

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of August 3, 2021

The following activity, as more fully described in the attached litigation report, has occurred since the report dated July 7, 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



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| 1 | Extension of Filing Deadlines (AD20-11) | Jul 26 | FERC further extends through Jan 1, 2022 FERC regulations that require filings be notarized or supported by sworn declarations |
| 2 | Blanket Waiver of ISO/RTO Tariff In-Person Meeting and Notarization Requirements (EL20-37) | Jul 26 | FERC further extends through Jan 1, 2022 blanket waivers of ISO/RTO Tariff in-person meeting and notarization requirements |

I. Complaints/Section 206 Proceedings



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| 2 | Green Development DAF Charges Complaint Against National Grid (EL21-47) | Jul 27 | Green Development submits motion to renew and reiterate its request for fast track processing of its Feb 10, 2021 complaint |
| 2 | NEPGA Net CONE Complaint (EL21-26) | Jul 29 | FERC issues a "Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration" of the EPSA/NEPGA request for rehearing of the <i>NEPGA Net Cone Complaint Order</i> |

II. Rate, ICR, FCA, Cost Recovery Filings



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| 7 | FCA16 De-List Bids Filing (ER21-2342) | Jul 9, 16 | NEPOOL, National Grid intervene |
| 7 | CSC CIP IROL Cost Recovery: Pre-Jun 1, 2021 Regulatory Asset Cost Recovery (ER21-2334) | Jul 22 | NESCOE protests CSC's proposal to establish and use a regulatory asset to recover CIP IROL Costs that it incurred from Jan 2016 to May 31, 2021 |
| 8 | CSC CIP IROL Cost Recovery: Jun 1, 2021 Forward (ER21-2031) | Jul 8 | FERC accepts CSC's post-Jun 1, 2021 CIP IROL rate schedule, eff. Jun 1, 2021 |
| 8 | Mystic 8/9 Cost of Service Agreement (ER18-1639) | Jul 15
Jul 29 | FERC issues order setting the base ROE at 9.33%
FERC accepts fourth compliance filing, eff. Jun 1, 2022 |

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



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| 9 | Removal of Appendix B from Market Rule 1; Deletion of Assoc. Tariff Provisions (ER21-2220) | Jul 16-19 | Eversource, National Grid intervene |
| 9 | CPower Waiver Request (ER21-2135) | Jul 28 | FERC denies CPower's request for waiver of the ISO-NE Tariff provisions for the determination of CPower' Demand Capacity Resources' ARA3 Summer ARA Qualified Capacity |
| 10 | Solar Data Requirements & Relocation of Wind Data Requirements (ER21-1974) | Jul 16 | FERC accepts revisions, eff. Jul 20, 2021 |
| 11 | Updated CONE, Net Cone and PPR Values (eff. FCA16) (ER21-787) | Jul 29
Jul 30 | FERC issues a "Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration" of the EPSA/NEPGA request for rehearing of the <i>Updated CONE, Net Cone and PPR Values Order</i>
FERC accepts ISO-NE's compliance filing, eff. May 29, 2021 |

V. OATT Amendments / TOAs / Coordination Agreements

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| * 12 | TOs <i>Order 676-I</i> Compliance Filing (ER21-2529) | Jul 27 | PTO AC, ISO-NE, Schedule 20A Service Providers, GMP, and VTransco submit revisions to Schedule 21-Common and Schedule 20A-Common in accordance with <i>Order 676-I</i> ; comment date Aug 19, 2021 |
| * 12 | CSC <i>Order 676-I</i> Compliance Filing (ER21-2509) | Jul 26 | CSC and ISO-NE submit <i>Order 676-I</i> revisions to Schedule 18, Attachment Z of the ISO-NE Tariff; comment date Aug 16, 2021 |
| 12 | BTM Generation Proposal (ER21-2337) | Jul 22
Jul 13
Jul 8-16 | Comments and protests filed by: ISO-NE IMM , AEE , IECG , NECOS/ENE , NEPGA , Public Systems , MPUC/CT PURA/MA DPU , VT PUC
NEPOOL files comments
Calpine, EMI, National Grid intervene |

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

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| * 13 | Schedule 21-VP 2021 Annual BHD Informational Filing (ER20-2119) | Jul 28 | Versant files revised 12-CP values, changing calculation of retail transmission charges for Large Power – Transmission Voltage and other retail customers |
| * 13 | Schedule 21-FG&E Annual Informational Filing (ER09-1498) | Jul 26 | FG&E submits annual update to its Revenue Requirement recovered through the ISO-NE Tariff and Schedule 21-FG&E for the Jun 1, 2021 – May 31, 2022 period |

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

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| * 15 | LFTR Implementation: 51st Quarterly Status Report (ER07-476) | Jul 15 | ISO-NE files its 51st quarterly report |
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IX. Membership Filings

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| 16 | August 2021 Membership Filing (ER21-2552) | Jul 29 | NEPOOL requests that the FERC accept (i) the memberships of In Commodities US and Jupiter Power; (ii) the termination of the Participant status of GenOn Energy Management and GenOn Canal; and (iii) the name change of Rivercrest Power-SOUTH, LLC (f/k/a BioUrja Power LLC); comment date Aug 19, 2021 |
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X. Misc. - ERO Rules, Filings; Reliability Standards

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| * 19 | FERC/NERC Joint Report on Real Time Assessments (not docketed) | Jul 8 | FERC/NERC Joint Report on Real Time Assessments (not docketed) |
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XI. Misc. - of Regional Interest

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| * 20 | First Rev LGIA: National Grid / New England Wind (Hoosac) (ER21-2548) | Jul 29 | National Grid and ISO-NE file a First Revised LGIA with New England Wind to include details regarding DAF charges and to update the CNRC of the Hoosac wind farm; comment date Aug 19, 2021 |
| * 21 | Versant Power MPD OATT Order 676-I Compliance Filing (ER21-2498) | Jul 23 | Versant Power files proposed revisions to MPD OATT Section 4 to incorporate by reference certain <i>Order 676-I</i> revisions and requests waiver of certain of those standards not applicable to MPD; comment date Aug 13, 2021 |

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| * 21 | Versant Waiver Request:
Unreserved Transmission Use
Penalty Policy (ER21-2447) | Jul 16 | Versant Power requests waiver of the application of its current Unreserved Transmission Use Penalty Policy to Black Bear, instead proposing to use its prior version; comment date Aug 6, 2021 |
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XII. Misc. - Administrative & Rulemaking Proceedings



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| 23 | Joint Federal-State Task Force on
Electric Transmission (AD21-15) | Jul 19 | NARUC nominates state commissioners to Transmission Task Force, including New England Commissioners Riley Allen (VT PUC) and Matt Nelson (Chair, MA DPU) |
| 24 | Climate Change, Extreme Weather,
and Elec. Sys. Reliability: Jun 1-2
Tech. Conf. (AD21-13) | Jul 22 | Jun 1-2 transcripts posted to eLibrary |
| 24 | Resource Adequacy - Modernizing
Electricity Mkt Design (AD21-10) | Jul 19 | Post-technical conference comments filed by: AEE , Calpine , CT Parties , Dominion , Eversource , MMWEC , NESCOE , NEPGA , NextEra , NRG , Public Interest Orgs , Vistra , AEMA , EPSA , RENEW |
| | | Jul 19 | FERC issues notice of 2 staff-led tech confs to discuss potential energy and ancillary services market reforms that may be needed as the resource fleet and load profiles change over time; tech conf dates: Sep 14, 2021 and Oct 12, 2021 |
| 26 | Hybrid Resources (AD20-9) | Jul 19 | ISO/RTOs, including ISO-NE, file reports on implementation of hybrid resources as directed in Jan 19 order; comment date Aug 18, 2021 |
| | | Jul 28 | ESA requests 30-day extension of time, to Sep 20, 2021, to file comments in response to the ISO/RTO reports |
| 26 | NOI: Removing the DR Opt-Out in
ISO/RTO Markets (RM21-14) | Jul 23 | Nearly 30 parties file comments, including by: AEE , Voltus , AEMA , APPA/NRECA , EEI , and NARUC |
| 27 | NOPR: Electric Transmission
Incentives Policy (RM20-10) | Jul 26 | 28 sets of reply comments filed, including by the New England TOs , NECOS , NESCOE , CT PURA/CT DEEP/MA AG , CT AG , and Public Interest Groups |
| 22 | <i>Orders 864/864-A</i> (Public Util. Trans.
ADIT Rate Changes): New England
Compliance Filings (various) | Jul 27 | <i>ER20-2429-001 (CMP)</i> . MPUC protests CMP deficiency letter response |

