary
26	Electrification and the Grid of the Future: Apr 29 Technical Conference (AD21-12)	Jun 21-Jul 1	Nearly 20 sets of comments filed
26	Resource Adequacy - Modernizing Electricity Mkt Design (AD21-10)	Jun 4 Jul 1	FERC invites post tech conf comments; comment date Jul 19, 2021 Updated transcript of New England conf posted to eLibrary
27	The Office of Public Participation (AD21-9)	Jun 24	FERC issues report detailing the creation of the Office of Public Participation
27	ISO/RTO Credit Principles and Practices (AD21-6)	Jun 7-8 Jul 6	Post tech conf comments filed by ISO-NE , Appian Way , Committee of Chief Risk Officers , CPV , DC Energy , Energy Trading Institute , EPSA , Financial Marketers Coalition , ISO/RTO Council , MISO , NYISO , PJM , SPP , Vitol NEPOOL files comments in response to IRC comments
28	Increasing Market & Planning Efficiency Through Improved Software Tech Conf (AD10-12)	Jun 17 Jun 22-24 Jul 1	FERC issues second sup. and final agenda for Jun 22-24 tech conf FERC holds 12th consecutive tech. conf. on this topic; post-tech conf comments due Jul 30, 2021 Panelist materials posted in eLibrary
29	NOPR: Electric Transmission Incentives Policy (RM20-10)	Jun 22-30	Over 60 sets of comments filed, including by the New England TOs , MMWEC/NHEC/CMMEC , NECOS , NESCOE , Potomac Economics , and CT PURA ; Reply comments due on or Jul 26, 2021
31	Order 2222/2222-A/2222-B: DER Participation in ISO/RTO Markets (RM18-9)	Jun 17 Jun 22	FERC issues <i>Order 2222-B</i> , modifying the discussion in <i>Order 2222-A</i> and setting aside, in part, and clarifying, in part, <i>Order 2222-A</i> ISO-NE submits first process status update
33	Order 860/860-A: Data Collection for Analytics & Surveillance and MBR Purposes (RM16-17)	Jun 7	EEL , the Global LEI Foundation , TAPS , and XBRL US file comments
25	Orders 864/864-A (Public Util. Trans. ADIT Rate Changes): New England Compliance Filings (various)	Jul 6	<i>ER20-2429-001 (CMP)</i> . CMP responds to May 4, 2021 deficiency letter; comments date Jul 27, 2021

XIII. FERC Enforcement Proceedings

37	GreenHat (IN18-9)	Jun 11	Respondents elect the federal district court path described in FPA § 31(d)(3) for any future adjudication of these allegations in the event that the FERC chooses to pursue a civil penalty against Respondents
		Jun 16	FERC extends Respondents answer period to and including July 6, 2021
* 38	Shell Energy NA (US) (IN21-8)	Jun 15	FERC approves Stipulation and Consent Agreement that resolved OE's investigation into whether Shell engaged in a related-positions fraudulent scheme during the May 2016 bidweek, in violation of NGA section 4A and FERC's Anti-Manipulation Rule; Shell must disgorge \$48,317 plus interest , and pay a \$951,683 civil penalty to the United States Treasury
38	Rover Pipeline, LLC and Energy Transfer Partners, L.P. (IN19-4)	Jun 21	Rover and ETP answer Show Cause Order, asserting that the FERC should dismiss this matter and decline to initiate an enforcement action

XIV. Natural Gas Proceedings

40	Iroquois ExC Project (CP20-48)	Jun 11	FERC staff issues notice of draft EIS; comment date Aug 2, 2021
40	Atlantic Bridge Project (CP16-9)	Jun 15	Algonquin, INGAA request rehearing of <i>May 19 Order</i>
		Jun 16	Algonquin petitions DC Circuit for review of <i>Briefing Order, April 19 Notice of Denial of Rehearings by Operation of Law, and May 19 Order</i>

XV. State Proceedings & Federal Legislative Proceedings

43	New England States' Vision Statement	Jun 29	NESCOE Managers publish Progress Report to the New England Governors Regarding "Advancing the New England Energy Vision"
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XVI. Federal Courts

44	ISO-NE Implementation of <i>Order 1000</i> Exemptions for Immediate Need Reliability Projects (20-1422)	Jun 11	FERC files Respondent Brief
44	CIP IROL Cost Recovery Rules (20-1389)	Jun 28	Cogentrix/Vistra file Petitioners' Reply Brief
44	Mystic 8/9 COS Agreement (20-1343 et al.) (consol.)	Jun 23 Jun 28	Court establishes briefing schedule Court orders FERC to file certified index to the record by Jul 12, 2021
47	Order 872 (9th Cir.) (20-72788 et al.) (consol.)		SEIA and Other Petitioners submit Petitioners' briefs
48	PennEast Project (18-1128)	Jun 22	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"
48	<i>Opinion 569/569-A</i> : FERC's Base ROE Methodology (16-1325 et al.) (consol.)	Jun 8 Jun 22	FERC files Respondent brief Intervenors in Support of FERC file Joint Brief
2	Algonquin Atlantic Bridge Project <i>Briefing Order</i> (21-1115)	Jun 4 Jun 4 Jun 21	Appearances, docketing statements and a statement of issues filed FERC files unopposed motion to hold this proceeding in temporary abeyance, until Aug 2, 2021 Court grants Jun 4 abeyance motion, directing the parties to file motions to govern future proceedings by Aug 6, 2021

M E M O R A N D U M

TO: NEPOOL Participants Committee Members and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: July 8, 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 July 7, 2021. If you have questions, please contact us.

COVID-19

- **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 for Participants" was revised on May 18, 2021 to make two additional 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

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).

⁴ *Chief Administrative Law Judge's Notices to the Public*, Docket No. AD20-12 (May 18, 2021) (requiring that only attorneys may access Live Litigation (§VI(a)(vii)) and encouraging that privileged sessions be limited and revising guidance on privileged versus public session management (§VI(k)).

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).

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)**

As previously reported, Green Development, LLC ("Green Development") filed on February 10, 2021 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. 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. National Grid filed its answer on March 2, 2021. 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. On April 9, National Grid answered those answers. There was no activity in this proceeding since the last Report. 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).

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

On May 28, 2021, the FERC denied NEPGA's December 11, 2020 Net CONE complaint against ISO-NE.¹² 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.¹³ In denying the Complaint, the FERC found that ISO-NE did not violate its current Tariff or the filed rate doctrine by using the proposed methodology to recalculate Net CONE. The FERC said that ISO-NE was "entitled to file a revised Net CONE definition pursuant to FPA section 205 and, as such, it was appropriate for ISO-NE to have performed its Net CONE calculations for the next FCA consistent with the definition it intended to file and have in effect in advance of that FCA".¹⁴ Assertions regarding

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).

¹² *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 175 FERC ¶ 61,177 (May 28, 2021) ("*NEPGA Net Cone Complaint Order*").

¹³ NEPGA also asked the FERC to find unjust and unreasonable the Net CONE value for FCAs 16-18 filed in ER21-787. Those values were conditionally accepted in a concurrently-issued order (see ER21-787 in Section III below). In the *NEPGA Net Cone Complaint Order*, the FERC said that NEPGA had not demonstrated that substituting the Net CONE values calculated using the old methodology (undoing the filing in ER21-787) was appropriate or necessary to address the alleged filed rate doctrine violation. *NEPGA Net Cone Complaint Order* at P. 55.

¹⁴ *Id.* at P 53.

the impact of the proposed methodology to the market were left to be addressed in ER21-787 (see Section III below).¹⁵

Request for Rehearing. On June 28, 2021, EPSA and NEPGA jointly requested rehearing of both the *NEPGA Net Cone Complaint Order* and the *Updated CONE, Net Cone and PPR Values Order*. The EPSA/NEPGA requests for rehearing are pending, with FERC action required on or before July 28, 2021, or the requests will be deemed denied by operation of law.

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)**

As previously reported, NECEC Transmission LLC (“NECEC”) and Avangrid Inc. (together, “Avangrid”) filed a complaint (the “Complaint”) on October 13, 2020 requesting FERC action “to stop NextEra from unlawfully interfering with the interconnection of the New England Clean Energy Connect transmission project (“NECEC Project”)” and seeking, among other things, an initial, expedited order that would grant certain relief¹⁶ and direct NextEra to immediately commence engineering, design, planning and procurement activities that are necessary for NextEra to construct the generator owned transmission upgrades during Seabrook Station’s Planned 2021 Outage. NextEra submitted an answer to the October 13 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. Avangrid answered NextEra’s answer and NextEra answered Avangrid’s November 17 answer (“supplemental answer”), repeating its request that the FERC dismiss or deny the Complaint. Avangrid also answered the supplemental answer.

Avangrid amended the Complaint on March 26, 2021 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 (which did not occur). On April 15, 2021, NextEra answered the amended Complaint. On April 20, 2021, Avangrid answered NextEra’s April 15 answer. On May 6, 2021, ISO-NE submitted a letter to express importance of prompt resolution of these matters. On May 17, Avangrid submitted a letter supporting ISO-NE’s May 6, 2021 letter. There has been no activity in this proceeding since the last Report and this matter remains 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 than the Avangrid Complaint, 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,

¹⁵ *Id.* at P 54.

¹⁶ 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.

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 filed by Eversource, MMWEC and NEPGA. Avangrid and NECEC Transmission ("Avangrid") protested the Declaratory Order Petition. Doc-less interventions were filed by Avangrid, Dominion, Eversource, Calpine, Exelon, HQU, National Grid, NESCOE, NRG, and Public Citizen. NextEra answered Avangrid's protest and Avangrid answered NextEra's answer. On May 6, 2021, ISO-NE submitted a letter in this proceeding, as well as in EL21-6, to express importance of prompt resolution of these matters. There has been no activity in this proceeding since the last Report and this matter also remains pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

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

- **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,¹⁷ 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*).¹⁸ However, the FERC's orders were challenged, and in *Emera Maine*,¹⁹ 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)²⁰ and third (EL14-86)²¹ 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%

¹⁷ 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*").

¹⁸ *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*").

¹⁹ *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).

²⁰ 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%.

²¹ 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.²² 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 proceeding²³ also went to hearing before an ALJ, Judge Glazer, who issued his initial decision on March 27, 2017.²⁴ 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.²⁵ 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.²⁶ 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*²⁷ (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.²⁸

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

²² *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”).

²³ 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.

²⁴ *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 162 FERC ¶ 63,026 (Mar. 27, 2018) (“Base ROE Complaint IV Initial Decision”).

²⁵ *Id.* at P 2.; Finding of Fact (B).

²⁶ *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (Oct. 18, 2018) (“Order Directing Briefs” or “Coakley”).

²⁷ *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*.

²⁸ *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%.²⁹ 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 Customers³⁰ 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*³¹ 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).

²⁹ *Id.* at P 59.

³⁰ For purposes of the motion seeking clarification, "Customers" are CT PURA, MA AG and EMCOS.

³¹ *Ass'n of Buss. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569, 169 FERC ¶ 61,129 (Nov. 21, 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

- **FCA16 De-List Bids Filing (ER21-2342)**

Pursuant to Market Rule 1 § 13.8.1(a), ISO-NE submitted on July 1, 2021 a filing describing the Permanent De-List Bids and Retirement De-List Bids, as well as the substitution auction test prices, that were submitted on or prior to the March 12, 2021 FCA16 Existing Capacity Retirement Deadline. ISO-NE reported that it received 1 Permanent De-List Bid, 13 Retirement De-List Bids, and 2 substitution auction test prices from 8 Lead Market Participants. The bids were for resources located in the CT, VT, ME, South Eastern Massachusetts, Northeastern Massachusetts Boston (“NEMA/Boston”) and Western Central MA Load Zones, with 996.460 MWs of aggregate capacity. Six of the Bids, totaling 26.262 MW in aggregate, were for resources under 20 MW or that did not meet the affiliation requirements that would have required IMM review. Two of those six (representing 23.174 MWs) required substitution auction test price reviews because the Bids were for greater than 3 MWs. The IMM did review the remaining eight Bids (from three separate suppliers) for 232.240 MWs of capacity. The IMM also reviewed two substitution auction test prices that were not associated with a Retirement or Permanent De-List Bid. The two bids were from a single Market Participant and for a total of 737.958 MW. The IMM’s determination regarding those bids is described in the version of the filing that was filed confidentially as required under §13.8.1(a) of Market Rule 1. Comments on this filing are due on or before July 22. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CSC Request for Regulatory Asset Recovery of Previously-Incurred CIP IROL Costs (ER21-2334)**

On July 1, 2021, Cross-Sound Cable Company LLC (“CSC”) requested FERC authorization to establish a regulatory asset that would include all CIP-IROL Costs³² that CSC prudently incurred between January 1, 2016 and May 31, 2021 (\$1.324 million) and permit CSC to recover those costs under Schedule 17 (from all ISO-NE transmission customers) over a five-year period (beginning on the date the FERC makes this rate treatment and related cost recovery effective).³³ CSC stated that the first year annual revenue requirement would be \$335,785, and that CSC would file with the FERC by July 1 of each year to establish the revenue requirement for each successive year of the five-year recovery period. CSC stated that it “engaged in an extensive pre-filing information exchange process” consistent with the Schedule 17 pre-filing process. CSC avers that its regulatory asset approach is consistent with the FERC’s order on requests for rehearing in ER20-739³⁴ (see Sep 29, 2020 Report and Section XV below) and will “not run afoul of the filed rate doctrine or rule against retroactive ratemaking.” CSC requested a September 1, 2021 effective date for the commencement of the five-year cost recovery period. Comments on this filing are due on or before July 22, 2021. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **CSC CIP IROL Cost Recovery: Jun 1, 2021 Forward (ER21-2031)**

On May 28, 2021, CSC requested FERC acceptance of a proposed rate schedule to allow CSC to begin the recovery period for certain CIP-IROL Costs under Schedule 17 of the ISO-NE Tariff. CSC stated that the rate schedule will provide interested parties notice of CSC’s intent to recover CIP-IROL Costs for its IROL-Critical-designated 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 June 1, 2021 effective date was requested. Comments on this filing were due on or before June 18, 2021; none were filed. NESCOE

³² Interconnection Reliability Operating Limits (“IROL”) Critical Infrastructure Protection (“CIP”) costs under Schedule 17 of the ISO-NE Tariff.

