

**EXECUTIVE SUMMARY**  
**Status Report of Current Regulatory and Legal Proceedings**  
**as of October 5, 2021**

The following activity, as more fully described in the attached litigation report, has occurred since the report dated August 31, 2021 ("last Report") was circulated. New matters/proceedings since the last Report are preceded by an asterisk '\*'. Page numbers precede the matter description.

**COVID-19**



*No Activity to Report*

**I. Complaints/Section 206 Proceedings**



* 2	206 Investigation: ISO-NE Tariff Schedule 25 and Section I.3.10 (EL21-94)	Sep 7	FERC institutes investigation; ISO-NE response due on or before <b>Nov 8, 2021</b>
		Sep 8	FERC issues notice of proceeding & Oct 30, 2020 refund effective date
		Sep 8-Sep 30	NEPOOL, NESCOE, Brookfield, Calpine, Dominion, Eversource, HQ US, LS Power, MA AG, MMWEC, National Grid, NECEC Transmission, NEPGA, NextEra, NRG, CT DEEP, MA DOER, ACPA, EPSA, RENEW, Public Citizen intervene
3	Green Development DAF Charges Complaint Against National Grid (EL21-47)	Sep 23	FERC denies in part, and grants in part, Complaint. National Grid not permitted, unless and until it complies with the requirement for a separate agreement, to assess DAF charges to Narragansett in association with the upgrades necessary for the Projects
3	NEPGA Net CONE Complaint (EL21-26)	Sep 23	FERC issues an <i>Allegheny Order</i> , modifying the discussion in, but sustaining the results of, the <i>May 28 Orders</i>
4	NECEC/Avangrid Complaint Against NextEra/Seabrook (EL21-6)	Sep 7	FERC issues an order establishing additional briefing in this proceeding; initial briefs due on or before <b>Oct 7, 2021</b> ; reply briefs, <b>Oct 22, 2021</b> .

**II. Rate, ICR, FCA, Cost Recovery Filings**



8	VTransco Request to Defer 2021/22 Retiree Lump Sum Payment Cost Recovery (ER21-2627)	Sep 22	FERC authorizes VTransco to defer retiree costs, eff. Dec 31, 2021
8	CSC CIP IROL Cost Recovery: Pre-Jun 1, 2021 Regulatory Asset Cost Recovery (ER21-2334)	Sep 30	CSC requests rehearing of the <i>August 31 Order</i> denying CSC's pre-Jun 1, 2021 CIP IROL cost recovery plan
9	Mystic 8/9 Cost of Service Agreement (ER18-1639)	Sep 13	FERC issues a "Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration" of the requests for rehearing of the <i>Mystic ROE Order</i>
		Sep 15	Mystic submits 2021 Capital Expenditures Informational Filing

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



* 11	eTariff § III.3.1 Corrections (ER21-2850)	Sep 8	ISO-NE files conforming changes to eTariff § III.3.1
		Sep 10	NEPOOL intervenes

**V. OATT Amendments / TOAs / Coordination Agreements**



12	BTM Generation Proposal (ER21-2337)	Sep 20	ISO-NE files responses to Aug 20 deficiency letter; comment deadline <b>Oct 12, 2021</b>
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| 12 | Updated CONE, Net Cone and PPR Values (eff. FCA16) (ER21-787) | Sep 23 | FERC issues <i>Net CONE Allegheny Order</i> , modifying the discussion in, but sustaining the results of, the <i>May 28 Orders</i> |
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#### V. Financial Assurance/Billing Policy Amendments



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|------|--|-----------|--|
| * 13 | eTariff FAP Attachment 3 Corrections (ER21-2815) | Sep 1     | ISO-NE submits corrections to eTariff FAP to reinstate previously-accepted text in Attachment 3 that was inadvertently omitted in subsequently-accepted eTariff filings; comment deadline Sep 22, 2021 |
|      |  | Sep 8, 10 | Calpine, NEPOOL intervene  |

#### VI. Schedule 20/21/22/23 Changes



#### No Activity to Report

#### VII. NEPOOL Agreement/Participants Agreement Amendments



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|------|--|--------|--|
| * 14 | Waiver Agreement: PA Board Provisions (not docketed) | Sep 24 | NEPOOL and ISO-NE submit an informational filing advising the FERC of the waiver of PA §§ 9.2.2 and 9.2.3(a) |
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#### VIII. Regional Reports