XIII. FERC Enforcement Proceedings



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| * 35 | Terra-Gen, LLC
(IN21-7) | Aug 2 | FERC approves Stipulation and Consent Agreement that resolved OE's investigation into whether Terra-Gen submitted false/misleading information to CAISO about Cameron Ridge's physical capabilities and whether Terra Gen violated the CAISO Tariff by deviating Cameron Ridge's output from CAISO's dispatch instructions; Terra-Gen must disgorge \$117,231 plus interest , and pay a \$510,962 civil penalty to the United States Treasury |
| 35 | PacifiCorp (IN21-6) | Jul 16 | PacifiCorp answers <i>PacifiCorp Show Cause Order</i> , denying violating FAC-009-1; Enforcement Staff answer due Sep 14, 2021 |
| 36 | GreenHat (IN18-9) | Jul 6 | Respondents answer Order to Show Cause and Notice of Proposed Penalty |
| | | Jul 27 | Enforcement Litigation Staff answers Respondents' Jul 6 answers |
| 36 | Rover Pipeline, LLC and Energy
Transfer Partners, L.P. (IN19-4) | Jul 21 | Enforcement Staff answers Rover and ETP answer to Show Cause Order |

37	Total Gas & Power North America, Inc. et al. (IN12-17)	Jul 15	FERC issues order establishing hearing procedures
		Jul 16	TG&P requests Track III Schedule
		Jul 20	FERC Trial Staff responds to TG&P request for Track III Schedule
		Jul 21	TG&P answers FERC Trial Staffs' Jul 20 response
		Jul 27	Chief Judge designates Judge Suzanne Krolikowski as the presiding ALJ and establishes an extended Track III Schedule for the proceeding

XIV. Natural Gas Proceedings



38	Iroquois ExC Project (CP20-48)	Jul 8	Comment date on draft EIS revised to Aug 9, 2021
		Jul 15-Aug 3	Over 200 et of individual comments submitted
38	Atlantic Bridge Project (CP16-9)	Jul 16	Algonquin, INGAA requests for rehearing of <i>May 19 Order</i> denied by operation of law
		Jul 16, 19	Algonquin, INGA petition DC Circuit for review of <i>Briefing Order, April 19 Notice of Denial of Rehearings by Operation of Law, and May 19 Order</i> ; consolidated with DC Circuit Case No. 21-1115

XV. State Proceedings & Federal Legislative Proceedings



No Activity to Report

XVI. Federal Courts



42	ISO-NE Implementation of <i>Order 1000</i> Exemptions for Immediate Need Reliability Projects (20-1422)	Jul 8	MMWEC files notice that it would not submit a Reply Brief
		Jul 9	LSP Transmission files Petitioner Reply Brief
		Jul 16	LSP Transmission files Joint Appendix
		Jul 28	MMWEC files Intervenor for Petitioner Final Brief
		Jul 30	LSP Transmission and FERC Trial Staff file Final Briefs
42	CIP IROL Cost Recovery Rules (20-1389)	Jul 16	Cogentrix/Vistra file Deferred Appendix
		Jul 26	Cogentrix/Vistra and FERC file Final Briefs
43	Mystic 8/9 COS Agreement (20-1343 et al.) (consol.)	Jul 12	FERC files certified index to the record
45	Order 872 (9th Cir.) (20-72788 et al.) (consol.)	Jul 26	NewSun Energy submits Intervenor Brief
46	<i>Opinion 569/569-A</i> : FERC's Base ROE Methodology (16-1325 et al.) (consol.)	Jul 8	Petitioners' and Joint Petitioners' file Reply Briefs
		Jul 22	Intervenors in Support of Petitioners file Reply Brief
47	Algonquin Atlantic Bridge Project <i>Briefing Order</i> (21-1115; 21-1138, 21-1153, 21-1155) (consol.)	Jul 19, 22	Court consolidates Cases 21-1153 and 21-1155 with 21-1115; 21-1153 and 21-1155 held in abeyance pursuant to Jun 21 order in 21-1115; 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: August 4, 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 August 3, 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 July 26, 2021, the waiver of FERC regulations that require that filings with the FERC be notarized or supported by sworn declarations was **extended for an additional six months, through January 1, 2022**.⁵ The July 26 notice extended the waiver first noticed in May⁶ for a third time.⁷ As previously reported, Entities may also seek waiver of FERC orders, regulations, tariffs and rate schedules, including motions for waiver of

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 (July 26, 2021) (“Third Extension”).

⁶ *Extension of Non-Statutory Deadlines*, Docket No. AD20-11-000 (May 8, 2020) (“First Extension”); *Extension of Non-Statutory Deadlines*, Docket No. AD20-11-000 (Jan. 25, 2021) (“Second Extension”).

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

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)**

In light of the continuing nature of the COVID-19 National Emergency, the FERC On July 26, 2021, the blanket waivers of ISO/RTO Tariff *in-person*⁹ meeting and notarization requirements were ***extended for an additional 6 months, through January 1, 2022***.¹⁰ The July 26 order extended for a third time the blanket waivers first granted in the FERC's April 2, 2020 order and extended in orders issued August 20, 2020 and January 25, 2021.¹¹

I. Complaints/Section 206 Proceedings

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

On July 27, 2021, Green Development, LLC ("Green Development") submitted a motion to renew and reiterate its request for fast track processing of its February 10, 2021 complaint ("Complaint"). As previously reported, the Complaint against New England Power Company and Narragansett Electric Company (together, "National Grid" or "Grid") requests 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. 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

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*, 176 FERC ¶ 61,044 (July 26, 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); *Temporary Action to Facilitate Social Distancing*, 174 FERC ¶ 61,047 (Jan. 25, 2021) (extending the waivers through July 31, 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*"), *reh'g denied*, 176 FERC ¶ 62,058 (July 29, 2021).

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.

consistent with the definition it intended to file and have in effect in advance of that FCA”.¹⁴ Assertions regarding 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 Denied by Operation of Law. 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*. On July 29, 2021, the FERC issued a “Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration”.¹⁶ The Notice confirmed that the 60-day period during which a petition for review of the *NEPGA Net Cone Complaint Order* can be filed with an appropriate federal court was triggered when the FERC did not act on the requests for rehearing of the *NEPGA Net Cone Complaint Order*. The Notice also indicated that the FERC would address, as is its right, the rehearing request in a future order, and may modify or set aside its order, in whole or in part, “in such manner as it shall deem proper.”

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 relief¹⁷ 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

¹⁴ *Id.* at P 53.

¹⁵ *Id.* at P 54.

¹⁶ *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 176 FERC ¶ 62,058 (July 29, 2021) (“*Order Denying NEPGA Net Cone Complaint Order*”).

¹⁷ 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.

its dispute with NECEC". Specifically, Seabrook asked the FERC to declare that: (1) Seabrook is not required to incur a financial loss to upgrade, for NECEC's sole benefit, a 24.5 kV generator circuit breaker and ancillary equipment ("Generation Breaker") at Seabrook Station; (2) "Good Utility Practice" for replacement of the nuclear plant Generation Breaker is defined in terms of the practices of the nuclear power industry, such that Seabrook's proposed definition of that term is appropriate for use in a facilities agreement with NECEC; and (3) Seabrook will not be liable for consequential damages for the service it provides to NECEC under a facilities agreement (collectively, the "Requested Declarations"). Alternatively, Seabrook asked that the FERC declare that nothing in ISO-NE's Tariff requires Seabrook to enter into an agreement to replace the Generation Breaker, and therefore, Seabrook and the Joint Owners are entitled to bargain for appropriate terms and conditions to recover their costs, to define Good Utility Practice, and to limit liability associated with providing the service ("Alternative Declaration").

Comments on Seabrook's Petition were 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, HQ US, 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,¹⁸ 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*).¹⁹ However, the FERC's orders were challenged, and in *Emera Maine*,²⁰ 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.

¹⁸ 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*").

¹⁹ *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*").

²⁰ *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).