³³ CSC proposed three alternative bases upon which the FERC could grant its request to use a regulatory asset for CIP IROL cost recovery and rate treatment: (i) FPA section 219 and Order 679 (incentive rate framework); FPA section 205 (in furtherance of the FERC’s expressed policy of ensuring reliability of the BES in response to cybersecurity threats); or (iii) FPA section 309 (FERC’s remedial authority).

³⁴ *ISO New England Inc.*, 172 FERC ¶ 61,251 (Sep. 17, 2020).

submitted 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).

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

On June 24, 2021, the FERC accepted the results³⁵ of the fifteenth FCA (“FCA15”).³⁶ In accepting the results, the FERC found that ISO-NE conducted FCA15 in accordance with its Tariff,³⁷ and that the protests raised by MA AG (regarding CASPR being a failed market design, ORTP values, and long-term market solutions), NEPGA (reiterating arguments regarding Killingly) and individual citizens (largely focused on environmental issues, and the Merrimack Generating Station in particular) were outside the scope of this proceeding.³⁸ The FCA15 results were accepted, effective June 26, 2021, as requested. Unless the *FCA15 Results Order* is challenged, this proceeding will be concluded. 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).

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

On May 20, 2021, the FERC approved³⁹ the settlement that amended and restated four Support Agreements and an Agreement with Respect to Use of Québec Interconnection (“Use Agreement”).⁴⁰ The Support and Use Agreements provide for the 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 term of the Support Agreements (and thereby the Use Agreement) was extended for another 20 years, until October 31, 2040. The settlement was accepted effective as of January 1, 2021, as requested. The May 20 order also directed the Filing Parties⁴¹ to make a compliance filing with revised tariff records in eTariff format reflecting the FERC’s action. The May 20 order was not challenged and is final and unappealable.

eTariff Compliance Filings. On June 18, 2021, the Filing Parties submitted their respective compliance filings with revised tariff records in eTariff format (IRH Management Committee (Use Agreement) (ER21-2163); National Grid Asset Owners (Phase I New Hampshire Transmission Line Support Agreement) (ER21-2162); New England Hydro Transmission Corporation (Phase II New Hampshire Transmission Facilities Support Agreement) (ER21-2161); New England Hydro Transmission Electric Company (Phase II Massachusetts Transmission Facilities Support Agreement) (ER21-2160); VETCO (Phase I Vermont Transmission Line Support Agreement) (ER21-2158)). Comments, if any, on those compliance filings are due on or before July 12, 2021. Going forward, reporting on those compliance filings will continue in Section XI (p. 23) below.

³⁵ *ISO New England Inc.*, 175 FERC ¶ 61,243 (June 24, 2021) (“*FCA15 Results Order*”).

³⁶ As previously reported, highlights of FCA15 (conducted Feb. 8, 2021) included: (i) Capacity Clearing Prices 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; (ii) no substitution auction conducted in light of no active demand bids submitted; (iii) no resources cleared as Conditional Qualified New Generating Capacity Resources; (iv) no Long Lead Time Generating Facilities secured a Queue Position to participate as a New Generating Capacity Resource.

³⁷ *FCA15 Results Order* at P 11.

³⁸ *Id.* at P 12.

³⁹ *New England Hydro-Transmission Electric Company, Inc. et al.*, 175 FERC ¶ 61,140 (May 20, 2021).

⁴⁰ 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.

⁴¹ “Filing Parties” were the 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”).

If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **MPD OATT 2021 Annual Informational Filing (ER20-1977)**

On May 3, 2021, as corrected June 14, 2021, Versant submitted its annual informational filing setting forth, for the June 1, 2021 to May 31, 2022 rate year, the charges for transmission service under the MPD OATT. Versant also separately submitted an updated transmission real power loss factor informational filing on May 7, 2021. Although these filings will not be noticed for public comment, they will be subject to the process established in the “Protocols for Implementing and Reviewing Charges Established by the MPD OATT Attachment J Rate Formulas” and may result in further proceedings. If there are questions on this latest MPD OATT Informational Filing, please contact Pat Gerity (860-275-0533; pmgerity@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”)⁴² among Constellation Mystic Power (“Mystic”), Exelon Generation Company (“ExGen”) and ISO-NE, which is to provide compensation for the continued operation of the Mystic 8 & 9 units from June 1, 2022 through May 31, 2024. As noted in Section XV below, each of the *July 17 Orders*⁴³ (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,⁴⁴ ENECOS,⁴⁵ 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,⁴⁶ 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.

⁴² 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.

⁴³ 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).

⁴⁴ “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”).

⁴⁵ “ENECOS” are: Braintree, Concord, Georgetown, Hingham, Littleton, Middleborough, Middleton, Norwood, Pascoag, Reading, Taunton, and Wellesley.

⁴⁶ *Constellation Mystic Power, LLC*, 172 FERC ¶ 61,093 (July 28, 2020), *order addressing arguments on reh’g*, 173 FERC ¶ 61,261 (Dec. 21, 2020).

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. On April 26, 2021, the FERC accepted in part, and rejected in part, the Sep 2020 Compliance Filing.⁴⁷ The FERC found that Mystic had partially complied with its directive “to reflect the transfer in lieu of foreclosure in its original cost study.”⁴⁸ Agreeing with CT Parties, the FERC found that Mystic improperly applied the difference between the purchase price and net original cost to reduce the plant’s gross book value, thereby unreasonably increasing Mystic’s rate base. Accordingly, the FERC directed Mystic to submit, on or before June 25, 2021, a compliance filing “adopting the accounting treatment that Mystic submitted in Attachment A of its answer for instructional purposes, which adds to accumulated depreciation the difference between the purchase price and net original cost (and not to the plant’s gross book value)”.⁴⁹

Feb 2021 (Third) 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*.⁵⁰ The Feb 2021 Compliance Filing proposed 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 Systems⁵¹ filed protests of the third compliance filing, and Mystic answered those protests on April 2, 2021. In the *April 26 Order*, the FERC rejected the Feb 2021 Compliance Filing.⁵² The FERC found that, while Mystic removed the phrase “that were expensed”, Mystic also proposed other revisions to the language of section 2.4 of the COS Agreement that went beyond the directives of the *Dec 21, 2020 Third Compliance Order*. Under FERC precedent, filers may not include a rate change in a compliance filing that is not directed or otherwise authorized by the FERC.⁵³ Therefore, the FERC rejected Mystic’s proposed changes to section 2.4 of the COS Agreement and directed Mystic to submit in its 60-day (June 25, 2021) compliance filing, a change to section 2.4 that simply removes the phrase “that were expensed.”

Jun 2021 (Fourth) Compliance Filing (-009). On June 2, 2021, Mystic filed a revised COS Agreement in a fourth compliance filing, this time in response to the requirements of the *April 26 Order*, that proposes the following two changes: (1) the adoption of accounting treatment that adds to accumulated depreciation the difference between the purchase price and net original cost (and not to the plant’s gross book value), which results in an Annual Fixed Revenue Requirement (“AFRR”) of \$173,379,730 and \$142,130,497 for the 2022/2023 and 2023/2024 Capacity Commitment Periods, respectively; and (2) a change to section 2.4 that simply removes the phrase “that were expensed”. Comments on the fourth compliance filing were due on or before June 23, 2021; none were filed. The fourth compliance filing is pending before the FERC.

Informational Filing – Change to Fuel Supply Agreement between Mystic and Constellation LNG. On June 1, 2021, Mystic submitted an information filing to advise the FERC of a change to section (viii) of the Fuel

⁴⁷ *Constellation Mystic Power, LLC*, 175 FERC ¶ 61,069 (Apr. 26, 2021) (“*April 26 Order*”).

⁴⁸ *Id.* at PP 23-24. Mystic was directed to reflect the fact that a group of creditors acquired Mystic 8 and 9 from the then-owner (Boston Generating, LLC) in exchange for extinguishing a debt in accordance with the FERC’s original cost test.

⁴⁹ *Id.* at P 24.

⁵⁰ *Constellation Mystic Power, LLC*, 173 FERC ¶ 61,261 (Dec. 21, 2020) (“*Dec 21, 2020 Third Compliance Order*”).

⁵¹ “Public Systems” are Mass. Mun. Wholesale Electric Co. (“MMWEC”) and New Hampshire Elec. Coop. (“NH EC”).

⁵² *April 26 Order* at P 30.

⁵³ See *Ind. & Mich. Mun. Distribs. Ass’n v. Ind. Mich. Power Co.*, 61 FERC ¶ 61,351, at 62,373 (1992).

Supply Agreement, which changed the date upon which a determination that a sale is not below the variable cost of supply is made on the date on which Constellation LNG provides binding pricing for a sale to a third party customer, rather than on the date of execution of the third party sale. Mystic stated that ISO-NE agreed that the change is consistent with the spirit of the original provision. This filing was not noticed for public comment.

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).

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

- **Removal of Appendix B from Market Rule 1; Deletion of Assoc. Tariff Provisions (ER21-2220)**

On June 28, 2021, ISO-NE and NEPOOL jointly filed Tariff changes to remove from Market Rule 1 Appendix B (Imposition of Sanctions by the ISO) and to make conforming changes to the Tariff reflecting the removal of that Appendix. Appendix B formerly established procedures and standards by which ISO-NE could impose sanctions, if subsequently approved by the FERC, for sanctionable conduct. However, ISO-NE concluded that the provisions of Appendix B were outdated, unclear, or internally inconsistent with other Tariff provisions. Accordingly, ISO-NE proposed, and the Participants Committee supported at its April 1, 2021 meeting (Agenda Item #6), its removal. Comments on this filing are due on or before July 19, 2021. Thus far, doc-less interventions have been filed by Calpine, NRG and NESCOE. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **CPower Waiver Request (Determination of ARA3 Summer ARA Qualified Capacity for Demand Capacity Resources (ER21-2135))**

On June 14, 2021, CPower requested waiver of Tariff Section III.13.4.2.1.2.2.4.1(a)(i)(2) so that the determination of the amount of capacity that CPower can offer into the monthly reconfiguration auctions for CPower's Summer-only On-Peak Demand Resources is not based on October 2020 audit values (which are significantly lower Qualified Capacity values than its most recent audit (in April 2021) demonstrates is actually available). Comments on this filing were due on or before July 6, 2021; none were filed. NEPOOL and National Grid filed doc-less interventions. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **Solar Data Requirements & Relocation of Wind Data Requirements (ER21-1974)**

On May 21, 2021, ISO-NE and NEPOOL jointly filed Tariff changes to establish operational and meteorological data requirements for solar facilities and relocate and streamline already-existing data requirements for wind facilities. Specifically, the changes: (i) add to Market Rule 1 section III.1.11.3 requirements for solar facilities to provide forced outage and meteorological data; (ii) move from the LGIA to section III.1.11.3 the requirements for wind facilities to provide forced outage and meteorological data (effectively extending the requirements to all wind facilities that interconnect through ISO-NE's generator interconnection process, as well as any wind facilities that may interconnect through state interconnection processes); add four new defined terms used in section III.1.11.3 (Solar High Limit, Solar Plant Future Availability, Wind High Limit, and Wind Plant Future Availability) to the Tariff's Definition section (I.2.2); and (iv) deletes "photovoltaic" from section III.1.11.3 so that the Tariff consistently uses the generic term "solar." The revisions were supported by the Participants Committee at its August 2, 2019 meeting (Consent Agenda Items #1 and #2). A July 20, 2021 effective date was requested. Comments on this filing were due on or before June 11, 2021; none were filed. Doc-less interventions were filed by Calpine and NESCOE. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **eTariff § III.13.7 Conforming Changes (ER21-1883)**

On June 28, 2021, the FERC accepted conforming changes to ISO-NE eTariff § III.13.7 to remove updates to Cost of New Entry ("CONE"), Net CONE, and the Capacity Performance Payment Rate ("PPR") that had not yet

been accepted by the FERC, but were nonetheless included in the eTariff version of § III.13.7 accepted in the March 31 order in the EER Exemption from PFP Settlement proceeding (ER21-943).⁵⁴ The conforming changes were accepted as of April 1, 2021, as requested. Unless the June 28 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **eTariff § III.13.1 Corrections (ER21-1766)**

On June 22, 2021, the FERC accepted changes to Section III.13.1 of ISO-NE's eTariff to ensure that the eTariff Viewer reflects in all appropriate versions the rejection of the June 11, 2018 Economic Life Revisions and includes the corresponding, since-accepted compliance revisions.⁵⁵ The changes were accepted effective September 25, 2018, December 24, 2018, January 14, 2019, January 29, 2019, February 19, 2019, March 14, 2019, October 1, 2019, and February 12, 2021, respectively, as requested. Unless the June 22 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Waiver Request: FCA16 Qualification Requirement (CMEEC, MMWEC, Pascoag, VT DPS) (ER21-1726)**

On June 4, 2021, the FERC granted a request by CMEEC, MMWEC, Pascoag, and VT DPS (together, "Movants") for a one-time waiver of the requirement to submit, by the deadline contained in ISO-NE Tariff Section III.13.1.10(e),⁵⁶ the required copies of executed versions of its New York Power Authority ("NYPA") contracts in connection with the FCA16 New Capacity Imports qualification process.⁵⁷ In granting the waiver request, the FERC directed that executed versions of the completed NYPA agreements be submitted as soon as practicable after the close of the FCA16 submission window, and prior to October 1, 2021.⁵⁸ The June 4 order was not challenged and is final and unappealable. This proceeding is concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **ISO-NE IMM Ethical Standards Changes (ER21-1666)**

On June 3, 2021, the FERC accepted revisions to Market Rule 1 to include directly in Section 18 of Appendix A to Market Rule 1 the remaining minimum ethical standards for the IMM Unit and its employees⁵⁹ that, pursuant to *Order 719*, must be included in the ISO-NE Tariff.⁶⁰ The June 3 order was not challenged and is final and unappealable. This proceeding is concluded. 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).