- |      |  |       |   |
|------|--|-------|---|
| 15   | Capital Projects Report - 2021 Q2 (ER21-2632)                  | Oct 1 | FERC accepts 2021 Q2 Report, eff. Jul 1, 2021 |
| * 16 | Reserve Market Compliance (31st) Semi-Annual Report (ER06-613) | Oct 1 | ISO-NE submits 31st semi-annual report        |

#### IX. Membership Filings



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|------|--|--------|--|
| * 16 | Oct 2021 Membership Filing (ER21-2985)                     | Sep 30 | <b>New Members:</b> CPV Valley, GB CT, GB M&M, JPMVEC, Oxford Energy Center, Naugatuck Avenue Storage, Norman Street ES, and Westfield ESS; <b>Name Change:</b> Rhode Island Bioenergy Facility, LLC; comment deadline <b>Oct 21, 2021</b> |
| 17   | Aug 2021 Membership Filing (ER21-2558)                     | Sep 27 | FERC accepts (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               |
| * 17 | Suspension Notice – Manchester Methane, LLC (not docketed) | Sep 17 | ISO-NE files notice of suspension of Manchester Methane, LLC from the New England Markets  |
|      |  | Oct 5  | Manchester Methane default cured; suspension lifted  |

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



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|------|--|--------|--|
| * 17 | Revised Rel. Standards: CIP-013-2, CIP-005-7, CIP-010-4 (RD21-2)             | Sep 15 | NERC files for approval proposed changes to CIP-004-7 and CIP-011-3 to clarify protections required regarding use of third-party solutions for BES Cyber System Information; comment deadline <b>Oct 6, 2021</b> |
| * 19 | Rules of Procedure Changes (CMEP Risk-Based Approach Enhancements) (RR21-10) | Sep 29 | NERC files for approval changes to ROP § 400 and 1500 and Appendices 2 and 4C; comment deadline <b>Oct 20, 2021</b>  |
| 20   | 2022 NERC/NPCC Business Plans and Budgets (RR21-9)                           | Sep 29 | NERC submits Budget Amendment to include additional Fixed Asset expenditures; comment deadline <b>Oct 12, 2021</b>   |

**XI. Misc. - of Regional Interest**

* 21	203 Application: PSEG/Generation Bridge II (ArcLight) (EC21-125)	Sep 2	PSEG Project Companies and Generation Bridge II requested authorization for a transaction pursuant to which 100% of the membership interests in the PSEG Project Companies will be sold to Generation Bridge II, a wholly-owned, indirect subsidiary of ArcLight Fund VII, which is itself affiliated with Great River Hydro
		Sep 28	Applicants submit corrections to an affidavit included in the original filing; comment deadline <b>Nov 29, 2021</b>
21	203 Application: Cypress Creek/EQT (EC21-108)	Oct 1	FERC authorizes Catalyst (EQT) acquisition of Cypress Creek Renewables
22	203 Application: Seneca/Rice et al. (EC21-84)	Sep 24	Archaea provides notice that this FERC-authorized transaction was consummated on Sep 15, 2021
* 23	CL&P/EIP E&P Agreement (ER21-2880)	Sep 13	CL&P files E&P Agreement
* 23	IA Termination: CL&P/Sterling Property (ER21-2860)	Sep 9	CL&P files a notice of termination of a 2002 IA governing service to a 26 MW waste-tire fueled generator located in Sterling, CT
		Sep 22	Brookfield intervenes
		Sep 30	Sterling Property protests termination notice
23	Seabrook/NECEC E&P Agreement (ER21-2719)	Oct 4	FERC accepts E&P Agreement, eff. Aug 20, 2021
24	LGIA: National Grid / New England Wind (Hoosac) (ER21-2548)	Sep 24	FERC accepts LGIA, eff. Mar 19, 2021
24	Versant Waiver Request: Unreserved Transmission Use Penalty Policy (ER21-2447)	Sep 27	FERC dismisses the waiver request as inappropriate (because the policy for which Versant sought waiver was a business rule that was not part of the tariff on file with the FERC)
25	IRH Support and Use Agreements eTariff Compliance Filings (ER21-2163 et al.)	Sep 16	FERC accepts changes to VETCO's Phase I VT Transmission Line Support Agreement filing (ER21-2158), eff. Jan 1, 2021
25	Orders 864/864-A (Public Util. Trans. ADIT Rate Changes): New England Compliance Filings (various)	Sep 15 Sep 29 Sep 30	ER20-2429-001 (CMP). FERC issues second deficiency letter ER20-2429-001 (CMP). CMP requests extension of time to respond to second deficiency letter. ER20-2429-001 (CMP). FERC grants extension of time to respond to second deficiency letter to <b>Oct 22, 2021</b>