- **Base ROE Complaints II & III (EL13-33 and EL14-86) (consolidated).** The second (EL13-33)²¹ and third (EL14-86)²² ROE complaint proceedings were consolidated for purposes of hearing and decision, though the parties were permitted to litigate a separate ROE for each refund period. After hearings were completed, ALJ Sterner issued a 939-paragraph, 371-page *Initial Decision*, which lowered the base ROEs for the EL13-33 and EL14-86 refund periods from 11.14% to 9.59% and 10.90%, respectively.²³ 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 proceeding²⁴ also went to hearing before an ALJ, Judge Glazer, who issued his initial decision on March 27, 2017.²⁵ 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.²⁶ 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.²⁷ 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*²⁸ (EL14-12; EL15-45) in

²¹ 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%.

²² 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.

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

²⁴ 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.

²⁵ *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 162 FERC ¶ 63,026 (Mar. 27, 2018) ("Base ROE Complaint IV Initial Decision").

²⁶ *Id.* at P 2.; Finding of Fact (B).

²⁷ *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (Oct. 18, 2018) ("Order Directing Briefs" or "Coakley").

²⁸ *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

Section XI below). The FERC established a paper hearing on how its proposed methodology should apply to the four pending ROE proceedings.²⁹

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

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

The FERC provided preliminary analysis of how it would apply the proposed methodology in the Base ROE I Complaint, suggesting that it would affirm its holding that an 11.14% Base ROE is unjust and unreasonable. The FERC suggested that it would adopt a 10.41% Base ROE and cap any preexisting incentive-based total ROE at 13.08%.³⁰ 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 Customers³¹ 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.

Opinion 569; and (iv) calculating the zone of reasonableness in equal thirds, instead of using the quartile approach that was applied in *Opinion 569*.

²⁹ *Id.* at P 19.

³⁰ *Id.* at P 59.

³¹ For purposes of the motion seeking clarification, “Customers” are CT PURA, MA AG and EMCOS.

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*³² and requested that the FERC re-open the record to permit that additional testimony on the impacts of the *MISO ROE Order*'s changes. On January 21, 2020, EMCOS and CAPs opposed the TOs' request and brief.

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

II. Rate, ICR, FCA, Cost Recovery Filings

- **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 were due on or before July 22; none were filed. Doc-less interventions were filed by NEPOOL, Calpine, National Grid, and NRG. This matter is pending before the FERC. 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 Costs³³ 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).³⁴ 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 ER20-739³⁵ (see Sep 29, 2020 Report and Section XV below) and will "not run afoul of the filed rate doctrine or rule against

³² *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).

³³ Interconnection Reliability Operating Limits ("IROL") Critical Infrastructure Protection ("CIP") costs under Schedule 17 of the ISO-NE Tariff.

³⁴ 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).

³⁵ *ISO New England Inc.*, 172 FERC ¶ 61,251 (Sep. 17, 2020).

retroactive ratemaking.” CSC requested a September 1, 2021 effective date for the commencement of the five-year cost recovery period. Comments on this filing were due on or before July 22, 2021 and NESCOE protested the filing, asserting that Schedule 17 does not provide for the rate incentive treatment that CSC seeks, CSC should not be allowed to circumvent the parameters for cost recovery in Schedule 17, and CSC’s arguments that its request for incentive rate treatment is consistent with the Filed Rate Doctrine and Rule Against Retroactive Ratemaking ignore the FERC’s Schedule 17 Orders. 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).

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

On July 8, 2021, the FERC accepted CSC’s proposed rate schedule to allow it to begin the recovery period for certain CIP-IROL Costs (incurred after June 1, 2021) under Schedule 17 of the ISO-NE Tariff.³⁶ CSC’s rate schedule was accepted effective June 1, 2021, as requested. Unless the July 8 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **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”)³⁷ 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*³⁸ (and the earlier, underlying orders) have been appealed to the DC Circuit. Since the last Report, the FERC took action on two remaining aspects of this proceeding that had been pending before it:

ROE Paper Hearings (-000). On July 15, 2021, the FERC issued an order setting the base ROE for the Mystic COS Agreement at 9.33%.³⁹ As previously reported, the *Dec 2018 Order* established a paper hearing to

³⁶ *Cross-Sound Cable Co., LLC*, Docket No. ER21-2031 (July 8, 2021) (*unpublished letter order*).

³⁷ 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.

³⁸ 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).

³⁹ *Constellation Mystic Power, LLC*, 176 FERC ¶ 61,019 (July 15, 2021) (“*Mystic ROE Order*”).

determine the just and reasonable ROE to be used in setting charges under Mystic's COS Agreement. There were two rounds of briefing, described in previous Reports, with the second and more recent round to allow parties an opportunity to present written evidence applying the FERC's *Opinion 569-A* ROE methodology to the facts of this proceeding. Challenges, if any, to the *Mystic ROE Order* are due on or before August 14, 2021.

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*,⁴⁰ that proposed 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". The FERC accepted that compliance filing on July 29, 2021.⁴¹

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 were due on or before July 19, 2021; none were filed. Doc-less interventions were filed by Calpine, Eversource, National Grid, NRG, and NESCOE. 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).

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

On July 28, 2021, the FERC denied CPower's June 14, 2021 request for waiver of Tariff Section III.13.4.2.1.2.2.4.1(a)(i)(2).⁴² CPower requested the waiver 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 would not be based on October 2020 audit values (which were significantly lower Qualified Capacity values than its most recent audit (in April 2021) demonstrates is actually available). In denying the waiver, the FERC found that that "granting CPower's request could have broad implications on the effectiveness of the ISO-NE Tariff and auditing rules and result in preferential treatment by allowing CPower to incorrectly use the higher Qualified Capacity data to determine its Summer ARA Qualified Capacity, while applying actual values to other similarly situated Demand Capacity Resources who remain subject to the ISO-NE Tariff."⁴³ Unless the July 28 order is challenged, this proceeding will be 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).

⁴⁰ *Constellation Mystic Power, LLC*, 75 FERC ¶ 61,069 (2021) ("Second Compliance Order").

⁴¹ *Constellation Mystic, LLC*, Docket No. ER18-1639-009 (July 29, 2021).

⁴² *Enerwise Global Technologies, Inc.*, 176 FERC ¶ 61,051 (July 28, 2021).

⁴³ *Id.* at P16.

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

On July 16, the FERC accepted the Tariff changes filed jointly by IO-NE and NEPOOL to establish operational and meteorological data requirements for solar facilities and relocate and streamline already-existing data requirements for wind facilities.⁴⁴ 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); (iii) 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) delete "photovoltaic" from section III.1.11.3 so that the Tariff consistently uses the generic term "solar." The revisions were accepted effective July 20, 2021, as requested. Unless the July 16 order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact please contact Eric Runge (617-345-4735; ekrunge@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, 2021.⁴⁵ Specifically, the FERC accepted 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. 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;⁴⁶ 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 were due on or before July 7, 2021; none were filed. The June 22 compliance filing is pending before the FERC.

⁴⁴ *ISO New England Inc. and New England Power Pool Participants Comm.*, Docket No. ER21-1974 (July 16, 2021) (unpublished letter order).

⁴⁵ *ISO New England Inc.*, 175 FERC ¶ 61,195 (June 7, 2021) ("*ORTP Jump Ball Order*").

⁴⁶ *Id.* at P 127 et seq.

Requests for Rehearing of ORTP Jump Ball Order (-002). On July 7, 2021, Clean Energy Advocates⁴⁷ 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, 2021,⁴⁸ eff. May 29, 2021, the updates to the CONE, Net CONE and PPR values, as amended in ISO-NE's March 30, 2021 Deficiency Response,⁴⁹ 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.⁵⁰ As noted in Section II above (EL21-26), the FERC denied NEPGA's Net CONE Complaint in a concurrently-issued order.

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. The FERC accepted ISO-NE's compliance filing, effective May 29, 2021, on July 30, 2021.⁵¹

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*. On July 29, 2021, the FERC issued a "Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration".⁵² The Notice confirmed that the 60-day period during which a petition for review of the *Updated CONE, Net Cone and PPR Values Order* can be filed with an appropriate federal court was triggered when the FERC did not act on the requests for rehearing of the *Updated CONE, Net Cone and PPR Values Order*. The Notice also indicated that the FERC would address, as is its right, the rehearing request in a future order, and may modify or set aside its order, in whole or in part, "in such manner as it shall deem proper."