- **FCA16 ORTP Jump Ball Filing (ER21-1637)**

On June 7, 2021, the FERC accepted in part and rejected in part pieces of ISO-NE's and NEPOOL's proposals, effective June 8, 2021.⁶¹ Specifically, the FERC accepted NEPOOL's proposed ORTP value for battery

⁵⁴ *ISO New England Inc.*, Docket No. ER21-1833 (June 28, 2021) (unpublished letter order).

⁵⁵ *ISO New England Inc.*, Docket No. ER21-1766 (June 22, 2021) (unpublished letter order).

⁵⁶ Movants explained that the waiver is necessary because, while the contracts with NYPA have been completed and have received initial approval from NYPA's Board of Trustees, the contracts will not have been signed prior to the close of the June 10-18, 2021 FCA16 submission window because of the duration of the state approval process.

⁵⁷ *Conn. Mun. Elec. Energy Coop. et al.*, 175 FERC ¶ 61,191 (June 4, 2021).

⁵⁸ *Id.* at PP 1, 15.

⁵⁹ While two of those ethical standards were already set forth directly in Appendix A Section 18, the revisions added the remaining five to Section 18 and deleted Exhibit 5 to Appendix A (ISO-NE's Code of Conduct), which had been until now relied on for including those five standards.

⁶⁰ *ISO New England Inc. and New England Power Pool Participants Comm.*, Docket No. ER21-1666 (June 3, 2021) (unpublished letter order).

⁶¹ *ISO New England Inc.*, 175 FERC ¶ 61,195 (June 7, 2021) ("ORTP Jump Ball Order").

storage and NEPOOL's proposed federal tax credits adjustments to the ORTPs for PV solar resources for FCA17 and FCA18. Otherwise, the FERC accepted ISO-NE's proposed ORTP values (including ISO-NE's Offshore Wind ORTP value (on which the Commissioners split 3-2; see separate dissents by Commrs. Glick and Clements, who agreed with NEPOOL's Offshore Wind ORTP)) and ISO-NE's proposal to maintain the current Tariff language regarding economic life determination and the establishment of ORTPs for hybrid and co-located resources in the FCM (rejecting NEPOOL's proposed Tariff revisions in each case). The FERC also rejected NEPOOL's proposal to require ISO-NE to account for future federal tax credit changes through the Tariff's indexing process, finding instead that such changes are more appropriately made through a FERC filing when and if such changes are made. With respect to other issues, the FERC rejected (i) Generation Owners' argument that accepting either the ISO-NE-proposed or the NEPOOL-proposed ORTPs for FCA16 would violate the filed rate doctrine or the rule against retroactive ratemaking;⁶² and (ii) arguments about the MOPR (as outside the scope of this proceeding). In light of this outcome, the FERC directed ISO-NE to submit a compliance filing on or before June 22, 2021 that combines the alternative proposals as accepted by the FERC.

Compliance filing (-001). On June 22, 2021, ISO-NE (i) submitted Tariff revisions to incorporate the ORTPs and related revisions accepted in the *ORTP Jump Ball Order* (including NEPOOL's proposed ORTP value for battery storage and NEPOOL's proposed federal tax credits adjustments to the ORTPs for PV solar resources for FCA17 and FCA18) and (ii) explained why it was not proposing further updates to the FCA16 ORTP values to account for adjustments to CONE and related values for FCA16 in the *Updated CONE, Net Cone and PPR Values Order*. Comments on the June 22 compliance filing are due on or before July 7, 2021; none were filed. The June 22 compliance filing is pending before the FERC.

Requests for Rehearing of ORTP Jump Ball Order (-002). On July 7, 2021, Clean Energy Advocates⁶³ requested rehearing of the *ORTP Jump Ball Order*. Clean Energy Advocates' request for rehearing is pending, with FERC action required on or before August 6, 2021, or the request will be deemed denied by operation of law.

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), Joe Fagan (202-218-3901; jfagan@daypitney.com) or Rosendo Garza (860-275-0660; rgarza@daypitney.com).

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

As previously reported, the FERC conditionally accepted on May 28, 2021,⁶⁴ eff. May 29, 2021, the updates to CONE, Net CONE and PPR values, as amended in ISO-NE's March 30, 2021 Deficiency Response,⁶⁵ as well as the modified definition of Net CONE, subject to a 15-day compliance filing that reflects the assumption that the reference unit has on-site compression.⁶⁶ As noted in Section II above (EL21-26), the FERC denied NEPGA's Net CONE Complaint in a concurrently-issued order.

⁶² *Id.* at P 127 et seq.

⁶³ "Clean Energy Advocates" are Conservation Law Foundation ("CLF"), Natural Resources Defense Council ("NRDC"), Sierra Club, RENEW Northeast, Inc. ("RENEW"), and Sustainable FERC Project.

⁶⁴ *ISO New England Inc.*, 175 FERC ¶ 61,172 (May 28, 2021) ("*Updated CONE, Net Cone and PPR Values Order*").

⁶⁵ As previously reported, the FERC issued a deficiency letter, on March 1, 2021, directing ISO-NE to provide 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.

⁶⁶ In its answer to the Deficiency Letter protests, ISO-NE stated that, assuming the FERC determines (as it has) that the reference unit requires on-site compression, the FERC should direct ISO-NE to include \$8.75 million for that cost, that ISO-NE would account for on-site compression by adding \$100,000 in annual operating and maintenance costs, reducing the seasonal capacity in the dispatch model by

Compliance Filing. On June 11, 2021, in response to the *Updated CONE, Net Cone and PPR Values Order*, ISO-NE filed updated CONE, Net CONE and PPR values, \$12.400, \$7.468 and \$9,337, respectively, to reflect the cost of gas compression. Comments on the ISO-NE compliance filing were due July 2, 2021; none were filed. The compliance filing is pending before the FERC.

Request for Rehearing. On June 28, 2021, EPSA and NEPGA jointly requested rehearing of both the *Updated CONE, Net Cone and PPR Values Order* and the *NEPGA Net Cone Complaint Order*. The EPSA/NEPGA request for rehearing is pending, with FERC action required on or before July 28, 2021, or the requests will be deemed denied by operation of law.

If you have any questions concerning this proceeding, please contact Dave Doot (dtddoot@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

- **BTM Generation Proposal (ER21-2337)**

On July 1, 2021, ISO-NE and the Participating Transmission Owners Administrative Committee (“PTO AC”) jointly filed revisions to Tariff sections I and II to clarify that the calculation of Monthly Regional Network Load excludes load served by behind-the-meter (“BTM”) generation, which does not participate in the New England wholesale markets as a Generator Asset, as well as the portions of a Generator Asset utilized to net load at the same retail meter (“BTM Generation Proposal”). The Participants Committee supported the BTM Generation Proposal at its June 3, 2021 meeting (Consent Agenda Items #3 and 4). Comments on this filing are due on or before July 22, 2021. Thus far, doc-less interventions have been filed by IECG, NESCOE and NRG. 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 21-VP 2021 Annual Informational Filing (ER20-2119)**

On June 15, 2021, as updated on June 30, 2021, Versant Power submitted its annual informational filing to update its local transmission service charges under Schedule 21-VP. Included in its June 30, 2021 update was a revised version of Attachment P that sets forth the rates that went into effect on June 1, 2021 and reflects a settlement in principle reached with the Maine Public Utilities Commission (“MPUC”) regarding

5.5 MW (to account for load to run the compression equipment), and reducing the plant capacity available for participation in the Forward Capacity Market by 5.5 MW. Accordingly, ISO-NE stated that the resulting CONE, Net CONE, and PPR values would be \$12.400/kW-month, \$7.468/kW-month, and \$9,337/MWh, respectively. *May 28 Order* at P 59.

charges under Schedule 21-VP for the 2020-2021 rate year that Versant anticipates filing with the FERC shortly. The FERC will not notice these information filings for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-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*,⁶⁷ and certified by Settlement Judge Dring⁶⁸ to the Commission,⁶⁹ remains pending before the FERC. As previously reported, under the Settlement, permitted cost recovery over a period from June 1, 2018 to May 31, 2021 will be \$390,000 under Attachment P of the BHD OATT and \$260,000 under the MPD OATT. If you have any questions concerning these matters, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-GMP Annual True Up Calculation Informational Filing (ER12-2304)**

On June 1, 2021, pursuant to Section 4 of Schedule 21-GMP, Green Mountain Power (“GMP”) submitted its annual informational filing containing the true-up calculation of its actual (rather than estimated) costs for the January 1, 2020 through December 31, 2020 time period. The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-NSTAR Annual Informational Filing (ER09-1243; ER07-549)**

On May 28, 2021, NSTAR submitted an informational filing containing the true-up of billings under Schedule 21-NSTAR for the period January 1, 2020 through December 31, 2020. NSTAR stated that the filing complied with the requirements of Section 4 and Attachment D of Schedule 21-NSTAR, as well as the Settlement Agreement approved previously by the FERC.⁷⁰ On June 30, 2021, NSTAR supplemented its May 28 annual informational filing with additional information regarding its Construction-Work-In-Progress (“CWIP”) in accordance with Section 4.1(i) and (ix) of Schedule 21-NSTAR (“CWIP Supplement”). The CWIP Supplement was provided primarily on a project-specific basis, and included NSTAR’s 2020 long-range construction forecast. The FERC will not notice either of these filings 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).

⁶⁷ *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.

⁶⁸ 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.

⁶⁹ *Emera Maine and BHE Holdings*, 163 FERC ¶ 63,018 (June 11, 2018).

⁷⁰ See *NSTAR Elec. Co.*, 123 FERC ¶ 61,270 at P 5 (2008).

- **Schedule 21-CMP Annual Info. Filing (ER09-938)**

On June 30, 2021, Central Maine Power (“CMP”) submitted its annual update to the formula rates contained in Schedule 21-CMP. CMP indicated that the informational filing reflected actual cost data for the 2020 calendar year plus estimated cost data for the 2021 calendar year associated with CMP’s forecasted transmission plant additions and Maine Power Reliability Program CWIP as well as the annual true-up and associated interest. CMP referred to Section 10.2 of Schedule 21-CMP for specific procedures for review and challenges to the informational report. 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*⁷¹ and *531-B*⁷² 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 - 2021 Q1 (ER21-1873)**

On June 17, 2021, the FERC accepted ISO-NE’s Capital Projects Report and Unamortized Cost Schedule covering the first quarter (“Q1”) of calendar year 2021 (the “Report”).⁷³ As previously reported, report highlights included the following new projects: (i) Security Information and Event Management Log Monitoring Infrastructure Replacement (\$2.91 million); (ii) IMM Data Analysis Phase III (\$1.57 million); (iii) 2021 Issue Resolution Project (\$1.13 million); (iv) TransSMART Technical Architecture Update (\$819,400); (v) Communication Front End Energy Management Platform 3.2 Upgrade (\$605,300); (vi) Learning Content Management System / Learning Management System Replacement (\$260,000); and (vii) Behind-the-Meter Photovoltaic Web Publication (\$145,000). The one Project with a significant change was the Data Governance, Risk Management & Compliance Software Phase I Project (with a 2021 budget decrease of \$125,000). Unless the June 17 order is challenged, this proceeding will be

⁷¹ *Martha Coakley, Mass. Att’y Gen.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) (“*Opinion 531-A*”).

⁷² *Martha Coakley, Mass. Att’y Gen.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) (“*Opinion 531-B*”).

⁷³ *ISO New England Inc.*, Docket No. ER21-1873 (June 17, 2021) (unpublished letter order).

concluded. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **IMM 2020 Annual Markets Report (ZZ21-4)**

On June 11, 2021, the IMM filed its 2020 Annual Markets Report, which covers the 2020 calendar year period.⁷⁴ The report addresses the development, operation, and performance of the New England Markets and presents an assessment of each market based on market data, performance criteria, and independent studies, providing the information required under Section 17.2.4 of Appendix A to Market Rule 1. On the basis of its review of market outcomes and related information, the IMM concluded, as it has for many years in a row, that the New England Market operated competitively in 2020. The IMM reported that the restrictions implemented to curb the spread of COVID-19 posed unprecedented operational challenges, most notably in terms of the level and predictability of electricity demand as consumption behavior changed, the temporary deferral of equipment outages, and measures taken to protect key personnel operating the grid, but that ISO-NE successfully managed these challenges. No major reliability issues occurred in 2020 due to COVID-19 or other factors, and there were no periods in the Real-Time Energy Market when a shortage of energy and reserves resulted in very high energy prices or reserve scarcity pricing. In 2020, the average wholesale energy price was at its lowest level in New England since the implementation of Standard Market Design, driven by record low natural gas prices and wholesale electricity demand, both of which have trended downwards in recent years due to long-term factors such as cheaper shale gas, energy efficiency programs and growth in behind-the-meter photovoltaic generation. For the seventh consecutive year, the forward capacity auction procured surplus capacity. Other highlights included:

- ▶ 2020 total wholesale costs (\$8.1 billion) were \$1.7 billion lower than 2019, driven by lower energy and capacity costs; with the exception of transmission costs (up by \$0.2 billion), each component of the wholesale cost of electricity declined in 2020.
- ▶ 2020 Energy costs totaled \$3.0 billion, down \$1.1 billion or 27% from 2019 (Day-ahead LMPs averaged \$23.32/MWh, down 25% (or by \$7.90/MWh) on 2019), with the decrease driven by lower natural gas prices, which averaged \$2.10/MMBtu, down 36% from 2019 prices.
- ▶ Capacity costs comprised 1/3 of total wholesale costs, totaling \$2.7 billion, down by 22% (or \$0.7 billion) on 2019. The costs were driven by lower combined clearing prices in FCAs 10 and 11.