**XII. Misc. - Administrative & Rulemaking Proceedings**

26	Joint Federal-State Task Force on Electric Transmission (AD21-15)	Sep 10	Comments on agenda topics filed by <a href="#">AEP</a> , <a href="#">APPA</a> , the <a href="#">Environmental Law and Policy Center</a> and <a href="#">National Audubon Society</a> , <a href="#">ITC</a> , <a href="#">NYU's Institute for Policy Integrity</a> , <a href="#">Shell</a> , <a href="#">Southern Company Services</a> , <a href="#">Wires</a>
27	Climate Change, Extreme Weather, and Elec. Sys. Reliability: Jun 1-2 Tech. Conf. (AD21-13)	Sep 23 – 30	Post-technical conference comments submitted by <a href="#">CAISO</a> ; <a href="#">MISO</a> ; <a href="#">NYISO</a> ; <a href="#">PJM</a> ; <a href="#">AEP</a> ; <a href="#">City of New Orleans</a> ; <a href="#">City of New York</a> ; <a href="#">Columbia Law School's Sabin Center for Climate Change Law</a> ; <a href="#">EDF and Sabin Center for Climate Change Law</a> ; <a href="#">EEI</a> ; <a href="#">EPSA</a> ; <a href="#">Eversource</a> ; <a href="#">Exelon</a> ; <a href="#">Jupiter Intelligence</a> ; <a href="#">Louisville Gas and Electric Company</a> and <a href="#">Kentucky Utilities Company</a> ; <a href="#">MI PSC</a> ; <a href="#">NRDC</a> , <a href="#">Sierra Club</a> , <a href="#">Sustainable FERC Project</a> , and <a href="#">UCS</a> ; <a href="#">ODEC</a> ; <a href="#">NERC</a> ; <a href="#">C. Wright</a>
27	Electrification and the Grid of the Future (AD21-12)	Sep 30	FERC posts transcript of April 29 tech conf in eLibrary

28	Reliability Technical Conference (AD21-11)	Sep 30 Sep 17- Oct 4	FERC holds annual Commissioner-led tech conf Speaker materials posted to eLibrary
28	Modernizing Electricity Market Design - Energy and Ancillary Service Markets (AD21-10)	Sep 3 Sep 7 Sep 14  Sep 13 – 20 Oct 1	FERC issues second supplemental notice (including speaker names) of Sep 14 tech conf FERC staff issues White Paper FERC holds the first of the 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 PJM, SPP, CAISO, Reliable Energy Analytics submit public comments FERC issues supplemental notice of Oct 12 tech conf (including panel topics and speaker names)
29	Office of Public Participation (AD21-9)	Sep 3  Sep 8	M.J. Bradley submits Summary of Stakeholder Feedback Provided Through Listening Sessions and Written Comments FERC issues notice that the virtual workshop to discuss technical assistance in electric proceedings, solicit public input on their technical assistance needs, and explore ways OPP could facilitate technical assistance to interested parties will be held on <b>Oct 7, 2021</b> rather than Sep 16, 2021 as previously noticed
30	Hybrid Resources (AD20-9)	Sep 8-21	ACRE, Clean Grid Alliance, EEI, the City of New York, Hybrid Resource Coalition, NRECA, Pine Gate Renewables, PJM IMM, UCS submit comments
31	ANOPR: Transmission Planning and Allocation and Generator Interconnection (RM21-17)	Sep 3  Sep 16 Sep 17	FERC denies IRC, OPSI and OMS request extension of time to submit comments; comment deadline remains <b>Oct 12, 2021</b> ; reply comment deadline extended to <b>Nov 30, 2021</b> FERC announces <b>Nov 15, 2021</b> staff-led, remote technical conference regarding regional transmission planning National Conference of State Legislatures submits comments
33	NOPR: Electric Transmission Incentives Policy (RM20-10)	Sep 10	FERC holds <b>Sep 10 workshop</b>
34	Order 2222/2222-A/2222-B: DER Participation in RTO/ISO Markets (RM18-9)	Sep 21	ISO-NE submits second process status update