⁴⁷ "Clean Energy Advocates" are Conservation Law Foundation ("CLF"), Natural Resources Defense Council ("NRDC"), Sierra Club, RENEW Northeast, Inc. ("RENEW"), and Sustainable FERC Project.

⁴⁸ *ISO New England Inc.*, 175 FERC ¶ 61,172 (May 28, 2021) ("*Updated CONE, Net Cone and PPR Values Order*"), *reh'g denied*, 176 FERC ¶ 62,059 (July 29, 2021).

⁴⁹ 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.

⁵⁰ 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 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.

⁵¹ *ISO New England Inc.*, Docket No. ER21-787-002 (July 30, 2021) (unpublished letter order).

⁵² *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 176 FERC ¶ 62,059 (July 29, 2021) ("*Order Denying Reh'g of Updated CONE, Net Cone and PPR Values Order*").

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

IV. OATT Amendments / TOAs / Coordination Agreements

- **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 were due on or before July 22, 2021. Comments and protests were filed by [NEPOOL](#), [the ISO-NE IMM](#), [AEE](#), [IECG](#), [NECOS/ENE](#), [NEPGA](#), [Public Systems](#), [MPUC/CT PURA/MA DPU](#), and the [VT PUC](#). Doc-less interventions were filed by Calpine, EMI, IECG, National Grid, NESCOE, and NRG. 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).

- **TOs Order 676-I Compliance Filing (ER21-2529)**

On July 27, 2021, the PTO AC, ISO-NE, Schedule 20A Service Providers, GMP, and VTransco filed revisions to ISO-NE Tariff Schedule 21-Common and Schedule 20A-Common in accordance with *Order 676-I*. The revisions include certain updated business practice standards (Version 003.2) adopted by the Wholesale Electric Quadrant ("WEQ") of the North American Energy Standards Board ("NAESB") and incorporated by reference in the FERC's regulations through *Order 676-I*. Comments on this filing are due on or before August 19, 2021. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **CSC Schedule 18 Order 676-I Compliance Filing (ER21-2509)**

On July 26, 2021, CSC and ISO-NE filed revisions to ISO-NE Tariff Schedule 18-Attachment Z in accordance with *Order 676-I*. The revisions include certain updated business practice standards (Version 003.2) adopted by NAESB's Wholesale Electric Quadrant and incorporated by reference in the FERC's regulations through *Order 676-I*. Comments on this filing are due on or before August 16, 2021. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **ISO-NE/NEPOOL 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 NAESB's Wholesale Electric Quadrant. 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 remains 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: 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*,⁵³ and certified by Settlement Judge Dring⁵⁴ to the Commission,⁵⁵ 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-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 charges under Schedule 21-VP for the 2020-2021 rate. Since the last Report, on July 28, 2021, Versant filed a correction to certain of its 12-CP values, which will result in 29% reduction in the \$/kW-month rate for Large Power – Transmission Voltage customers and a small increase (if any) in the rates for other retail customers (less than 25 basis points). With the correction and the timing of billing, the large customers will not have to pay incorrect rates; the other retail customers will continue to pay rates as filed in June, subject to a true-up “at the next available opportunity”. 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-FG&E Annual Informational Filing (ER09-1498)**

On July 26, 2021, Fitchburg Gas & Electric (“FG&E”) submitted its data and schedules used to calculate its annual transmission revenue requirement for Non-PTF Local Network Transmission Service, Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service as set forth in Schedule 21-FG&E covering the June 1, 2021 – May 31, 2022 period. FG&E reported that its annual revenue requirement reflected in FG&E's rates effective June 1, 2021, is \$1,439,133. The FERC will not notice this filing for public

⁵³ *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.

⁵⁴ 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.

⁵⁵ *Emera Maine and BHE Holdings*, 163 FERC ¶ 63,018 (June 11, 2018).

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-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.⁵⁶ 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).

- **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).

⁵⁶ See *NSTAR Elec. Co.*, 123 FERC ¶ 61,270 at P 5 (2008).

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

The TOs' November 2, 2015 refund report documenting resettlements of regional transmission charges by ISO-NE in compliance with *Opinions No. 531-A*⁵⁷ and *531-B*⁵⁸ also remains pending. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

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

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

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

- **LFTR Implementation: 51st Quarterly Status Report (ER07-476; RM06-08)**

ISO-NE filed the 51st of its quarterly status reports regarding LFTR implementation on July 15, 2021. ISO-NE reported that it implemented monthly reconfiguration auctions (accepted in ER12-2122) beginning with the month of October 2019. ISO-NE further reported that, while it will continue to evaluate its as-filed LFTR design and financial assurance issues, including an ongoing evaluation of the FTR market and risk associated with FTRs and LFTRs, it is currently focused on higher priority market-design initiatives. These status reports are not noticed for public comment.

- **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.⁵⁹ 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.

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

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

⁵⁹ Please note that Annual Markets Reports filings are not noticed for public comment by the FERC.

- ▶ 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 5 meeting.

IX. Membership Filings

- **August 2021 Membership Filing (ER21-2552)**

On July 28, 2021, NEPOOL requested that the FERC accept (i) the memberships of In Commodities US LLC (Supplier Sector); and Jupiter Power (Provisional Member); (ii) the termination of the Participant status of GenOn Energy Management and GenOn Canal; and (iii) the name change of Rivercrest Power-SOUTH, LLC (f/k/a BioUrja Power LLC). Comments on this filing are due on or before August 19, 2021.

- **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 were due on or before July 21, 2021; none were filed. This July 2021 membership filing is pending before the FERC.

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

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

- **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.⁶⁰ On March 25, 2020, Joint Associations⁶¹ requested an extension of time to submit comments and reply comments. On April 2, the FERC granted Joint Associations' request and extended the deadline for initial comments on the NOI to July 1, 2020; the deadline for reply comments, July 31, 2020. Comments were filed by NERC, the IRC, Accenture, Amazon Web Services ("Amazon"), Bonneville, the Bureau of Reclamation, Barry Jones, Georgia System Operations, GridBright, Idaho Power, Microsoft, MISO, MISO Transmission Owners, Siemens Energy Management, Tri-State Generation and Transmission Association, VMware, Inc., AEE, American Association for Laboratory Accreditation ("A2LA"), APPA, Canadian Electricity Assoc., EEI,

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

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

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,⁶² directed NERC to begin a formal process to assess, and to make an informational filing in a little over one year (January 1, 2022) that addresses, the feasibility of voluntarily conducting BES operations in the cloud in a secure manner, as well as the status and schedule for any plans to modify the standards.

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

On September 17, 2020, the FERC approved the retirement of the 18 Reliability Standard requirements through the retirement of four Reliability Standards and the modification of five Reliability Standards,⁶³ concluding that the 18 requirements “(1) provide little or no reliability benefit; (2) are administrative in nature or relate expressly to commercial or business practices; or (3) are redundant with other Reliability Standards.”⁶⁴ The FERC also approved the associated violation risk factors, violation severity levels, implementation plan, and effective dates proposed by NERC. Because it was not persuaded by NERC’s justification for the retirement of FAC-008-4 requirement R8, the FERC remanded the retirement of requirements R7 and R8 to NERC for further consideration.⁶⁵

The FERC left for another day its final action on the remaining 56 requirements for which the FERC proposed to approve retirement in the *Retirements NOPR*⁶⁶ (the “MOD A Reliability Standards”). The FERC intends to coordinate the effective dates for the retirement of the MOD A Reliability Standards with successor North 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

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

⁶³ *Elec. Rel. Org. Proposal to Retire Reqs. in Rel. Standards Under the NERC Standards Efficiency Review*, Order No. 873, 172 FERC ¶ 61,225 (Sep. 17, 2020) (“*Order 873*”). The four Reliability Standards being eliminated in their entirety are FAC-013-2 (Assessment of Transfer Capability for the Near-term Transmission Planning Horizon), INT-004-3.1 (Dynamic Transfers), INT-010-2.1 (Interchange Initiation and Modification for Reliability), MOD-020-0 (Providing Interruptible Demands and Direct Control Load Management Data to System Operations and Reliability Coordinators). The five modified Reliability Standards are INT-006-5 (Evaluation of Interchange Transactions), INT-009-3 (Implementation of Interchange) and PRC-004-6 (Protection System Misoperation Identification and Correction), IRO-002-7 (Reliability Coordination—Monitoring and Analysis), TOP-001-5 (Transmission Operations).