In light of its review, the IMM, in Section 1.6 (pp. 38-41) of the Report, made a number of recommendations for Market Rule changes and identified areas for additional analysis in 2021. These recommendations will be discussed in more detail at the Participants Committee's August 6 meeting.

- **ISO-NE FERC Form 3Q (2021/Q1) (not docketed)**

On May 25, 2021, ISO-NE submitted its 2021/Q1 FERC Form 3Q (quarterly financial report of electric utilities, licensees, and natural gas companies). FERC Form 3-Q is a quarterly regulatory requirement which supplements the annual FERC Form 1 financial reporting requirement. These filings are not noticed for comment.

- **ISO-NE 2020 FERC Form 714 (not docketed)**

On June 1, 2021, ISO-NE submitted its Annual Electric Balancing Authority Area and Planning Area Report for calendar year 2020. Through its Form 714 filing, ISO-NE reports, among other things, generation in the New England Control Area, actual and scheduled inter-balancing authority area power transfers, and net energy for load, summer-winter generation peaks and system lambda. The FERC uses the data to obtain a broad picture of interconnected balancing authority area operations including comprehensive information of balancing authority area generation, actual and scheduled inter-balancing authority area power transfers, and

⁷⁴ Please note that Annual Markets Reports filings are not noticed for public comment by the FERC.

load; and to prepare status reports on the electric utility industry including review of inter-balancing authority area bulk power trade information. Planning area data will be used to monitor forecasted demands by electric utility entities with fundamental demand responsibility, and to develop hourly demand characteristics. These filings are not noticed for comment.

IX. Membership Filings

- **July 2021 Membership Filing (ER21-2267)**

On June 30, 2021, NEPOOL requested that the FERC accept (i) the memberships of Gridmatic Isotria LLC (Supplier Sector); InBalance, Inc. (Supplier Sector); North East Offshore, LLC [Related Person to Deepwater Wind and Eversource]; and NEPGA (Fuels Industry Participant); (ii) the termination of the Participant status of Priogen Power LLC; and (iii) the name change of WP&G Holdings, LLC (f/k/a Mega Energy Holdings, LLC). Comments on this filing are due on or before July 21, 2021.

- **June 2021 Membership Filing (ER21-2026)**

On July 6, 2021 the FERC accepted (i) the memberships of Hydroland, Inc. (AR Sector, RG Sub-Sector Small Group Member); and Vineyard Wind 1 LLC [Related Person to Avangrid companies (Transmission Sector)]; (ii) the termination of the Participant status of Convergent Energy and Power LP; and (iii) the Millennium Power Company, LLC name change.⁷⁵ Unless the July 6 order is challenged, this proceeding will be concluded.

- **May 2021 Membership Filing (ER21-1804)**

On June 28, 2021, the FERC accepted (i) the memberships of Protor Energy, LLC [Related Person to Darby Energy, LLC (Supplier Sector)]; and Voltus Inc. (AR Sector, Load Response Sub-Sector); and (ii) the termination of the Participant status of Great Bay Power Marketing (AR Sector, Small RG Group Member).⁷⁶ Unless the June 30 order is challenged, this proceeding will be concluded.

- **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>
Jun 2/4	Woods Hill Solar	Financial Assurance	Jun 10

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).

- **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

⁷⁵ *New England Power Pool Participants Comm.*, Docket No. ER21-2026 (July 6, 2021) (unpublished letter order).

⁷⁶ *New England Power Pool Participants Comm.*, Docket No. ER21-1804 (June 28, 2021) (unpublished letter order).

computing services (resulting from Projects 2016-02 (Modifications to CIP Standards) and 2019-02 (BES Cyber System Information Access Management)). NERC filed its sixth informational filing on June 15, 2021, reporting no change in schedule for the filing of either project from that reported in its supplemental November 2020 filing -- filing of proposed Reliability Standards in December 2021 for both Projects (2019-02 and 2016-02).

- **Revised Reliability Standards (SOL Changes): FAC-003-5, 011-4, 014-3; IRO-008-3; PRC 002-3, 023-5, -026-2; and TOP-001-6 (RM21-19)**

On June 28, 2021, NERC filed for approval proposed changes to the following Reliability Standards related to establishing and communicating System Operating Limits ("SOLs", and together the "SOL Changes"):

- ◆ FAC-011-4 (System Operating Limits Methodology for the Operations Horizon)
- ◆ FAC-014-3 (Establish and Communicate System Operating Limits)
- ◆ FAC-003-5 (Transmission Vegetation Management)
- ◆ IRO-008-3 (Reliability Coordinator Operational Analyses and Real-time Assessments)
- ◆ PRC-002-3 (Disturbance Monitoring and Reporting Requirements)
- ◆ PRC-023-5 (Transmission Relay Loadability)
- ◆ PRC-026-2 (Relay Performance During Stable Power Swings)
- ◆ TOP-001-6 (Transmission Operations)

NERC also requested the retirement of Reliability Standard FAC-010-3 (System Operating Limits Methodology for the Planning Horizon) and modifications to NERC's Glossary of Terms to revise the definition for System Operating Limit and to include "System Voltage Limit". The SOL Changes (NERC Project 2015-09) were developed in response to recommendations from a periodic review of the FAC-010, FAC-011, and FAC-014 Reliability Standards. NERC asked that revised Reliability Standards become effective (and the currently effective versions be retired) on the first day of the first calendar quarter that is 24 months following FERC approval. The SOL Changes have not yet been noticed for public comment.

- **Revised Reliability Standards (Cold Weather Reliability Standards): EOP-011-2; IRO-010-4; and TOP-003-5 (RM21-16)**

On June 17, 2021, NERC filed for approval proposed changes to the following Reliability Standards to require generators to implement plans for cold weather preparedness and to enhance the ability of Balancing Authorities, Transmission Operators and Reliability Coordinators to plan and operate the grid reliably during cold weather conditions by requiring the exchange of information related to generators' capability to operate ("together, the "Cold Weather Reliability Standards"):

- ◆ EOP-011-2 (Emergency Preparedness and Operations)
- ◆ IRO-010-4 (Reliability Coordinator Data Specification and Collection)
- ◆ TOP-003-5 (Operational Reliability Data)

The Cold Weather Reliability Standards address recommendations arising from FERC and NERC Staff's report on the causes of the January 17, 2018 cold weather event affecting the south central United States. NERC asked that revised Reliability Standards become effective (and the currently effective versions be retired) on the first day of the first calendar quarter that is 18 months following FERC approval. The Cold Weather Reliability Standards have not yet been noticed for public comment.

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

On June 18, 2020, the FERC issued a notice of inquiry ("NOI") seeking comments on certain potential enhancements to the currently-effective CIP Reliability Standards. In particular, the FERC asked for comments on whether the CIP Standards adequately address: (i) cybersecurity risks pertaining to data security, (ii) detection of anomalies and events, and (iii) mitigation of cybersecurity events. In addition, the FERC asked for comments on

the potential risk of a coordinated cyberattack on geographically distributed targets and whether FERC action including potential modifications to the CIP Standards would be appropriate to address such risk.

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

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

On February 20, 2020, the FERC issued a NOI seeking comments on (i) the potential benefits and risks associated with the use of virtualization and cloud computing services in association with bulk electric system ("BES") operations; and (ii) whether the CIP Reliability Standards impede the voluntary adoption of virtualization or cloud computing services.⁷⁷ On March 25, 2020, Joint Associations⁷⁸ 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 to the comments filed, the FERC, in a December 17, 2020 order,⁷⁹ 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,⁸⁰ 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."⁸¹ 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

⁷⁷ *Virtualization and Cloud Computing Services*, 170 FERC ¶ 61,110 (Feb. 20, 2020).

⁷⁸ "Joint Associations" are for purposes of this proceeding: EEI, APPA, NRECA, and LPPC.

⁷⁹ *Virtualization and Cloud Computing Services*, 173 FERC ¶ 61,243 (Dec. 17, 2020) ("Order Directing Jan 2022 Info. Filing").

⁸⁰ *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).

⁸¹ *Order 873* at P 2.

requirement R8, the FERC remanded the retirement of requirements R7 and R8 to NERC for further consideration.⁸²

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*⁸³ (the “MOD A Reliability Standards”). The FERC intends to coordinate the effective dates for the retirement of the MOD A Reliability Standards with successor North American Energy Standards Board (“NAESB”) business practice standards (v. 003.3) that include Modeling business practices, which were just accepted in *Order 676-J* (see Section XII below).

- **Report of Comparisons of 2020 Budgeted to Actual Costs for NERC and the Regional Entities (RR21-5)**

On June 1, 2021, NERC filed comparisons of actual to budgeted costs for 2020 for NERC and the six Regional Entities operating in 2020, including NPCC. The Report includes comparisons of actual funding received and costs incurred, with explanations of significant actual cost-to-budget variances, audited financial statements, and tables showing metrics concerning NERC and Regional Entity administrative costs in their 2020 budgets and actual results. Comments on this filing were due on or before June 22, 2021; none were filed. This matter is pending before the FERC.

- **5-Year ERO Performance Assessment Report (RR19-7-002)**

On May 19, 2021, the FERC submitted a further compliance filing in response to the requirements of the January 19, 2021 *Order on Compliance Filings*⁸⁴ (i) to further clarify information sharing between NERC and the Electricity Information Sharing and Analysis Center⁸⁵ (“E-ISAC”) as it relates to the development of Reliability Standards; and (ii) to revise NERC’s Rules of Procedure to explicitly require that NERC share all Points Bulletins (“APBs”) with the FERC no later than at the time of issuance. Comments on the further compliance filing were due on or before June 9, 2021; none were filed. This matter is pending before the FERC.

- **SolarWinds and Related Supply Chain Compromise White Paper (not docketed)**

On July 7, 2021, FERC staff and E-ISAC released a joint white paper emphasizing the need for continued vigilance by the electricity industry related to supply chain compromises and incidents and recommending specific cybersecurity mitigation actions to better ensure the security of the bulk-power system (“BPS”). View Report [here](#).

XI. Misc. - of Regional Interest

- **203 Application: PPL/Narragansett (EC21-87)**

On May 4, 2021, PPL Corporation and The Narragansett Electric Company (“Narragansett”) requested authorization for a transaction pursuant to which a wholly-owned subsidiary of PPL will acquire 100% of the

⁸² *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.

⁸³ *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.

⁸⁴ *N. Am. Elec. Rel. Corp.*, 174 FERC ¶ 61,030 (2021) (“*Order on Compliance Filings*”) (accepting NERC’s compliance filings submitted in response to the FERC’s 2020 Five Year Order (*N. Am. Elec. Rel. Corp.*, 170 FERC ¶ 61,029 (Jan. 23, 2020)). and directing the further compliance filing).

⁸⁵ The EISAC, created in 1999 pursuant to a U.S. presidential directive, provides its member utilities and partners with resources to prepare for and reduce cyber and physical security threats to the North American electricity industry

outstanding shares of common stock of Narragansett. The transaction is expected to close in the fourth quarter of 2021. Since the last Report, the Rhode Island (“RI”) Division of Public Utilities and Carriers (“RI DPU”) and RI Attorney General intervened out-of-time and filed comments. On July 7, PPL and Narragansett jointly answered the RI AG comments. This matter remains pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **203 Application: Seneca/Rice et al. (EC21-84)**

On June 14, 2021, the FERC authorized a transaction pursuant to which the ultimate upstream ownership of Seneca Energy II (“Seneca”), among others, will change to include a publicly listed company (Rice Acquisition Corp. (“Rice”)) and both Aria Energy LLC (“Aria”), which is wholly-owned by funds managed by Ares Management Corporation (“Ares Management”), and Archaea Energy, LLC (“Archaea”).⁸⁶ After the closing, Aria affiliates will hold approximately 20% of the expected outstanding voting shares; Archaea and its members, 29%; Rice and its shareholders, the remaining shares. Seneca will remain, for the time being, a Related Person to Generation Sector member Kleen Energy. Unless the June 14 order is challenged, this proceeding will be concluded. Also, pursuant to the June 14 order, notice must be filed within 10 days of consummation of the transaction, which as of the date of this Report has not yet occurred. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **203 Application: ReEnergy/Ember (EC21-83)**

On June 11, 2021, the FERC authorized ReEnergy Livermore Falls LLC and ReEnergy Stratton LLC (“ReEnergy”) to sell 55% of their membership interests to a new joint venture holding company to be owned by ReEnergy Biomass and Ember RGE Holdings, LLC (“Ember”).⁸⁷ Upon consummation, ReEnergy Biomass and Ember will ultimately hold 15-30% and 70-85%, respectively, of the voting interests in the joint venture holding company. Unless the June 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).

- **203 Application: Engie/Hull Street (Waterbury Generation) (EC21-75)**

On May 28, 2021, the FERC authorized a transaction pursuant to which all of the equity interests in Waterbury Generation will be acquired by an indirect subsidiary of Hull Street Energy (“Hull Street”).⁸⁸ On June 8, notice was filed that the transaction was consummated on June 3, 2021, making Waterbury Generation a Related Person of AR Sector member Central Rivers Power MA and its affiliates. This concludes reporting on this matter.