**XIII. FERC Enforcement Proceedings**

40	PacifiCorp (IN21-6)	Sep 14	OE answers PacifiCorp's Jul 19, 2021 answer
41	GreenHat (IN18-9)	Sep 3  Oct 1 Oct 5	OE issues notice that the date by which the FERC needs to issue a penalty order to ensure that a lawsuit against the Kittell Estate will be timely is <b>Oct 11, 2021</b> OE lawyers report on improper communications between decisional staff member and another lawyer working on the GreenHat litigation Kittell Estate moves that the FERC drop all enforcement action against the Estate, ban OE staff Messrs. Tabackman and Olson from any future involvement, and order other offices within the FERC to investigate
41	Rover Pipeline, LLC and Energy Transfer Partners, L.P. (IN19-4)	Sep 15	Rover answers OE's Jul 21 answer

42	Total Gas & Power North America, Inc. et al. (IN12-17)	Sep 1	Presiding ALJ Krolkowski issues order confirming her rulings from the Aug 26 prehearing conference and establishing a procedural schedule
		Sep 21	Chief Judge Cintron concurrently designates Judge Joel deJesus as Settlement Judge; first settlement conf <b>Oct 15, 2021</b>
		Sep 24	Respondents and OE Staff move to temporarily suspend the procedural schedule for about six weeks
		Sep 28	Chief Judge Cintron grants Respondents' motion, extending the hearing commencement and initial decision deadlines to <b>Sep 26, 2022</b> and <b>Feb 20, 2023</b> , respectively

**XIV. Natural Gas Proceedings**

44	Iroquois ExC Project (CP20-48)	Sep 2	FERC staff changes issuance date of its final EIS for the Project to <b>Nov 12, 2021</b>
		Sep 3	FERC staff issues environmental information request #4
		Sep 13	Iroquois responds to environmental information request #4

**XV. State Proceedings & Federal Legislative Proceedings**

47	New England States' Vision Statement	Sep 23	ISO-NE Board responds to New England States' Vision Statement and Advancing the Vision Report
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**XVI. Federal Courts**

48	CIP IROL Cost Recovery Rules (20-1389)	Sep 22	Court schedules oral argument for <b>Nov 12, 2021</b>
48	Mystic 8/9 Cost of Service Agreement (20-1343 et al.)	Sep 7	Mystic and State Petitioners file Opening Briefs
		Sep 21	Intervenor for State Petitioners file their Brief
50	2013/14 Winter Reliability Program Order on Compliance and Remand (20-1289, 20-1366 ) (consol.)	Sep 29	Court allots 10 minutes per side; oral argument <b>Oct 15, 2021</b> before Judges Srinivasan, Henderson and Edwards
51	ISO-NE's Inventoried Energy Program Proposal (19-1224 et al.)		Oral argument <b>Oct 21, 2021</b> before Judges Wilkins, Katsas and Jackson
51	Order 872 (20-72788 et al.) (9th Cir.)	Sep 27	Respondent's brief filed
52	PennEast Project (18-1128)	Sep 1	Parties file motion to govern future proceedings
		Sep 13	Court orders Petitioners and Respondents to file supplemental briefs on <b>Nov 12, 2021</b>
52	Opinion 569/569-A: FERC's Base ROE Methodology (16-1325 et al.) (consol.)	Sep 22	Court schedules oral argument for <b>Nov 18, 2021</b>

## M E M O R A N D U M

**TO:** NEPOOL Participants Committee Members and Alternates

**FROM:** Patrick M. Gerity, NEPOOL Counsel

**DATE:** October 6, 2021

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

We have summarized below the status of key ongoing proceedings relating to NEPOOL matters before the Federal Energy Regulatory Commission ("FERC"),<sup>1</sup> state regulatory commissions, and the Federal Courts and legislatures through October 5, 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.<sup>2</sup> 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.<sup>3</sup> The "Remote Hearing Guidance for Participants" was revised on May 18, 2021 to make two additional changes.<sup>4</sup> 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**.<sup>5</sup> The July 26 notice extended the waiver first noticed in May<sup>6</sup> for a third time.<sup>7</sup> As previously reported, Entities may also seek waiver of FERC orders, regulations, tariffs and rate schedules, including motions for waiver of

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<sup>1</sup> 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").

<sup>2</sup> *Chief Administrative Law Judge's Notices to the Public*, Docket No. AD20-12 (June 17, 2020).

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

<sup>4</sup> *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)).

<sup>5</sup> *See Extension of Non-Statutory Deadlines*, Docket No. AD20-11-000 (July 26, 2021) ("Third Extension").

<sup>6</sup> *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").