⁶⁴ *Order 873* at P 2.

⁶⁵ *Order 873* at P 5. Pursuant to FPA section 215(d)(4), if the FERC disapproves a modification to a Reliability Standard in whole or in part, it must remand the entire Reliability Standard to NERC for further consideration. Accordingly, although it was satisfied here with the justification for the retirement of R7, the FERC was required to remand both R7 and R8 so that its concerns with the retirement of Requirement R8 could be addressed.

⁶⁶ *Electric Reliability Organization Proposal to Retire Requirements in Rel. Standards Under the NERC Standards Efficiency Review*, 170 FERC ¶ 61,032 (Jan. 23, 2020) (“*Retirements NOPR*”) (proposing to approve the retirement of 74 of 77 Reliability Standard requirements requested to be retired by NERC in these two dockets in connection with the first phase of work under NERC’s Standards Efficiency Review, an initiative begun in 2017 that reviewed the body of NERC Reliability Standards to identify those Reliability Standards and requirements that were administrative in nature, duplicative to other standards, or provided no benefit to reliability). As previously reported, NERC withdrew its proposed changes to VAR-001-6 on May 14, 2020, reducing to 76 the number of requirements proposed to be retired.

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*⁶⁷ (i) to further clarify information sharing between NERC and the Electricity Information Sharing and Analysis Center⁶⁸ (“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 the Report [here](#).

- **FERC/NERC Joint Report on Real Time Assessments (not docketed)**

On July 8, 2021, FERC Staff, together with staff from NERC and its regional entities issued a report outlining recommendations for real-time assessments of grid operating conditions.⁶⁹ The report concluded that system operators are prepared to manage limited impairments of their primary assessment tools or data through system redundancy and redundant data sources. However, infrequent events involving significant real-time data loss or the failure of primary analysis tools lasting more than two hours require the development of alternative data sources, tools, and analyses work to mitigate the potential loss of visibility and control resulting from the impairment of their primary tools. The report addressed the following seven technical areas related to real-time assessments, including observations, conclusions, and recommendations for each: (i) Real-time Assessment Tools Under Normal Operating Conditions; (ii) Real-time Data and Data Quality; (iii) Real-time Data Loss Management; (iv) Alternative Real-time Assessment and Study Tools; (v) Model Management; (vi) Control Center Hardware Configuration; and (vii) Major System Upgrades/Vendor Changes. View the 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 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

⁶⁷ *N. Am. Elec. Rel. Corp.*, 174 FERC ¶ 61,030 (2021) (“*Order on Compliance Filings*”) (accepting NERC’s compliance filings submitted in response 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).

⁶⁸ 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

⁶⁹ Real-time assessments evaluate system conditions using real-time data to measure existing and potential operating conditions to ensure continued reliable operation of the bulk electric system. The joint staff review focuses on strategies and techniques used by reliability coordinators and transmission operators to perform these assessments following a loss or degradation of data or tools used to maintain situational awareness. The review included on-site discussions with representatives of nine participating reliability coordinators and transmission operators.

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”).⁷⁰ 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. 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: 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 “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 Advocates⁷¹ 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).

- **LGIA: National Grid / New England Wind (Hoosac) (ER21-2548)**

On July 29, 2021, National Grid and ISO-NE (“Filing Parties”) filed a First Revised LGIA between the Filing Parties and New England Wind to include details regarding the Direct Assignment Facilities charge omitted from the original LGIA and to update the Capacity Network Resource Capability (“CNRC”) of the 28.5 MW Hoosac wind farm. Going forward, the Filing Parties will report the conforming First Revised LGIA in their

⁷⁰ *Seneca Energy, II LLC et al.*, 175 FERC ¶ 62,170 (June 14, 2021).

⁷¹ “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.

respective Electric Quarterly Reports. A March 19, 2021 effective date (the date the revised LGIA was signed) was requested. Comments on this filing are due on or before July 19, 2021. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Versant Power MPD OATT Order 676-I Compliance Filing (ER21-2498)**

On July 23, 2021, Versant Power filed proposed revisions to Section 4 of the Versant Power Open Access Transmission Tariff For Maine Public District (the “MPD OATT”) to incorporate by reference certain of the revisions required by *Order 676-I* and requested waiver of certain of those standards that are not applicable to MPD and/or the MPD OATT. Comments on this filing are due on or before August 13, 2021. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Versant Waiver Request: Unreserved Transmission Use Penalty Policy (ER21-2447)**

On July 16, 2021, Versant Power requested a limited waiver of the application of its posted policy statement regarding penalties for unreserved transmission use that was in effect from January through March 2021 to Black Bear SO, LLC and Black Bear Hydro Partners, LLC (jointly, “Black Bear”). Instead, Versant proposes to charge Black Bear penalties for unreserved use based on Versant Power’s revised policy statement as published May 11, 2021, avoiding the imposition of a penalty on Black Bear that is nearly seven times what it would have incurred had it reserved and scheduled annual or monthly transmission service appropriately, but still requiring Black Bear to pay an unreserved use penalty for service used without the appropriate reservations. Comments, if any, on Versant’s waiver request are due on or before August 6, 2021. 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 were due on or before July 21, 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/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 were due on or before July 21, 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).

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

As noted above, in its May 20, 2021 order⁷² approving the settlement that amended and restated four Support Agreements and an Agreement with Respect to Use of Québec Interconnection (“Use Agreement”),⁷³

⁷² *New England Hydro-Transmission Electric Company, Inc. et al.*, 175 FERC ¶ 61,140 (May 20, 2021).

⁷³ 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

the FERC directed the Filing Parties⁷⁴ to make a compliance filing with revised tariff records in eTariff format 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 were due on or before July 12, 2021; none were filed. The Filing Parties intervened in each of the other Filing Parties compliance filing dockets. This matter is pending before the FERC. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

In accordance with *Order 864*⁷⁵ and *Order 864-A*,⁷⁶ 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 ER21-1650	NSTAR	pending pending
Aug 5, 2020	ER20-2608	PSNH	pending
Aug 4, 2020	ER20-2607	NEP – Seabrook Transmission Support Agreement	pending
Jul 31, 2020	ER20-2594 ER21-1709	VTransco	pending pending
Jul 30, 2020	ER20-2551	New England Power	pending
Jul 30, 2020	ER20-2553	NEP – LSA with MECO/Nantucket	pending

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.

⁷⁴ "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").

⁷⁵ *Public Util. Trans. Rate Changes to Address Accumulated Deferred Income Taxes*, Order No. 864, 169 FERC ¶ 61,139 (Nov. 21, 2019), *reh'g denied and clarification granted in part*, 171 FERC ¶ 61,033 (Apr. 16, 2020) ("*Order 864*"). *Order 864* requires all public utility transmission providers with transmission rates under an OATT, a transmission owner tariff, or a rate schedule to revise those rates to account for changes caused by the 2017 Tax Cuts and Jobs Act ("2017 Tax Law"). Specifically, for transmission formula rates, *Order 864* requires public utilities (i) to deduct excess ADIT from or add deficient ADIT to their rate bases and adjust their income tax allowances by amortized excess or deficient ADIT; and (ii) to incorporate a new permanent worksheet into their transmission formula rates that will annually track ADIT information.

⁷⁶ *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*").

Jul 30, 2020	ER20-2572 ER21-1130	New England TOs	pending
Jul 15, 2020	ER20-2429 ER21-1702	CMP	pending pending
Jun 29, 2020	ER20-2219	New England Power	pending
Jun 23, 2020 Mar 22, 2021	ER20-2133 -001	Versant Power	pending
May 18, 2020 Jan 7, 2021	ER20-1839	VETCO	pending
Feb 26, 2020 Dec 11, 2020	ER20-1089	New England Elec. Trans. Corp.	pending
Feb 26, 2020 Dec 11, 2020	ER20-1088	New England Hydro Trans. Elec. Co.	pending
Feb 26, 2020 Dec 11, 2020	ER20-1087	New England Hydro Trans. Corp.	pending

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

♦ **ER20-2429-001 (CMP)**. On July 27, 2021, the MPUC protested CMP's July 6 deficiency letter response.