- **203 Application: NRG/Generation Bridge (ArcLight) (EC21-74)**

On April 6, 2021, Certain NRG project companies, including Connecticut Jet Power LLC (“Connecticut Jet”), Devon Power LLC (“Devon”), Middletown Power LLC (“Middletown”), and Montville Power LLC (“Montville”), requested authorization for a transaction pursuant to which 100% of the membership interest in the NRG project companies will be sold to Generation Bridge Acquisition, LLC (“Purchaser”), a wholly-owned, indirect subsidiary of ArcLight Fund VI, which is itself affiliated with Great River Hydro. Workpapers supporting approval of the proposed transaction were filed on June 24, 2021. 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).

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

As previously reported, Exelon Generation Company, LLC (“ExGen”), on behalf of its public utility subsidiaries, requested on February 25, 2021 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

⁸⁶ *Seneca Energy, II LLC et al.*, 175 FERC ¶ 62,170 (June 14, 2021).

⁸⁷ *ReEnergy Livermore Falls LLC and ReEnergy Stratton LLC*, 175 FERC ¶ 62,160 (June 11, 2021).

⁸⁸ *Waterbury Generation LLC and Hull Street Energy, LLC*, 175 FERC ¶ 62,131 (May 28, 2021).

“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 Advocates⁸⁹ 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, Public Citizen, and out-of-time by LIPA and the Delaware Public Advocate. Exelon answered Joint PJM Consumer Advocates on April 2, 2021. On April 16, the FERC issued a deficiency letter requiring a response from Exelon within 30 days. On April 29, 2021, Exelon submitted its responses to the April 16 deficiency letter. Comments on the April 29 deficiency letter response were due on or before May 13, 2021; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **D&E Agreement: NSTAR/Hingham Municipal Light Plant (ER21-2281)**

On June 30, 2021, NSTAR filed an Agreement for Design, Engineering and Construction services (the “D&E Agreement”) between itself and Hingham Municipal Light Plant (“Hingham”). The D&E Agreement sets forth the terms and conditions under which NSTAR would undertake certain design and engineering activities for the construction of a new 115 kV station to permit NSTAR’s Line #478-502 to be sectionalized and Hingham’s Hobart Street Substation to be serviced to address a reliability concern for the town of Hingham. NSTAR requested that the D&E Agreement be accepted for filing as of July 1, 2021. Comments on this filing are due on or before July 21, 2021. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **D&E Agreement: NSTAR/Medway Grid (ER21-2273)**

Also on June 30, 2021, NSTAR filed a D&E Agreement between itself and Medway Grid, LLC (“Medway”). The Medway D&E Agreement sets forth the terms and conditions under which NSTAR would undertake certain preliminary design and engineering activities related to Qualified Transmission Upgrades identified in the FCA15 Post-Auction Overlapping Impact Restudy for Medway’s request to interconnect to NSTAR’s 3445 kV West Medway Substation (queue position #844). NSTAR requested that the Medway D&E Agreement be accepted for filing as of July 1, 2021. Comments on this filing are due on or before July 21, 2021. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Amended and Restated IRH Support and Use Agreements eTariff Compliance Filings (ER21-2163 et al.)**

As noted above, in its May 20, 2021 order⁹⁰ approving the settlement that amended and restated four Support Agreements and an Agreement with Respect to Use of Québec Interconnection (“Use Agreement”),⁹¹ the FERC directed the Filing Parties⁹² to make a compliance filing with revised tariff records in eTariff format

⁸⁹ “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.

⁹⁰ *New England Hydro-Transmission Electric Company, Inc. et al.*, 175 FERC ¶ 61,140 (May 20, 2021).

⁹¹ 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. The term of the Support Agreements (and thereby the Use Agreement) was extended for another 20 years, until October 31, 2040.

⁹² “Filing Parties” were the 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”).

reflecting the FERC's action. On June 18, 2021, the Filing Parties submitted their respective compliance filings with revised tariff records in eTariff format (IRH Management Committee (Use Agreement) (ER21-2163); National Grid Asset Owners (Phase I New Hampshire Transmission Line Support Agreement) (ER21-2162); New England Hydro Transmission Corporation (Phase II New Hampshire Transmission Facilities Support Agreement) (ER21-2161); New England Hydro Transmission Electric Company (Phase II Massachusetts Transmission Facilities Support Agreement) (ER21-2160); and VETCO (Phase I Vermont Transmission Line Support Agreement) (ER21-2158)). Comments, if any, on those compliance filings are due on or before July 12, 2021. Thus far, doc-less interventions were filed by National Grid in the Use Agreement and Phase I Vermont Transmission Line Support Agreement proceedings. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **D&E Agreement: NSTAR/Cranberry Point Energy Storage (ER21-1908)**

On July 6, 2021, the FERC accepted the D&E Agreement between NSTAR and Cranberry Point Energy Storage ("Cranberry Point").⁹³ As previously reported, the Cranberry Point D&E Agreement sets forth the terms and conditions under which NSTAR would advance certain design, engineering and cost estimating activities of certain upgrades identified in the System Impact Study for the large generating facility being developed by Cranberry Point that will interconnect to the NSTAR's 115 kV transmission system at or near Carver substation in Cape Cod. The FERC accepted the Cranberry Point D&E Agreement effective as of May 15, 2021, as requested. Unless the July 6 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **D&E Agreement Cancellation: CL&P / Gravel Pit Solar (ER21-1740)**

On June 21, 2021, the FERC accepted CL&P's notice of cancellation of a D&E Agreement with Gravel Pit Solar LLC.⁹⁴ The Gravel Pit Solar D&E Agreement, which set forth the terms and conditions under which Gravel Pit Solar would reimburse CL&P for the costs associated with performing preliminary engineering and design activities of the line work and switching station required to interconnect the project to the transmission system, terminated by its terms upon execution of an LGIA, which occurred on April 20, 2021. The notice of cancellation was accepted effective April 23, 2021, as requested. Unless the June 21 order is challenged, this matter will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **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 were due on or before April 6, 2021; none were filed. As of the date of this report, the FERC has not issued an order on this filing, meaning that the filing was accepted by operation of law. There will not be further reporting on this proceeding. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

⁹³ NSTAR Electric Co., Docket No. ER21-1908 (July 6, 2021) (unpublished letter order).

⁹⁴ The Connecticut Light & Power Co., Docket No. ER21-1740 (June 21, 2021) (unpublished letter order).

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

In accordance with *Order 864*⁹⁵ and *Order 864-A*,⁹⁶ 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
Apr 16, 2021	ER21-1694		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
	ER21-1650		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
	ER21-1709		pending
Jul 30, 2020	ER20-2551	New England Power	pending
Jul 30, 2020	ER20-2553	NEP – LSA with MECO/Nantucket	pending
Jul 30, 2020	ER20-2572	New England TOs	pending
	ER21-1130		
Jul 15, 2020	ER20-2429	CMP	pending
	ER21-1702		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	ER20-1839	VETCO	pending
Jan 7, 2021			
Feb 26, 2020	ER20-1089	New England Elec. Trans. Corp.	pending
Dec 11, 2020			
Feb 26, 2020	ER20-1088	New England Hydro Trans. Elec. Co.	pending
Dec 11, 2020			
Feb 26, 2020	ER20-1087	New England Hydro Trans. Corp.	pending
Dec 11, 2020			

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

♦ **ER20-2429-001 (CMP).** On July 6, 2021, CMP responded to FERC's May 4, 2021 deficiency letter. Comments, if any, on the deficiency letter are due on or before July 27, 2021.

⁹⁵ *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 a amortized excess or deficient ADIT; and (ii) to incorporate a new permanent worksheet into their transmission formula rates that will annually track ADIT information.

⁹⁶ *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*").

XII. Misc. - Administrative & Rulemaking Proceedings

- **Climate Change, Extreme Weather, and Electric Sys. Reliability: Jun 1-2 Technical Conference (AD21-13)**

On June 1-2, 2021, FERC staff convened a technical conference to discuss issues surrounding the threat to electric system reliability posed by climate change and extreme weather events. This technical conference addressed (i) concerns that, because extreme weather events are increasing in frequency, intensity, geographic expanse, and duration, the number and severity of weather-induced events in the electric power industry may also increase; and (ii) specific challenges posed to electric system reliability by climate change and extreme weather, which may vary by region. The FERC seeks to understand the near, medium and long-term challenges facing the regions of the country; how decision makers in the regions are evaluating and addressing those challenges; and whether further FERC action is needed to help achieve an electric system that can withstand, respond to, and recover from extreme weather events. Pre-technical conference comments were due on or before April 15, 2021 and were filed by, among others, [ISO-NE](#), [AEE](#), [Dominion](#), [EDF](#), [Eversource](#), [Exelon](#), [LS Power](#), [National Grid](#), [PSEG](#), [Vistra](#), [APPA](#), [Capital Power](#), [EEI](#), [NARUC](#), [NEI](#), [NERC](#), [NRECA](#), and the [R Street Institute](#). Speaker materials were posted in eLibrary on June 3, 2021.

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

On April 29, 2021, the FERC convened a Commissioner-led technical conference 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 of the technical conference was to “initiate a dialog between Commissioners and stakeholders on how to prepare for an increasingly electrified future.” Panel discussions addressed (1) projections, drivers, and risks of electrification; (2) infrastructure requirements of electrification (the extent to which electrification may influence or necessitate additional transmission and generation infrastructure); (3) transmission and distribution system services provided by flexible demand (how newly electrified sources of energy demand (e.g., electric vehicles, smart thermostats, etc.) could provide grid services and enhance reliability); and (4) the role of local, state, and federal coordination as electrification advances. On May 17, the FERC issued a notice inviting the submission of post-technical conference comments, on or before July 1, 2021, addressing issues raised during the technical conference and/or identified in the April 14, 2021 Supplemental Notice of Technical Conference. Nearly 20 sets of comments were filed, including comments by: AGA, CAISO, EEI, ILICC, MISO, MISO TOs, Organization of MISO States, NEMA, NRECA, Chargepoint, CTC Global, Electrify America, Entergy, Environmental Defense Fund, ITC Holdings, Prairie Power, and National Grid. This matter is pending before the FERC.

- **Resource Adequacy - Modernizing Electricity Market Design (AD21-10)**

March 23 Tech Conf (PJM). The FERC convened a Commissioner-led technical conference was on March 23, 2021 to provide input to the Commission on resource adequacy in the evolving electricity sector. Speaker materials from the March 23 technical conference have been posted to eLibrary. On March 29, Ohio PUC Commission Dan Conway submitted written comments. On April 5, the FERC issued a notice inviting post-technical conference comments on specific PJM-specific questions. Initial comments were due on or before April 26, 2021; reply comments must be submitted on or before May 10, 2021. More than 45 sets of comments were filed, including by: [AEE](#), [Calpine](#), [Cogentrix](#), [Dominion](#), [Exelon](#), [FirstLight](#), [LS Power](#), [NESCOE](#), [NEPGA](#), [NRG](#), [PSEG](#), [Shell](#), [Vistra](#), [CT DEEP](#), [EEI](#), [EPSA](#), and [NRECA/APPA](#), some of which addressed issues to be discussed in the May 25 New England technical conference (identified immediately below). On May 10, 2021, reply comments were filed by the [American Clean Power Association](#) (“ACPA”), [AEP](#), [EPSA](#), [Exelon](#), [Joint Consumer Advocates](#), [LS Power](#), [Old Dominion Electric Cooperative](#) (“ODEC”), [PJM Power Providers](#) (“P3”), [Public Interest Organizations](#) (“PIOs”), and the [Retail Electric Supply Association](#) (“RESA”).

May 25 Tech Conf (New England). On May 25, 2021, the FERC held a Commissioner-led technical conference regarding the wholesale markets administered by ISO New England Inc. Supplemental notices of the technical conference were issued on May 3 and May 17. The May 17 supplemental notice identified panelists and topics/questions for discussion for the technical conference. Panel discussions included: (1) a Commissioner-led

discussion of the relationship between state policies and the New England Markets; (2) a Staff-led discussion of short-term options and complementary potential market changes to accommodate state policies in New England; and (3) a Staff-led discussion of long-term options and centralized procurement of clean energy.

Post (New England) Tech Conf Comments. On June 4, 2021, the FERC issued a notice inviting post-technical conference comments on the issues raised during the technical conference, including the questions listed in the May 17, 2021 supplemental notice. Post-technical conference comments are due on or before **July 19, 2021**.

- **Office of Public Participation (AD21-9)**

On June 24, 2021, the FERC issued a report in which it detailed the forthcoming creation of the Office of Public Participation (“OPP”), which it intends to grow over the course of a four-year period before OPP reaches its full operating status by the close of Fiscal Year (“FY”) 2024. By the end of FY2021, the FERC plans to hire the OPP Director, as well as the Deputy Director and an administrative staff member. The FERC plans to assess OPP’s workload and reevaluate needed resources for additional growth into and beyond FY2024 to ensure meaningful and consistent compliance with FPA section 319.

Workshops and Listening Sessions. As previously reported, the FERC convened a workshop on April 16, 2021, to allow for input to the FERC on the creation of the OPP. The OPP is to “coordinate assistance to the public with respect to authorities exercised by the Commission,” including assistance to those seeking to intervene in FERC proceedings, pursuant to FPA section 319. At the workshop, the FERC heard 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 FERC; and (4) intervenor compensation. A transcript of the workshop is posted in the FERC’s eLibrary. In addition, the FERC held a series of virtual listening sessions, between March 17, 2021 to March 25, 2021, to similarly solicit public input on how the Commission should establish and operate the OPP with the following groups: (1) landowners and communities affected by infrastructure development (March 17); (2) environmental justice communities and tribal interests (March 22); (3) tribal governments (March 24); and (4) energy consumers and consumer advocates (March 25). Nearly 140 sets of comments were filed in response to the Commission’s outreach efforts.