<sup>7</sup> *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.<sup>8</sup>

- **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 extended on July 26, 2021, **for an additional 6 months, through January 1, 2022**, the blanket waivers of ISO/RTO Tariff *in-person*<sup>9</sup> meeting and notarization requirements.<sup>10</sup> 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.<sup>11</sup>

## I. Complaints/Section 206 Proceedings

- **206 Investigation: ISO-NE Tariff Schedule 25 and Section I.3.10 (EL21-94)**

On September 7, 2021, the FERC instituted a proceeding under FPA Section 206 to consider whether Schedule 25 and Tariff section I.3.10 may be unjust and unreasonable.<sup>12</sup> This proceeding arises out of issues raised in the NECEC/Avangrid Complaint Against NextEra/Seabrook (related to the interconnection of the New England Clean Energy Connect transmission project ("NECEC Project")) summarized below (EL21-6). Specifically, the FERC identified a concern that "Schedule 25's definition of Affected Party and Tariff section I.3.10 may be unjust and unreasonable to the extent they may allow generating facilities and their components to be identified as facilities on which adverse impacts must be remedied before an elective transmission upgrade can interconnect to the ISO-NE transmission system, even though generators are not subject to the Commission's open access transmission principles," and could result in upgrades identified on an Affected Party's system without any obligation for the Affected Party to construct the identified upgrades.<sup>13</sup>

Accordingly, the FERC directed ISO-NE to: (1) show cause as to why Schedule 25 and Tariff section I.3.10 remain just and reasonable or (2) explain what changes to Schedule 25 and/or Tariff section I.3.10 it believes would remedy the identified concerns if the FERC were to determine that Schedule 25 and/or Tariff section I.3.10 has become unjust and unreasonable and proceeds to establish a replacement rate. ISO-NE's response is due on or before November 8, 2021. ISO-NE may make its filing pursuant to FPA section 206 (in which case interested parties would have 60 days (or until January 7, 2022) to address whether ISO-NE's existing Tariff remains just and reasonable and if not, what changes to ISO-NE's Tariff should be implemented as a replacement rate) or, should it prefer, pursuant to its applicable FPA section 205 filing rights (in which case comments from interested parties would be due in accordance with the usual 21-day deadlines set for such proceedings). The FERC noted its expectation that, if ISO-NE files changes to Schedule 25 and/or Tariff section I.3.10 that it believes would remedy the identified concerns within 60 days of the date of the *Sep 7 Order*, it would issue a final order within three months of ISO-NE's response.<sup>14</sup> On September 8, the FERC issued a notice of the proceeding and of the refund

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

<sup>9</sup> 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).

<sup>10</sup> *Temporary Action to Facilitate Social Distancing*, 176 FERC ¶ 61,044 (July 26, 2021).

<sup>11</sup> *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).

<sup>12</sup> *NECEC Transmission LLC and Avangrid, Inc. v. NextEra Energy Resources, LLC et al. and ISO New England Inc.*, 176 FERC ¶ 61,148 (Sep. 7, 2021) ("*Sep 7 Order*").

<sup>13</sup> *Id.* at P 20.

<sup>14</sup> *Id.* at P 26.



effective date, which will be October 13, 2020 (the date the NECEC/Avangrid Complaint Against NextEra/Seabrook was filed). Those interested in participating in this proceeding were required to intervene on or before October 5, 2021.<sup>15</sup> NEPOOL, NESCOE, Brookfield, Calpine, Dominion, Eversource, HQ US, LS Power, MA AG, MMWEC, National Grid, NECEC Transmission, NEPGA, NextEra, NRG, CT DEEP, MA DOER, American Clean Power Association (“ACPA”), EPSA, RENEW Northeast, and Public Citizen intervened. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

The *Sep 7 Order* was summarized for the Reliability Committee by NEPOOL counsel at the RC’s September 21 meeting. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

On September 23, 2021, the FERC denied in part, but granted in part, the complaint (“Complaint”)<sup>16</sup> by Green Development, LLC (“Green Development”) against New England Power Company and Narragansett Electric Company (together, “National Grid” or “Grid”).<sup>17</sup> The *Complaint Order* partially denied the Complaint, finding that Green Development did not meet its burden of proof that the assignment of DAF charges violated the first part of the ISO-NE Tariff definition of Direct Assignment Facilities (requiring that the facilities be constructed for the sole use/benefit of a particular Transmission Customer requesting service under the ISO-NE Tariff).<sup>18</sup> However, the *Complaint Order* found that Green Development demonstrated a failure by National Grid to comply with the requirement that the facilities be “specified in a separate agreement among ISO-NE, the Interconnection Customer and the Transmission Customer, as applicable, and the Transmission Owner whose transmission system is to be modified.”<sup>19</sup> As a result, National Grid is not permitted, unless and until it complies with that part of the definition, to assess DAF charges to Narragansett in association with the upgrades necessary for the Projects.<sup>20</sup> Challenges to the *Green Development Complaint Order* are due on or before October 25, 2021. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