XII. Misc. - Administrative & Rulemaking Proceedings

- **Joint Federal-State Task Force on Electric Transmission (AD21-15)**

On June 17, 2021, the FERC established a Joint Federal-State Task Force on Electric Transmission ("Transmission Task Force").⁷⁷ The Transmission Task Force will be comprised of all FERC Commissioners as well as representatives from 10 state commissions (two from each NARUC region). State commission representatives will serve one-year terms from the date of appointment by FERC and in no event will serve on the Task Force for more than three consecutive terms. The Transmission Task Force will convene multiple formal meetings annually, with FERC issuing orders fixing the time and place and agenda for each meeting, and will be open to the public for listening and observing and on the record. The Transmission Task Force will focus on "topics related to efficiently and fairly planning and paying for transmission, including transmission to facilitate generator interconnection, that provides benefits from a federal and state perspective."⁷⁸

On July 19, 2021, NARUC nominated the 10 state commissioners to the Transmission Task Force, including New England Commissioners Riley Allen (VT PUC) and Matt Nelson (Chair, MA DPU). Those nominations are pending. The inaugural public meeting of the Transmission Task Force is expected to be held this Fall and will be publicly noticed by the FERC.

⁷⁷ *Joint Federal-State Task Force on Electric Transmission*, 175 FERC ¶ 61,224 (June 18, 2021).

⁷⁸ Topics that the Task Force may consider include: (i) identifying barriers that inhibit planning and development of optimal transmission necessary to achieve federal and state policy goals, as well as potential solutions to those barriers; (ii) exploring potential bases for one or more states to use FERC-jurisdictional transmission planning processes to advance their policy goals, including multi-state goals; (iii) exploring opportunities for states to voluntarily coordinate in order to identify, plan, and develop regional transmission solutions; (iv) reviewing FERC rules and regulations regarding planning and cost allocation of transmission projects and potentially identifying recommendations for reforms; (v) examining barriers to the efficient and expeditious interconnection of new resources through the FERC-jurisdictional interconnection processes, as well as potential solutions to those barriers; and (vi) discussing mechanisms to ensure that transmission investment is cost effective, including approaches to enhance transparency and improve oversight of transmission investment including, potentially, through enhanced federal-state coordination.

- **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; transcripts of the June 1-2 days, July 22, 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, IL ICC, 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.

- **Modernizing Electricity Market Design - Resource Adequacy (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 were due on or before **July 19, 2021** and were filed by: [AEE](#), [Calpine](#), [CT Parties](#), [Dominion](#), [Eversource](#), [MMWEC](#), [NESCOE](#), [NEPGA](#), [NextEra](#), [NRG](#), [Public Interest Orgs](#), [Vistra](#), [AEMA](#), [EPSA](#), [RENEW](#).

- **Modernizing Electricity Market Design - Energy and Ancillary Service Markets (AD21-10)**

On July 19, 2021, the FERC issued a notice that it will convene two staff-led technical conferences by WebEx addressing ISO/RTO energy and ancillary services markets. The technical conferences will discuss potential energy and ancillary services market reforms, such as market reforms to increase operational flexibility, that may be needed as the resource fleet and load profiles change over time. The first technical conference will be held on Tuesday, September 14, 2021; the second, Tuesday, October 12, 2021. Each conference is scheduled to run from 9-5 p.m.

- **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.

- **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. The ISO/RTO Reports, including ISO-NE’s, were filed on July 19, 2021. Public comments in response to the ISO/RTO reports are due August 18, 2021, although the Energy Storage Association requested a 30-day extension of time, to September 20, 2021, to file comments in response to the ISO/RTO reports (ESA’s request is pending as of the date of this Report). 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.

- **NOI: Removing the DR Opt-Out in ISO/RTO Markets (RM21-14)**

On March 18, 2021, the FERC issued a NOI⁷⁹ seeking comments on whether to revise its Demand Response (“DR”) Opt-Out regulations established in *Orders 719 and 719-A*. Those regulations require an ISO/RTO not to accept bids from an aggregator of retail customers (“ARC”) that aggregates DR of the customers of utilities that distributed more than 4 million MWh in the previous fiscal year, where the relevant electric retail regulatory authority prohibits such customers’ DR to be bid into ISO/RTO markets by an ARC. The FERC now seek information to help it examine the potential costs/burdens and benefits, both quantitative and qualitative, of removing the DR Opt-Out, as well as other changes relating to DR since the FERC issued *Orders 719 and 719-A*. The FERC is not seeking comment on the Small Utility Opt-In. Comments on the NOI, following an extension, were due on or

⁷⁹ *Participation of Aggregators of Retail Demand Response Customers in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 174 FERC ¶ 61,198 (March 18, 2021) (“DR Aggregator NOI”).

before July 23, 2021 and were filed by nearly 30 parties, including by [AEE](#), [Voltus](#), [AEMA](#), [APPA/NRECA](#), [EEI](#), and [NARUC](#). Reply comments are due on or before August 23, 2021.

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

On December 17, 2020, the FERC issued a NOPR⁸⁰ proposing to establish rules for incentive-based rate treatment for voluntary cybersecurity investments by a public utility for or in connection with the transmission or sale of electric energy subject to FERC jurisdiction, and rates or practices affecting or pertaining to such rates for the purpose of ensuring the reliability of the 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](#), [aDolus Inc. et al.](#),⁸¹ [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, 2021⁸² 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 NOPR⁸³ 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, 2021.⁸⁴ 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,⁸⁵ 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,⁸⁶ the FERC issued on April 15, 2021 a *Supplemental NOPR*⁸⁷ 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

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

⁸¹ These joint comments were filed by aDolus Inc., Fortress Information Security, GMO GlobalSign Inc., Ion Channel, ReFirm Labs and Reliable Energy Analytics LLC.

⁸² The *Cybersecurity Incentives NOPR* was published in the *Fed. Reg.* on Feb. 5, 2021 (Vol. 86, No. 23) pp. 8,309-8,325.

⁸³ *Managing Transmission Line Ratings*, 173 FERC ¶ 61,165 (Nov. 19, 2020) (“*Managing Transmission Line Ratings NOPR*”).

⁸⁴ 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.

⁸⁵ “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.

⁸⁶ 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.

⁸⁷ *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, 175 FERC ¶ 61,035 (Apr. 15, 2021) (“*Supplemental NOPR*”).

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 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*.⁸⁸ A more detailed summary of the NOPR was distributed to the Transmission Committee and discussed at the TC’s March 25, 2020 meeting.

Comments on the *Supplemental NOPR* were due on or before June 25, 2021. Over 60 sets of comments were filed, including by the New England TOs, MMWEC/NHEC/CMMEC, NECOS, NESCOE, Potomac Economics, and CT PURA. Reply comments were due on or before July 26, 2021, with 28 sets of comments received, including by the [New England TOs](#), [NECOS](#), [NESCOE](#), [CT PURA/CT DEEP/MA AG](#), [CT AG](#), and [Public Interest Groups](#).⁸⁹

September 10, 2021 Workshop. The FERC will convene a workshop on September 10, 2021⁹⁰ 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).

⁸⁸ 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.

⁸⁹ “Public Interest Groups” are NRDC, Sierra Club, Sustainable FERC Project, and Western Grid Group.

⁹⁰ 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”)⁹¹ adopting reforms to remove what it found were barriers to the participation of distributed energy resource (“DER”)⁹² 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 2222.⁹³ 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.⁹⁴ 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

⁹¹ *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”).

⁹² 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.”

⁹³ *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”).

⁹⁴ *Id.* at P 5.

compliance proposal in June. The ISO plans to respond to that feedback 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*,⁹⁵ 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*.⁹⁶ 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.”⁹⁷

Order 2222-B. On June 17, 2021, the FERC issued *Order 2222-B*,⁹⁸ 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, 2021.⁹⁹

⁹⁵ *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*”).

⁹⁶ *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*”).

⁹⁷ *Id.*

⁹⁸ *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*”).

⁹⁹ *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*,¹⁰⁰ issued three years after the FERC's *Data Collection NOPR*,¹⁰¹ (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,¹⁰² 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,¹⁰³ 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.¹⁰⁴ 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, 2021,¹⁰⁵ and were

¹⁰⁰ *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).