- **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 and a transcript of the technical conference are posted in the FERC’s eLibrary.

On April 21, 2021, the FERC issued a notice inviting post-technical conference comments on the issues raised during the technical conference, including the questions listed in the February 24, 2021 supplemental notice of the technical conference and in the attachment to the April 21 notice. Post-technical conference comments were due on or before June 7, 2021 and were filed by [ISO-NE](#), [Appian Way](#), [Committee of Chief Risk Officers](#), [CPV](#), [DC Energy](#), [Energy Trading Institute](#), [EPSA](#), [Financial Marketers Coalition](#), [ISO/RTO Council](#), [MISO](#), [NYISO](#), [PJM](#), [SPP](#), and [Vitol](#). On July 6, NEPOOL filed comments in response to the IRC comments that, to the extent Tariff changes are to be proposed, the Tariff changes be vetted first pursuant to the Participant Processes set forth in the Participants Agreement. This matter is pending before the FERC.

- **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. Post-technical conference comments were filed by over 30 parties, including: [ISO-NE](#), [NESCOE](#), [Anbaric](#), [ConEd](#), [Eversource](#), [National Grid](#), [NRDC et al.](#), [Orsted](#), [Shell](#), [CT DEEP](#), [EEI](#), [MA DOER](#), [RENEW et al.](#), and [RWE Renewables Americas](#). This matter is pending before the FERC.

- **Hybrid Resources (AD20-9)**

As previously reported, the FERC convened a July 23, 2020 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 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 are due August 18, 2021. The FERC will use the reports and comments to determine whether further action is appropriate.

Hybrid Resources White Paper. On May 26, 2021, the FERC issued a white paper that discusses the hybrid resources technical conference, as well as information learned in post-technical conference comments. Interested persons were invited to submit comments on the white paper and encouraged to jointly respond to both the white paper and RTO/ISO informational reports where applicable to avoid duplicate comments. Comments on the white paper are also due August 18, 2021.

- **Increasing Market and Planning Efficiency Through Improved Software Tech Conf (Jun 22-24, 2021) (AD10-12)**

On June 22-24, the FERC held its 12th annual technical conference addressing increasing Real-Time and Day-Ahead market efficiency through improved software. The conference took place virtually via WebEx, with remote participation from both presenters and attendees. Speaker materials were posted in eLibrary on July 1, 2021. The FERC will accept comments following the conference, with a comment deadline of July 30, 2021.

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

On December 17, 2020, the FERC issued a NOPR⁹⁷ 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 BPS.

Comments on the *Cyber security Incentives NOPR* were due on or before April 6, 2021. Comments were filed by: [NECPUC](#), [APPA](#), [EEI](#), [EPSA](#), [LPPC](#), [NERC](#), [NRECA](#), [TAPS](#), [Accenture](#), [aDolusInc. et al.](#),⁹⁸ [Alliant](#), [Anterix](#), [Bureau of Reclamation](#), [CA Dept of Water Resources State Water Project/CPUC](#), [George Cotter](#), [FRS](#), [Hitachi ABB Power Grids](#), [IECA](#), [ITC](#), [Joint Consumer Advocates](#), [MI PUC](#), [Org of MISO States](#), [MISO TOs](#), [PJM TOs](#), and [Public Citizen](#). Reply comments were due May 6, 2021⁹⁹ and were filed by [APPA/TAPS](#), [EEI](#), [SEIA](#), California Public Utilities Commission and California Department of Water Resources (“[CA PUC/DWR](#)”), and the Office of the Ohio Federal Energy Advocate (“[Ohio FEA](#)”). This matter remains pending before the FERC.

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

On November 19, 2020, the FERC issued a NOPR¹⁰⁰ 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/RTOs 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, 2021.¹⁰¹ 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,¹⁰² NRECA/LPPC, and Potomac Economics. Reply comments were submitted by the Organization of MISO States, Potomac Economics, and ITC Holdings Corp. This matter is pending before the FERC.

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

Supplemental NOPR. In light of comments already received in this proceeding,¹⁰³ the FERC issued on April 15, 2021 a *Supplemental NOPR*¹⁰⁴ to propose and seek comment on a revised incentive for transmitting and electric utilities that join Transmission Organizations (“Transmission Organization Incentive”). The incentive would be reduced from 100 to 50 basis points and would be available only for three years. The FERC seeks comment on whether voluntary participation should be a requirement, and if so, how “voluntary” should be determined. In

⁹⁷ *Cybersecurity Incentives*, 173 FERC ¶ 61,240 (Dec. 17, 2020) (“*Cybersecurity Incentives NOPR*”).

⁹⁸ These joint comments were filed by aDolus Inc., Fortress Information Security, GMO GlobalSign Inc., Ion Channel, ReFirm Labs and Reliable Energy Analytics LLC.

⁹⁹ The *Cybersecurity Incentives NOPR* was published in the *Fed. Reg.* on Feb. 5, 2021 (Vol. 86, No. 23) pp. 8,309-8,325.

¹⁰⁰ *Managing Transmission Line Ratings*, 173 FERC ¶ 61,165 (Nov. 19, 2020) (“*Managing Transmission Line Ratings NOPR*”).

¹⁰¹ 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.

¹⁰² “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.

¹⁰³ Over 80 sets of comments on the *March NOPR* were filed on or before the July 1, 2020 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.

¹⁰⁴ *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, 175 FERC ¶ 61,035 (Apr. 15, 2021) (“*Supplemental NOPR*”).

addition, the FERC now proposes to require each utility that has received a Transmission Organization Incentive for three or more years to submit a compliance filing revising its tariff to remove the incentive from its transmission tariff. The *Supplemental NOPR* did not address the other proposals contained in the *March NOPR*.¹⁰⁵ A more detailed summary of the NOPR was distributed to the Transmission Committee and discussed at the TC's March 25, 2020 meeting.

On May 11, 2021, the FERC granted requests for a 30-day extension of time to submit comments on the *Supplemental NOPR*. Comments on the *Supplemental NOPR* were due on or before June 25, 2021, with over 60 sets of comments filed, including by the New England TOs, MMWEC/NHEC/CMMEC, NECOS, NESCOE, Potomac Economics, and CT PURA. Reply comments are due on or before July 26, 2021.

September 10, 2021 Workshop. The FERC will convene a workshop on September 10, 2021¹⁰⁶ to discuss certain performance-based ratemaking approaches, particularly shared savings, that may foster deployment of transmission technologies. The notice states that the workshop will explore: the maturity of the modeling approaches for various transmission technologies; the data needed to study the benefits/costs of such technologies; issues pertaining to access to or confidentiality of this data; the time horizons that should be considered for such studies; and other issues related to verifying forecasted benefits. The workshop may also discuss whether and how to account for circumstances in which benefits do not materialize as anticipated and may explore other performance-based ratemaking approaches for transmission technologies seeking incentives under FPA section 219, particularly market-based incentives.

If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

¹⁰⁵ As previously reported, the *March NOPR* proposed revisions to the FERCs existing transmission incentives policy and corresponding regulations, including the following:

- ◆ A shift from risks and challenges to a **consumers' benefits test** that focuses on ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.
- ◆ **ROEs incentive for Economic Benefits.** A 50-basis-point adder for transmission projects that meet an economic benefit-to-cost ratio in the top 75th percentile of transmission projects examined over a sample period and an additional 50-basis-point adder for transmission projects that demonstrate *ex post* cost savings that fall in the 90th percentile of transmission projects studied over the same sample period, as measured at the end of construction.
- ◆ **ROE for Reliability Benefits.** A 50-basis-point adder for transmission projects that can demonstrate potential reliability benefits by providing quantitative analysis, where possible, as well as qualitative analysis.
- ◆ **Abandoned Plant Incentive.** 100 percent of prudently incurred costs of transmission facilities selected in a regional transmission planning process that are cancelled or abandoned due to factors that are beyond the control of the applicant. Recovery from the date that the project is selected in the regional transmission planning process.
- ◆ **Eliminate Transco Incentives.**
- ◆ **Transmission Organization Incentive.** A 50-basis-point increase for transmitting utilities that turn over their wholesale facilities to a Transmission Organization and *only for the first three years after transferring operational control of its facilities*. The FERC seeks comment as to whether participation must be voluntary to receive the incentive, and if so, how the CFERC should determine whether the decision to join 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.

¹⁰⁶ Notice of Workshop, *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, Docket Nos. RM20-10 and AD19-19 (Apr. 15, 2021).

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

Order 2222. On September 17, 2020, the FERC issued a final rule (“Order 2222”)¹⁰⁷ adopting reforms to remove what it found were barriers to the participation of distributed energy resource (“DER”)¹⁰⁸ 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;
- (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.

ISO-NE Compliance. On May 24, 2021, the FERC approved the extension of time requested by ISO-NE, to February 2, 2022 (2/2/222), to comply with Order 2222.¹⁰⁹ In granting the extension of time, as it did for MISO, SPP and PJM, the FERC directed ISO-NE to submit an informational filing indicating any changes to the stakeholder process schedule provided in its extension request on or before June 23, 2021 and to submit status reports every 90 days thereafter until the date that ISO-NE submits its compliance filing.¹¹⁰ ISO-NE submitted its first report on June 22, 2021. In that report, ISO-NE stated that the “stakeholder schedule included in ISO-NE’s motion for an extension of time has not been modified. Various NEPOOL stakeholders provided feedback on the ISO-NE’s draft

¹⁰⁷ *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 2222, 172 FERC ¶ 61,247 (Sep. 17, 2020) (“Order 2222”).

¹⁰⁸ 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.”

¹⁰⁹ *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Indep. Sys. Operators*, 175 FERC ¶ 61,156 (May 24, 2021) (“ISO-NE Order 2222 Compliance Extension”).

¹¹⁰ *Id.* at P 5.

compliance proposal in June. The ISO plans to respond to that feedback in July and August before presenting its final draft compliance design and initial Tariff redlines in September, leading, ultimately, to the filing of a compliance proposal on February 2, 2022.” Materials associated with ISO-NE’s *Order 2222* compliance process can be viewed on the ISO-NE website’s *Order 2222* [Key Project page](#).

Order 2222-A. On March 18, 2021, the FERC issued *Order 2222-A*,¹¹¹ 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 modifying § 35.28(g)(12)(i) to make a non-substantive ministerial correction. Requests for rehearing and/or clarification of *Order 2222-A* were due on or before April 19, 2021 and were filed by: AEE/AEMA (Advanced Energy Management Alliance), EEI, National Association of Regulatory Utility Commissioners (“NARUC”), Louisiana Public Service Commission (“LPSC”) and the Mississippi Public Service Commission (“MPSC”), North Carolina Utilities Commission, the MISO Transmission Owners (“MISO TOs”), and Voltus. On April 30, MISO filed comments supporting the rehearing requests filed by NARUC, LPSC/MPSC and the MISO TOs. On May 4, ISO-NE answered the AEE/AEMA request for clarification and/or rehearing of *Order 2222*. On May 14, AEE/AEMA answered ISO-NE’s May 4 answer.

On May 20, 2021, the FERC issued a “Notice of Denial of Rehearings by Operation of Law and Providing for Further Consideration”. The Notice confirmed that the 60-day period during which a petition for review of *Order 2222-A* can be filed with an appropriate federal court was triggered when the FERC did not act on the requests for rehearing of *Order 2222-A*.¹¹² 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.”¹¹³

Order 2222-B. On June 17, 2021, the FERC issued *Order 2222-B*,¹¹⁴ which as permitted by FPA section 313(a), modified the discussion in *Order 2222-A* and set aside, in part, and clarified, in part, that decision. Specifically, *Order 2222-B* set aside the decision in *Order 2222-A* to decline to extend the opt-out and opt-in requirements of *Order* Nos. 719 and 719-A to demand response resources participating in heterogeneous distributed energy resource aggregations (finding that these issues are better addressed in Docket No. RM21-14). *Order 2222-B* also provides further clarification regarding appropriate restrictions to avoid double counting of services and the compensation of demand response resources that participate in heterogeneous distributed energy resource aggregations. *Order 2222-B* will become effective August 27, 2021.¹¹⁵

¹¹¹ *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) (“*Order 2222-A*”).

¹¹² *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Indep. Sys. Operators*, 175 FERC ¶ 62,109 (May 20, 2021) (“*Notice of Denial of Rehearings By Operation of Law*”).

¹¹³ *Id.*

¹¹⁴ *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Indep. Sys. Operators*, Order No. 2222-B, 175 FERC ¶ 61,227 (June 17, 2021) (“*Order 2222-B*”).

¹¹⁵ *Order 2222-B* was published *Fed. Reg.* on June 28, 2021 (Vol. 86, No. 121) pp. 33,853-33,861.

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

As previously reported, *Order 860*,¹¹⁶ issued three years after the FERC's *Data Collection NOPR*,¹¹⁷ (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,¹¹⁸ 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,¹¹⁹ 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.¹²⁰ 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) blanket authorization and the upstream affiliate whose securities were acquired pursuant to the section 203(a)(2) blanket authorization. Comments on the Notice were due on or before June 7, 2021,¹²¹ and were

¹¹⁶ *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).

¹¹⁷ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (July 21, 2016) ("*Data Collection NOPR*").

¹¹⁸ 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.

¹¹⁹ *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*").

¹²⁰ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 174 FERC ¶ 61,214 (Mar. 18, 2021).

¹²¹ The Notice was published *Fed. Reg.* on Apr. 6, 2021 (Vol. 86, No. 64) pp. 17,823-17,828.

filed by [EEI](#), [the Global LEI Foundation](#), [TAPS](#), and [XBRL US](#). 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 April 22, 2021, the FERC held a technical workshop to discuss the functionality and features of the MBR Database.