¹⁰¹ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (July 21, 2016) ("*Data Collection NOPR*").

¹⁰² 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.

¹⁰³ *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*").

¹⁰⁴ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 174 FERC ¶ 61,214 (Mar. 18, 2021).

¹⁰⁵ 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: November 30, 2021. 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.

- **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,¹⁰⁶ 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, 2021.¹⁰⁷ 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.¹⁰⁸ The *Proposed Policy Statement* sets forth the approach the FERC would take going forward to ensure compliance with the filed rate doctrine and the rule against retroactive making. The proposed policy will both clarify and modify waiver standards, and in some instances, make it harder to obtain waivers.

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

1. *Style Requests as Requests for Remedial Relief.* Filings seeking relief in connection with actions or omissions that have already occurred prior to the date relief is sought from the FERC would be characterized as a request for remedial relief (rather than as a request for a waiver). In response to such a request, the FERC will focus on what remedy, if any, is required to cure acknowledged or alleged deviations from a filed tariff. “Waiver” is to be limited to (a) requests for prospective relief when a requested future deviation from the filed tariff has not yet occurred at the time a request is filed; or (b) petitions for remedial relief when a tariff expressly authorizes regulated entities to seek a remedial waiver from the FERC for past non-compliance with the filed tariff.
2. *Form of Filing.* When the entity requesting remedial relief is the entity that acted (or believes it may have acted) in a manner inconsistent with the tariff, such requests should be filed as petitions for declaratory order under Rule 207 of the FERC’s Rules of Practice and Procedure.

¹⁰⁶ *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-J, 175 FERC ¶ 61,139 (May 20, 2021) (“*Order 676-J*”).

¹⁰⁷ *Order 676-J* was published *Fed. Reg.* on June 2, 2021 (Vol. 86, No. 104) pp. 29,491-29,503.

¹⁰⁸ *Waiver of Tariff Requirements*, 171 FERC ¶ 61,156 (May 21, 2020) (“*Proposed Policy Statement*”).

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 analysis¹⁰⁹ 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,¹¹⁰ 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,¹¹¹ INGAA, Kansas Electric Power Coop. (“KEPC”), NGA, NGSA, NRECA, Public Citizen, Sunflower Electric Power, and TAPS. Reply comments were filed by APPA, Joint Trade Associations,¹¹² KEPC, and the Sustainable FERC Project. The proposed Policy Statement remains pending before the FERC.

¹⁰⁹ 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.

¹¹⁰ 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.

¹¹¹ “Indicated Generators” are Vistra, NRG, FirstLight, Cogentrix, and LS Power.

¹¹² “Joint Trade Associations” are AEE, AWEA, EEI, EPSA, INGAA, NGSA, NRECA and SEIA.

- **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*.¹¹³ 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").¹¹⁴ 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, 2020.¹¹⁵ 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 Parties¹¹⁶ answered the New England TO's May 10 supplemental comments. On June 15, 2020, Joint Parties¹¹⁷ 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.¹¹⁸ 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 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 7.¹¹⁹ The 2021 NOI is to provide an opportunity for stakeholders to refresh the record and provide updated information and additional viewpoints to help the

¹¹³ *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*").

¹¹⁴ 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.¹¹⁴ 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).

¹¹⁵ 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.

¹¹⁶ 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.

¹¹⁷ "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.

¹¹⁸ "Six Cities" are the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California.

¹¹⁹ *Certification of New Interstate Natural Gas Facilities*, 174 FERC ¶ 61,125 (Feb. 18, 2021) ("2021 NOI").

FERC assess its policy.¹²⁰ 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

- **Terra-Gen (IN21-7)**

On August 2, 2021, the FERC approved a Stipulation and Consent Agreement with Terra-Gen, LLC¹²¹ (“Terra-Gen”) that resolved OE’s investigation into whether Terra-Gen submitted false or misleading information to the California Independent System Operator (“CAISO”) about the physical capabilities of Cameron Ridge¹²² and whether Terra Gen violated the CAISO Tariff by deviating its wind farm’s output from CAISO’s dispatch instructions. Under the Settlement, in which Terra-Gen neither admits nor denies the alleged violations, Terra-Gen must **disgorge \$117,231** plus interest,¹²³ and **pay a \$510,962 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).

- **PacifiCorp (IN21-6)**

On April 15, 2021, in the FERC’s first-ever Show Cause Order addressing alleged violations of NERC Reliability Standards,¹²⁴ 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, 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**.

Since the last Report, on July 16, 2021, PacifiCorp answered the PacifiCorp Show Cause Order, denying the alleged violations of FAC-009. Enforcement’s reply is due 60 days from the filing of PacifiCorp’s answer, or September 14, 2021. Should the FERC choose to pursue a civil penalty against PacifiCorp for the alleged

¹²⁰ *Id.* at P 3.

¹²¹ *Terra-Gen, LLC*, 176 FERC ¶ 61,071 (Aug. 2, 2021).

¹²² Cameron Ridge is a wind-powered electric generation facility owned by Terra-Gen’s subsidiary Cameron Ridge, LLC. Terra-Gen represented that more than 50% of the resource was comprised of technology that was physically unable to curtail output, and could not be made to do so without significant investment. However, Terra-Gen formulated and implemented a practice to curtail Cameron Ridge’s output in response to negative prices, as opposed to not being able to perform due to physical limitations, e.g., changes in wind speed, and therefore violated the CAISO Tariff each time it curtailed its resource in response to negative pricing.

¹²³ 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).

¹²⁴ *PacifiCorp*, 175 FERC ¶ 61,039 (Apr. 15, 2021) (“*PacifiCorp Show Cause Order*”).

violations, PacifiCorp has already exercised its right to adjudicate these allegations in federal district court. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **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.¹²⁵ 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 July 6, 2021, Respondents answered the *GreenHat Show Cause Order*. On July 27, Enforcement Litigation Staff answered Respondents’ July 6 answers. This matter is again before the FERC. A previously reported, should the FERC choose to pursue a civil penalty against Respondents for the alleged violations, Respondents have already exercised their right to adjudicate these allegations in federal district court. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

Natural Gas-Related Enforcement Actions

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

On March 18, 2021, the FERC issued a show cause order¹²⁶ 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).¹²⁷ 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. On June 18, 2021, Rover and ETP answered the *Rover/ETP Show Cause Order*, asserting that the FERC should dismiss this matter and decline to initiate an enforcement action. On July 21, 2021, Enforcement Staff answered Rover/ETP’s answer, stating the evidence supports a finding that Rover violated the FERC’s Regulations and should be assessed the civil penalty identified in the *Rover/ETP Show Cause Order*. This matter is pending before the FERC.

¹²⁵ *GreenHat Energy, LLC et al.*, 175 FERC ¶ 61,138 (May 20, 2021) (“*GreenHat Show Cause Order*”).

¹²⁶ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 174 FERC ¶ 61,208 (Mar. 18, 2021) (“*Rover/ETP Show Cause Order*”).

¹²⁷ 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.

- **BP (IN13-15)**

On December 17, 2020, the FERC issued *Opinion 549-A*,¹²⁸ a 159-page decision addressing arguments raised on rehearing requested of *Opinion 549*.¹²⁹ *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.¹³⁰ *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.¹³¹

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 order¹³² 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 2012.¹³³

The FERC also directed TGPNA to show cause why it should not be required to disgorge unjust profits of **\$9.18 million**, plus interest; TGPNA, Tran and Hall to show cause why they should not be assessed civil penalties (TGPNA - **\$213.6 million**; Hall - **\$1 million** (jointly and severally with TGPNA); and Tran - **\$2 million** (jointly and severally with TGPNA)). In addition, the FERC directed TGPNA's parent company, Total, S.A. ("Total"), and TGPNA's affiliate, Total Gas & Power, Ltd. ("TGPL"), to show cause why they should not be held liable for TGPNA's, Hall's, and Tran's conduct, and be held jointly and severally liable for their disgorgement and civil penalties based on Total's and TGPL's significant control and authority over TGPNA's daily operations. Respondents filed their

¹²⁸ *BP America Inc. et al.*, Opinion No. 549-A, 173 FERC ¶ 61,239 (Dec. 17, 2020) ("*BP Penalties Allegheny Order*")

¹²⁹ *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*"))).

¹³⁰ *BP Penalties Allegheny Order* at P 1.

¹³¹ *Id.* at P 319.

¹³² *Total Gas & Power North America, Inc.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) ("*TGPNA Show Cause Order*").

¹³³ 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.

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.

On July 15, 2021, the FERC issued an order establishing hearing procedures to determine whether Respondents violated the FERC's Anti-Manipulation Rule, and to ascertain certain facts relevant for any application of the FERC's Penalty Guidelines.¹³⁴ On July 27, Chief Judge Cintron designated Judge Suzanne Krolikowski as the Presiding ALJ and established an extended Track III Schedule¹³⁵ for the proceeding. Judge Krolikowski will convene a prehearing conference in this proceeding on or before September 10, 2021.

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 9, 2021. Thus far, over 200 sets of individual comments have been filed.
- ***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.¹³⁶ Rehearing of the *Authorization Order* was timely requested, but denied by operation of law.

¹³⁴ *Total Gas & Power North America, Inc. et al.*, 176 FERC ¶ 61,026 (July 15, 2021).

¹³⁵ The hearing in this proceeding will be convened within 55 weeks (Aug. 15, 2022) and the initial decision issued within 76 weeks (January 9, 2023) of the issuance of the Chief Judge's order.

¹³⁶ *Algonquin Gas Transmission, LLC*, Docket No. CP16-9 at 1 (Sep. 24, 2020) (delegated order) ("*Authorization Order*").

- ▶ *Briefing Order*. In a fairly unprecedented order issued February 18, 2021,¹³⁷ 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 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".¹³⁸ 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,¹³⁹ 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:

¹³⁷ *Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, LLC*, 174 FERC ¶ 61,126 (Feb. 18, 2021) ("*Briefing Order*").

¹³⁸ *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*").

¹³⁹ *Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, LLC*, 175 FERC ¶ 61,150 (May 19, 2021) ("*May 19 Order*").

- **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.¹⁴⁰ Those orders have been challenged on appeal to the US Court of Appeals for the Second Circuit (19-1610).
- ▶ As previously reported, the August 6, 2018 *Northern Access Certificate Rehearing Order* dismissed or denied the requests for rehearing of the *Northern Access Certificate Order*.¹⁴¹ 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,¹⁴² 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, 2017.¹⁴³ 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.¹⁴⁴ 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.

¹⁴⁰ *Nat’l Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 167 FERC ¶ 61,007 (Apr. 2, 2019).

¹⁴¹ *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).

¹⁴² 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).

¹⁴³ *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*”).

¹⁴⁴ *Nat’l Fuel Gas Supply Corp. v. NYSDEC et al.* (2d Cir., Case No. 17-1164).

- ▶ On August 8, 2019, the NY DEC again denied Applicants request for a Water Quality Certification, and as directed by the Second Circuit,¹⁴⁵ 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.¹⁴⁶
- ▶ 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,¹⁴⁷ 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.¹⁴⁸

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”. The Report will be further discussed at the August 5, 2021 Participants Committee meeting. View Report [here](#).

¹⁴⁵ 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).

¹⁴⁶ 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).

¹⁴⁷ *National Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 173 FERC ¶ 61,197 (Dec. 1, 2020).

¹⁴⁸ *Id.* at P 10.

XVI. Federal Courts

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

- **ISO-NE Implementation of Order 1000 Exemptions for Immediate Need Reliability Projects (20-1422)**
Underlying FERC Proceeding: EL19-90¹⁴⁹
Petitioner: LS Power

Status: Briefing Complete; Pending Court Action

On October 16, 2020, LSP Transmission Holdings II, LLC (“LS Power”) petitioned the DC Circuit Court of Appeals for review of the FERC’s orders addressing ISO-NE’s implementation of the Order 1000 exemptions for immediate need reliability projects. Since the last Report, MMWEC filed on July 8 a notice that it would not submit a Reply Brief. On July 9, 2021, LSP Transmission filed Petitioner’s Reply Brief. LSP Transmission filed a Joint Appendix on July 16. On July 28, 2021, MMWEC filed an Intervenor for Petitioner Final Brief. Final Briefs were filed on July 30. Briefing is now complete and this matter is pending before the Court

- **CIP IROL Cost Recovery Rules (20-1389)**
Underlying FERC Proceeding: ER20-739¹⁵⁰
Petitioner: Cogentrix, Vistra

Status: Briefing Complete; Pending Court Action

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. Since the last Report, Cogentrix and Vistra filed a Deferred Appendix (July 16, 2021) and Final Briefs (from Petitioners and the FERC) were submitted on July 26, 2021. Briefing is now complete and this matter is pending before the Court.

¹⁴⁹ *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).

¹⁵⁰ *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*”).

- **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: EL18-1639¹⁵¹
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.¹⁵² The cases have 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.

On June 23, 2021, 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). The date for oral argument and the composition of the merits panel will be identified at a later time. Since the last Report, on July 12, the FERC filed a Certified Index to the Record.

- **CASPR (20-1333, 20-1331) (consolidated)****
Underlying FERC Proceeding: ER18-619¹⁵³
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

¹⁵¹ July 2018 Order; July 2018 Rehearing Order; Dec 2018 Order; Dec 2018 Rehearing Order; Jul 17 Compliance Order.

¹⁵² 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.

¹⁵³ *ISO New England Inc.*, 162 FERC ¶ 61,205 (Mar. 9, 2018) ("*CASPR Order*").

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.

- **Opinion 531-A Compliance Filing Undo (20-1329)**
Underlying FERC Proceeding: ER15-414¹⁵⁴
Petitioners: TOs' (CMP et al.)
Status: Being Held in Abeyance

On August 28, 2020, the TOs¹⁵⁵ 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*¹⁵⁶ 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: ER13-2266¹⁵⁷
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

¹⁵⁴ *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) ("Order Rejecting Filing").

¹⁵⁵ 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.

¹⁵⁶ *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*").

¹⁵⁷ 171 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*").)

the FERC's April 1, 2020 *2013/14 Winter Reliability Program Order on Compliance and Remand*.¹⁵⁸ 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 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: ER19-1428¹⁵⁹**
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: RM19-15¹⁶⁰
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*.¹⁶¹ 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

¹⁵⁸ 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.

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

¹⁶⁰ *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).

¹⁶¹ *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.

Petitioners.¹⁶² On June 28, 2021, petitioner-intervenors filed their joint brief and (June 28, 2021); motions and associated briefs by amici curiae in support of petitioners were also filed on June 28, 2021. Since the last Report, NewSun Energy filed an Intervenor Brief on July 28. Next up will be Respondent's brief (September 27, 2021); joint brief of respondent-intervenors (October 27, 2021); motions and associated briefs by amici curiae in support of respondent (October 27, 2021); and any optional reply briefs (December 13, 2021).

- **PennEast Project (18-1128)**

Underlying FERC Proceeding: CP15-558¹⁶³

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")¹⁶⁴ 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) (consol.)**

Underlying FERC Proceeding: EL14-12; EL15-45¹⁶⁵

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

Status: Briefing Underway

The MISO Transmission Owners (TOs), Transource and "Dec 23 Petitioners",¹⁶⁶ 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. 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,

¹⁶² "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.

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

¹⁶⁴ 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.

¹⁶⁵ *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).

¹⁶⁶ "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.

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 Petitioners¹⁶⁷ filed their Brief. FERC filed its Respondent brief on June 8 and Intervenor in Support of FERC their Joint Brief on June 22, 2021. Since the last Report, Petitioners’ and Joint Petitioners’ Reply Briefs were filed on July 8, 2021; Intervenor in Support of Petitioners Reply Briefs, July 22, 2021. The following deadlines remain: Joint Deferred Appendix, August 6, 2021; and Final Briefs, August 19, 2021.

- **Algonquin Atlantic Bridge Project Briefing Order (21-1115*, 21-1138, 21-1153, 21-1155) (consol.); Underlying FERC Proceeding: CP16-9-012¹⁶⁸**
Petitioners: LS Power, Algonquin, INGA
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. Since the last Report, the Court consolidated Cases 21-1153 and 21-1155 with the lead Case (21-1115), with the consolidated cases being held in abeyance pursuant to the June 21 order.

¹⁶⁷ 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.

¹⁶⁸ *Briefing Order; April 19 Notice of Denial of Rehearings by Operation of Law*

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