- **Order 676-J: Incorporation of NAESB WEQ Standards v. 003.3 into FERC Regs (RM05-5-029, -030)**

On May 20, 2021, the FERC issued Order 676-J,¹²² which revises FERC regulations to incorporate by reference the latest version (Version 003.3) of the 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 WEQ Version 003.3 Standards include, in their entirety, the WEQ-023 Modeling Business Practice Standards contained in the WEQ Version 003.1 Standards, which address the technical issues affecting Available Transfer Capability (“ATC”) and Available Flowgate Capability (“AFC”) calculation for wholesale electric transmission services, with the addition of certain revisions and corrections. The FERC also revised its regulations to provide that transmission providers must avoid unduly discriminatory and preferential treatment in the calculation of ATC. *Order 676-J* will become effective August 2, 2021.¹²³ Public utilities must make a compliance filing to comply with the requirements of this final rule through eTariff 12 months after implementation of the WEQ Version 003.2 Standards. Compliance filings for cybersecurity and Parallel Flow Visualization standards are due March 2, 2022.

- **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.¹²⁴ The *Proposed Policy Statement* sets forth the approach the FERC would take going forward to ensure compliance with the filed rate doctrine and the rule against retroactive making. The proposed policy will both clarify and modify waiver standards, and in some instances, make it harder to obtain waivers.

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

1. *Style Requests as Requests for Remedial Relief.* Filings seeking relief in connection with actions or omissions that have already occurred prior to the date relief is sought from the FERC would be characterized as a request for remedial relief (rather than as a request for a waiver). In response to such a request, the FERC will focus on what remedy, if any, is required to cure acknowledged or alleged deviations from a filed tariff. “Waiver” is to be limited to (a) requests for prospective relief when a requested future deviation from the filed tariff has not yet occurred at the time a request is filed; or (b) petitions for remedial relief when a tariff expressly authorizes regulated entities to seek a remedial waiver from the FERC for past non-compliance with the filed tariff.

¹²² *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-J, 175 FERC ¶ 61,139 (May 20, 2021) (“*Order 676-J*”).

¹²³ *Order 676-J* was published *Fed. Reg.* on June 2, 2021 (Vol. 86, No. 104) pp. 29,491-29,503.

¹²⁴ *Waiver of Tariff Requirements*, 171 FERC ¶ 61,156 (May 21, 2020) (“*Proposed Policy Statement*”).

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 analysis¹²⁵ 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 waivers,¹²⁶ 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,¹²⁷ INGAA, Kansas Electric Power Coop. ("KEPC"), NGA, NGSA, NRECA, Public Citizen, Sunflower Electric Power, and TAPS. Reply comments were filed

¹²⁵ 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.

¹²⁶ 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.

¹²⁷ "Indicated Generators" are Vistra, NRG, FirstLight, Cogentrix, and LS Power.

by APPA, Joint Trade Associations,¹²⁸ KEPC, and the Sustainable FERC Project. The proposed Policy Statement remains 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*.¹²⁹ 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").¹³⁰ 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, 2020.¹³¹ 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 Parties¹³² answered the New England TO's May 10 supplemental comments. On June 15, 2020, Joint Parties¹³³ 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.¹³⁴ WIRES submitted supplemental comments on June 18, 2020 requesting that the FERC take further action in this proceeding to "resolve the uncertainty surrounding its base ROE methodology and establish a policy consistent with the recommendations made in these comments" (recommending a framework that employs all four of the previously proposed ROE models, including the Expected Earnings model, along with certain modifications, to ensure that ROEs attract capital investment in needed transmission infrastructure). On June 24, EEI and WIRES requested the FERC issue a NOI regarding the FERC's policy for determining base ROE applicable to the electric industry as a whole. Six Cities answered Joint Parties on June 30. APPA answered EEI and WIRES' June 24 motion.

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

As previously reported, the FERC's February 18, 2021 notice of inquiry ("*2021 NOI*") sought new information and additional stakeholder perspectives to help the FERC explore whether it should revise its approach under the currently effective policy statement on the certification of new natural gas transportation

¹²⁸ "Joint Trade Associations" are AEE, AWEA, EEI, EPSA, INGAA, NGSA, NRECA and SEIA.

¹²⁹ *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*").

¹³⁰ 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.¹³⁰ 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).

¹³¹ 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.

¹³² 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.

¹³³ "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.

¹³⁴ "Six Cities" are the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California.

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 NGA section 7.¹³⁵ 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.¹³⁶ Comments on the 2021 NOI were due May 26, 2021. In all, more than 130 sets of comments were filed, including a large number from concerned private citizens. This matter is pending before the FERC.

XIII. FERC Enforcement Proceedings

Electric-Related Enforcement Actions

- **GreenHat (IN18-9)**

On May 20, 2021, the FERC directed GreenHat Energy, LLC (“GreenHat”), John Bartholomew, Kevin Ziegenhorn, and [Luan Troxel as the Executor for] the Estate of Andrew Kittell (“Kittell Estate”) (collectively, “Respondents”) to show cause why they should not be found to have violated FPA section 222, along with section 1c.2 of the FERC’s regulations, PJM Tariff Attachment Q, Section B and section 15.1.3 of PJM’s Operating Agreement, by engaging in a manipulative scheme in PJM’s Financial Transmission Rights (“FTR”) market which generated more than \$13 million in unjust profits for Respondents and imposed approximately \$179 million in losses on PJM Members. The FERC directed GreenHat, Bartholomew, Ziegenhorn, and the Kittell Estate to show cause why they should not be required, jointly and severally, to disgorge unjust profits of just **over \$13 million**, plus interest, and directed GreenHat, Bartholomew, and Ziegenhorn (but not the Kittell Estate) to show cause why they should not be assessed civil penalties of **\$179 million**, **\$25 million**, and **\$25 million**, respectively.

Since the last Report, on June 16, 2021, the FERC extended Respondents answer period to and including July 6, 2021. However, at least as of the date of this Report, no reply is posted in eLibrary. In addition, on June 11, 2021, Respondents exercised their right, pursuant to FPA § 31(d)(1), to elect the federal district court path described in FPA § 31(d)(3) for any future adjudication of these allegations in the event that the FERC chooses to pursue a civil penalty against Respondents for alleged violations. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **PacifiCorp (IN21-6)**

On April 15, 2021, in the FERC’s first-ever Show Cause Order addressing alleged violations of NERC Reliability Standards,¹³⁷ the FERC directed PacifiCorp to show cause why it should not be found to have violated FPA section 215(b)(1) and section 39.2 of the FERC’s regulations by failing to comply with Reliability Standard FAC 009-1 (Establish and Communicate Facility Ratings), Requirement R1, and the successor Reliability Standard FAC-008-3 (Facility Ratings), Requirement R6 (collectively, “FAC-009-1 R1”), which requires a transmission owner to establish and have facility ratings that are consistent with its Facility Ratings Methodology (“FRM”). An Enforcement investigation found that clearance measurements on a majority of PacifiCorp’s transmission lines were incorrect under the National Electric Safety Code, which were used to calculate PacifiCorp’s facility ratings, thus making PacifiCorp’s facility ratings inconsistent with its FRM. Enforcement alleges that PacifiCorp was aware of incorrect clearances on its system since at least 2007 when FAC-009-1 R1 became mandatory, but failed to identify and remedy them in a timely manner, and PacifiCorp’s violations began on August 31, 2009, when it implemented its FRM policy, and at least some of the violations continued until August 2017 when PacifiCorp completed remediation of all of its incorrect clearances to make them consistent with its FRM. Enforcement also pointed to the role of the violations in the Wood Hollow,

¹³⁵ *Certification of New Interstate Natural Gas Facilities*, 174 FERC ¶ 61,125 (Feb. 18, 2021) (“2021 NOI”).

¹³⁶ *Id.* at P 3.

¹³⁷ *PacifiCorp*, 175 FERC ¶ 61,039 (Apr. 15, 2021) (“*PacifiCorp Show Cause Order*”).

Utah wildfire that lasted from June 23 to July 1, 2012. In light of these alleged violations, the FERC directed PacifiCorp to show cause why it should not be assessed civil penalties in the amount of **\$42 million**.

On April 21, PacifiCorp asked for a 60-day extension of time, to July 15, 2021, to file its answer. On April 22, FERC staff responded to Respondent's motion, not opposing the extension of time, but asking that, for scheduling conflict reasons, its deadline to reply also be extended by 30 days. On May 4, 2021, the FERC extended PacifiCorp's answer period by 60 days, to and including July 16, 2021, and Enforcement's reply period, 60 days from the filing of PacifiCorp's answer. On May 7, 2021, PacifiCorp exercised its right, pursuant to FPA § 31(d)(1), to elect the federal district court path described in FPA § 31(d)(3) for any future adjudication of these allegations in the event that the FERC chooses to pursue a civil penalty against PacifiCorp for alleged violations. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

Natural Gas-Related Enforcement Actions

- **Shell Energy NA (US) (IN21-8)**

On June 15, 2021, the FERC approved a Stipulation and Consent Agreement with Shell Energy North America (US), L.P.¹³⁸ ("Shell") that resolved OE's investigation into whether Shell engaged in a related-positions fraudulent scheme during the May 2016 bidweek, in violation of section 4A of the Natural Gas Act ("NGA") and the FERC's Anti-Manipulation Rule. Enforcement determined that Shell engaged in a related-positions fraud.¹³⁹ Under the Settlement, in which Shell neither admits nor denies the alleged violations, Shell must **disgorge \$48,317** plus interest,¹⁴⁰ and **pay a \$951,683 civil penalty** to the United States Treasury. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On March 18, 2021, the FERC issued a show cause order¹⁴¹ 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 NGA section 7(c).¹⁴² The FERC directed Respondents to show cause why they should not be assessed civil penalties in the amount of **\$20.16 million**. On April 5, 2021, the FERC extended by 60 days, to June 18, 2021, the deadline for Respondents' answer. Rover and

¹³⁸ *Shell Energy North America (US), L.P.*, 175 FERC ¶ 61,201 (June 15, 2021).

¹³⁹ OE found that (i) Shell's its physical trading at the KRS and PG&E Citygate trading hubs during the May 2016 bidweek was designed to manipulate monthly index prices to benefit derivative financial positions in a junior trader's speculative book and (ii) Shell did not appropriately supervise the junior trader during the May 2016 bidweek, nor did Shell take appropriate compliance action during or after the May 2016 bidweek to address the junior trader's failure to follow its manager's instruction. *Id.* at PP 13-16.

¹⁴⁰ Shell's disgorgement is to be allocated to National Trading II (\$13,391), Enstor Energy Services (\$10,166), Macquarie Energy (\$9,073), Noble Americas Gas & Power Corp. (\$8,636), and ConocoPhillips Co. (\$7,051).

¹⁴¹ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 174 FERC ¶ 61,208 (Mar. 18, 2021) ("*Rover/ETP Show Cause Order*").

¹⁴² 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.

ETP answered the *Rover/ETP Show Cause Order*, asserting that the FERC should dismiss this matter and decline to initiate an enforcement action. This matter is pending before the FERC.

- **BP (IN13-15)**

On December 17, 2020, the FERC issued *Opinion 549-A*,¹⁴³ a 159-page decision addressing arguments raised on rehearing requested of *Opinion 549*.¹⁴⁴ *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.¹⁴⁵ *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.¹⁴⁶

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*.

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

On April 28, 2016, the FERC issued a show cause order¹⁴⁷ 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 2012.¹⁴⁸

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

¹⁴³ *BP America Inc. et al.*, Opinion No. 549-A, 173 FERC ¶ 61,239 (Dec. 17, 2020) ("*BP Penalties Allegheny Order*")

¹⁴⁴ *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*"))).

¹⁴⁵ *BP Penalties Allegheny Order* at P 1.

¹⁴⁶ *Id.* at P 319.

¹⁴⁷ *Total Gas & Power North America, Inc.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) ("*TGPNA Show Cause Order*").

¹⁴⁸ 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 NGA section 4A 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.

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; National Grid and ConEd submit comments supporting Iroquois' application and request for action.
 - On May 27, 2021, FERC staff issued a notice that it will prepare an environmental impact statement ("EIS") for this Project, which will respond to comments filed on the Environmental Assessment, and plans to release that EIS on September 3, 2021.
 - On June 11, 2021, FERC staff issued a notice that it has prepared a draft EIS for this Project, which responds to comments on the September 30, 2020 Environmental Assessment, and with the exception of greenhouse gas ("GHG") emissions, concludes that approval of the proposed Project, with the mitigation measures recommended in the EIS, would not result in significant environmental impacts. FERC staff did not come to a determination of significance with regards to GHG emissions. Comments on the draft EIS are due on or before August 2, 2021.
- ***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.¹⁴⁹ Rehearing of the *Authorization Order* was timely requested, but denied by operation of law.
 - *Briefing Order*. In a fairly unprecedented order issued February 18, 2021,¹⁵⁰ 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 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

¹⁴⁹ *Algonquin Gas Transmission, LLC*, Docket No. CP16-9 at 1 (Sep. 24, 2020) (delegated order) ("*Authorization Order*").

¹⁵⁰ *Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, LLC*, 174 FERC ¶ 61,126 (Feb. 18, 2021) ("*Briefing Order*").

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. On April 19, 2021, the FERC issued a “Notice of Denial of Rehearings by Operation of Law and Providing for Further Consideration”.¹⁵¹ The Notice confirmed that the 60-day period during which a petition for review of its *Briefing Order* can be filed with an appropriate federal court was triggered when the FERC did not act on the requests for rehearing of the *Briefing Order*. 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.” On May 19, the FERC issued that order,¹⁵² dismissing the requests for rehearing of the *Briefing Order*, noting, over the objection of Commissioner Danly, that the *Briefing Order* was an exercise of the FERC’s continuing oversight of the Project (meaning the claimed harms would be speculative and premature) and Algonquin and Trade Associations will have an opportunity to submit, if they choose, in requests for rehearing of any final decision by the Commission in this proceeding. Algonquin petitioned the DC Circuit for review of the *Briefing Order* and the notice of denial by operation of law on May 3, 2021 (see Section XVI below).
- ▶ Requests for rehearing of the *May 19 Order* were filed by Algonquin and INGAA. Algonquin also petitioned the DC Circuit for review of the *Briefing Order*, *April 19 Notice of Denial of Rehearings by Operation of Law*, and the *May 19 Order*.
- ▶ Initial briefs in response to the *Briefing Order* were due April 5, 2021. Nearly 50 sets of initial briefs and comments were filed. Reply briefs were due on or before May 5, 2021; 12 sets of reply briefs were filed. Algonquin answered those reply briefs on May 14.
- ▶ 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.¹⁵³ Those orders have been challenged on appeal to the US Court of Appeals for the Second Circuit (19-1610).

¹⁵¹ *Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, LLC*, 175 FERC ¶ 62,022 (Apr. 19, 2021) (“*April 19 Notice of Denial of Rehearings by Operation of Law*”).

¹⁵² *Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, LLC*, 175 FERC ¶ 61,150 (May 19, 2021) (“*May 19 Order*”).

¹⁵³ *Nat’l Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 167 FERC ¶ 61,007 (Apr. 2, 2019).

- ▶ 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*.¹⁵⁴ Further, in an interesting twist, the FERC found that a December 5, 2017 “Renewed Motion for Expedited Action” filed by National Fuel Gas Supply Corporation and Empire Pipeline, Inc. (the “Companies”), in which the Companies asserted a separate basis for their claim that the NY DEC waived its authority under section 401 of the Clean Water Act (“CWA”) to issue or deny a water quality certification for the Northern Access Project, served as a motion requesting a waiver determination by the FERC,¹⁵⁵ 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, 2017.¹⁵⁶ 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.¹⁵⁷ 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,¹⁵⁸ 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.¹⁵⁹

¹⁵⁴ *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).

¹⁵⁵ 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).

¹⁵⁶ *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*”).

¹⁵⁷ *Nat’l Fuel Gas Supply Corp. v. NYSDEC et al.* (2d Cir., Case No. 17-1164).

¹⁵⁸ 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).

¹⁵⁹ 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).

- 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,¹⁶⁰ finding the request premature. The FERC reiterated its encouragement that pipeline applicants requesting extensions "file their requests no more than 120 days before the deadline to complete construction", so that the FERC has the relevant information available to determine whether good cause exists to grant an extension of time and whether the FERC's prior findings remain valid.¹⁶¹

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 were, following an extension, due by May 13, 2021. Comments submitted are posted on [NewEnglandEnergyVision.com](https://newenglandenergyvision.com). Recordings of the technical forums, as well as draft notices, agendas, and additional information on these sessions, are also available on the New England States' Vision Statement website (<https://newenglandenergyvision.com/>).

Report to the Governors. On June 29, 2021, the NESCOE Managers published their Progress Report to the New England Governors Regarding "Advancing the New England Energy Vision". View Report [here](#).

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).

¹⁶⁰ *National Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 173 FERC ¶ 61,197 (Dec. 1, 2020).

¹⁶¹ *Id.* at P 10.

- **ISO-NE Implementation of Order 1000 Exemptions for Immediate Need Reliability Projects (20-1422)**
Underlying FERC Proceeding: EL19-90¹⁶²
Petitioner: LS Power
Status: Briefing Underway

On October 16, 2020, LSP Transmission Holdings II, LLC (“LS Power”) petitioned the DC Circuit Court of Appeals for review of the FERC’s orders addressing ISO-NE’s implementation of the Order 1000 exemptions for immediate need reliability projects. 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. In accordance with that amended schedule, LS Power filed Petitioner’s Brief on April 5, 2021 and MMWEC filed an “Intervenor in Support of Petitioners” Brief on April 12, 2021. On June 11, 2021, the FERC filed its Respondent Brief. Next up are Intervenor’s Brief in Support of FERC, and Petitioner’s and Intervenor’s in Support of Petitioner Reply Briefs, all due July 9, 2021. Remaining deadlines after that include: submission of a Deferred Appendix on July 16, 2021; and Final Briefs to be submitted on July 30, 2021.

- **CIP IROL Cost Recovery Rules (20-1389)**
Underlying FERC Proceeding: ER20-739¹⁶³
Petitioner: Cogentrix, Vistra
Status: Briefing Underway

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”). FERC filed Respondent’s Brief on April 30, 2021. On May 14, NESCOE (Intervenor for Respondent) filed a notice that, because its interests were addressed in the FERC’s brief, it would not submit an Intervenor for Respondent Brief. On June 28, 2021, Cogentrix and Vistra filed Petitioners’ Reply Brief. Next up will be the submission of a 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: EL18-1639¹⁶⁴
Petitioners: Mystic (20-1343), NESCOE (20-1361, 21-1067), MA AG (20-1362), CT Parties (20-1365, 20-1368, 21-1070)
Status: Briefing Not Yet Begun

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.¹⁶⁵ The cases have

¹⁶² *ISO New England Inc.*, 171 FERC ¶ 61,211 (June 18, 2020) (“*Order Terminating Proceeding*”) (finding (i) “insufficient evidence in the record to find under FPA section 206 that [ISO-NE’s] implementation of the exemption for immediate need reliability projects is unjust, unreasonable, or unduly discriminatory or preferential; (ii) “insufficient evidence in the record to find that ISO-NE implemented the immediate need reliability project exemption in a manner that is inconsistent with or more expansive than [the FERC] directed”; and (iii) that ISO-NE complies with the five criteria established for the immediate need reliability project exemption); and *ISO New England Inc.*, 172 FERC ¶ 61,293 (Sep. 29, 2020) (“*Order 1000 Exemptions Allegheny Order*”) (addressing arguments raised by request for rehearing denied by operation of law, modifying discussion in *Order Terminating Proceeding*, but reaching same result).

¹⁶³ *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*”).

¹⁶⁴ *July 2018 Order; July 2018 Rehearing Order; Dec 2018 Order; Dec 2018 Rehearing Order; Jul 17 Compliance Order*.

¹⁶⁵ 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.

been consolidated into Case No. 20-1343. 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. On April 16, 2021, the Court ordered the parties to file, and the parties did file, by May 17, 2021, proposed formats for the briefing of these cases.

Since the last Report, the Court established a briefing schedule that calls for the following: Mystic and State Petitioners' Opening Briefs (September 7, 2021); Intervenor for State Petitioners' Brief (September 21, 2021); Respondent's Brief (December 6, 2021); Intervenor for Respondents' Briefs (December 20, 2021); Reply Briefs (February 3, 2022); Joint Appendix (February 17, 2022); and Final Briefs (February 24, 2022). On June 28, the Court directed the FERC to file the certified index to the record by July 12, 2021. The date for oral argument and the composition of the merits panel will be identified at a later time.

- **CASPR (20-1333, 20-1331) (consolidated)****

Underlying FERC Proceeding: ER18-619¹⁶⁶

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

Status: Being Held in Abeyance

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. On March 24, 2021, the Court granted NEPOOL's intervention and established a briefing schedule that, as explained just below, has since been superseded.

On April 7, 2021, the Court granted Petitioners' motion to hold this matter in abeyance, pending further order of the Court. The parties were directed to file motions to govern future proceedings in these cases on or before October 22, 2021.

¹⁶⁶ *ISO New England Inc.*, 162 FERC ¶ 61,205 (Mar. 9, 2018) ("*CASPR Order*").

- **Opinion 531-A Compliance Filing Undo (20-1329)**
Underlying FERC Proceeding: ER15-414¹⁶⁷
Petitioners: TOs' (CMP et al.)
Status: Being Held in Abeyance

On August 28, 2020, the TOs¹⁶⁸ 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*¹⁶⁹ 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 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 this case remain in abeyance pending further order of the court. On April 21, 2021, the FERC filed an unopposed motion for continued abeyance of this case *because* the Commission intends to issue a future order on Petitioners' request for rehearing of the challenged Order Rejecting Compliance Filing, and because the remand proceeding in which the challenged order was issued remains ongoing.

On May 4, 2021, the Court ordered that this case remain in abeyance pending further order of the court, directing the FERC to file a status report by September 1, 2021 and at 120-day intervals thereafter. The parties were directed to file motions to govern future proceedings in this case within 30 days of the completion of agency proceedings.

- **2013/14 Winter Reliability Program Order on Compliance and Remand (20-1289, 20-1366) (consol.)**
Underlying FERC Proceeding: ER13-2266¹⁷⁰
Petitioner: TransCanada
Status: Briefing Complete; Pending Court Action

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*.¹⁷¹ 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. Since the last Report, TransCanada filed Petitioner's Reply Brief on April 9, 2021 and the Deferred Appendix

¹⁶⁷ *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) ("Order Rejecting Filing").

¹⁶⁸ 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.

¹⁶⁹ *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*").

¹⁷⁰ 171 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*").)

¹⁷¹ 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.

on April 16. TransCanada filed its Final Brief on April 30, 2021. Briefing is now complete and this matter is pending before the Court.

- **ISO-NE's Inventoried Energy Program (Chapter 2B) Proposal (19-1224***; 19-1247; 19-1252; 19-1253)(consolidated); Underlying FERC Proceeding: ER19-1428¹⁷²**
Petitioners: ENECOS (Belmont et al.) (19-1224); MA AG (19-1247); NH PUC/NH OCA (19-1252); Sierra Club/UCS (19-1253)
Status: Briefing Complete; Pending Court Action

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 was filed on April 20, 2021. Final Briefs were filed on May 4, 2021. With briefing complete, this matter is now pending before the Court.

Other Federal Court Activity of Interest

- **Order 872 (20-72788,* 21-70113; 20-73375, 21-70113) (consol.) (9th Cir.)**
Underlying FERC Proceeding: RM19-15¹⁷³
Petitioners: SEIA et al.

Status: Briefing Again Underway

On September 17, 2020, SEIA petitioned the 9th Circuit Court of Appeals for review of *Order 872*.¹⁷⁴ 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 was to 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.

On March 25, 2021, the Court granted SEIA's unopposed March 5, 2021 motion to lift the stay in this proceeding. Briefing has resumed. On May 27, 2021, Petitioners' briefs were filed by SEIA and Other Petitioners.¹⁷⁵ Remaining submissions will include: 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).

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

¹⁷³ *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).

¹⁷⁴ *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.

¹⁷⁵ "Other Petitioners" are Montana Environmental Information Center, Sierra Club, Center for Biological Diversity, Vote Solar, Appalachian Voices, Energy Alabama, Georgia Interfaith Power & Light, North Carolina Sustainable Energy Association, Upstate Forever, and Community Renewable Energy Association.

- **PennEast Project (18-1128)**
Underlying FERC Proceeding: CP15-558¹⁷⁶
Petitioners: NJ DEP, DE and Raritan Canal Commission, NJ Div. of Rate Counsel
Status: Being Held in Abeyance

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")¹⁷⁷ 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 June 22, 2021, noting developments since the March 23, 2021 Status Report, and reporting that none of the events "constitute any of the conditions that [the DC Circuit] enumerated in its October 1, 2019 Order as triggering an obligation to file a motion governing future proceedings."

- **Opinion 569/569-A: FERC's Base ROE Methodology (16-1325, 20-1182, 20-1240, 20-1241, 20-1248, 20-1251, 20-1267, 20-1513)**
Underlying FERC Proceeding: EL14-12; EL15-45¹⁷⁸
Petitioners: MISO TOs, Transsource Energy, Dec 23 Petitioners et al.
Status: Briefing Underway

The MISO Transmission Owners (TOs), Transsource and "Dec 23 Petitioners",¹⁷⁹ 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 Parties") (that motion was granted on April 30, 2021). On March 18, New England Parties submitted an amicus brief in support of Transmission Owning Petitioners. On March 24, 2021, Intervenor in Support of Petitioners¹⁸⁰ filed their Brief. Since the last Report, FERC filed its Respondent brief on June 8 and Intervenor in Support of FERC their Joint Brief on June 22, 2021. The following deadlines remain: Petitioners Reply Briefs, July 8, 2021; Intervenor in Support of Petitioners Reply Briefs, July 22, 2021; Joint Deferred Appendix, August 6, 2021; and Final Briefs, August 19, 2021.

¹⁷⁶ *PennEast Pipeline Co., LLC*, 162 FERC ¶ 61,053 (Jan. 19, 2018), *reh'g denied*, 163 FERC ¶ 61,159 (May 30, 2018).

¹⁷⁷ 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.

¹⁷⁸ *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).

¹⁷⁹ "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.

¹⁸⁰ The Intervenor 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.

- **Algonquin Atlantic Bridge Project Briefing Order (21-1115);
Underlying FERC Proceeding: CP16-9-012¹⁸¹
Petitioner: LS Power**

Status: Briefing Not Yet Begun

On May 3, 2021, Algonquin petitioned the DC Circuit Court of Appeals for review of the *Briefing Order* and the *April 19 Notice of Denial of Rehearings by Operation of Law*. Appearances, docketing statements and a statement of issues were due and filed June 4, 2021. Also on June 4, 2021, the FERC filed an unopposed motion to hold this proceeding in temporary abeyance, until August 2, 2021, , including the filing of the certified index to the record, because “the May 3 petition for review no longer reflects the [FERC]’s latest determination in this matter.” On June 21, the Court granted the abeyance motion, directing the parties to file motions to govern future proceedings by August 6, 2021.

¹⁸¹ *Briefing Order; April 19 Notice of Denial of Rehearings by Operation of Law*

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