On September 23, 2021, the FERC issued an “*Allegheny Order*”<sup>21</sup> addressing arguments raised in a joint request for rehearing by the Electric Power Supply Association (“EPSA”) and the New England Power Generators Association (“NEPGA”) of the *NEPGA Net CONE Complaint Order*<sup>22</sup> and the *Updated CONE, Net Cone and PPR Values Order*<sup>23</sup> (together, the “*May 28 Orders*”). While “[p]ursuant to *Allegheny Defense Project v. FERC*, the

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<sup>15</sup> The *Notice* was published in the *Fed. Reg.* on Sep. 14, 2021 (Vol. 86, No. 175) p. 51,140.

<sup>16</sup> The Complaint requested a finding that Grid’s assessment of Direct Assignment Facility (“DAF”) charges for Green Development’s projects is unauthorized under the ISO-NE Tariff (the “Complaint”).

<sup>17</sup> *Green Development, LLC v. New England Power Co. and Narragansett Elec. Co.*, 176 FERC ¶ 61,193 (Sep. 23, 2021) (“*Green Development Complaint Order*” or “*Complaint Order*”).

<sup>18</sup> *Id.* at PP 54-55, 59-60.

<sup>19</sup> *Id.* at PP 54, 61-62.

<sup>20</sup> *Id.* at P 62.

<sup>21</sup> *ISO New England Inc. and New England Power Generators Association, Inc. v. ISO New England Inc.*, 176 FERC ¶ 61,176 (Sep. 23, 2021) (“*Net Cone Allegheny Order*”).

<sup>22</sup> *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). As previously reported, 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.

<sup>23</sup> *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).



rehearing request filed in this proceeding may be deemed denied by operation of law<sup>24</sup> ... as permitted by section 313(a) of the FPA, [the FERC modified] the discussion in",<sup>25</sup> but sustained the results of, the *May 28 Orders*. Notably, the FERC found that: (i) "ISO-NE's estimates are just and reasonable notwithstanding the possibility that other estimates may also be reasonable";<sup>26</sup> (ii) the Tariff and filed rate doctrine did not require that the methodology underlying the calculation of Net CONE be anything other than the approved methodology on file at the time the Net CONE values are implemented,<sup>27</sup> and it had appropriately determined that ISO-NE was entitled to base its recalculations on the definition it intended to file and have in effect in advance of that FCA.<sup>28</sup>

Neither of the *May 28 Orders* were appealed to a Federal Court and this proceeding is now concluded. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)) or Rosendo Garza (860-275-0660; [rgarza@daypitney.com](mailto: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 NECEC Project and seeking, among other things, an initial, expedited order that would grant certain relief<sup>29</sup> 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.

**Order Establishing Additional Briefing.** On September 7, 2021, the FERC issued an order establishing additional briefing in this proceeding and instituted a broader Section 206 proceeding (see EL21-94 above).<sup>30</sup> Specifically, with respect to this proceeding, the FERC requested additional briefing from the Parties, as well as from ISO-NE, on the following issues:

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<sup>24</sup> See Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration, *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 176 FERC ¶ 62,058 (July 29, 2021).

<sup>25</sup> *Id.* at P 2.

<sup>26</sup> *Id.* at P 8.

<sup>27</sup> *Id.* at P 14.

<sup>28</sup> *Id.* at P 15.

<sup>29</sup> 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.

<sup>30</sup> *NECEC Transmission LLC and Avangrid, Inc. v. NextEra Energy Resources, LLC et al. and ISO New England Inc.*, 176 FERC ¶ 61,148 (Sep. 7, 2021).

- ◆ Whether or not Seabrook's breaker is properly identified as a part of Seabrook's generating facility.
- ◆ If Seabrook's breaker is part of Seabrook's generating facility, under what authority, if any, Seabrook may be subject to the upgrade obligations imposed on Affected Parties under the ISO-NE Tariff.
- ◆ If Seabrook's breaker is part of Seabrook's generating facility, what obligations, if any, Seabrook has under its LGIA with respect to replacement of the breaker and whether or not ISO New England Operating Documents and Applicable Reliability Standards impose an obligation to replace the breaker. If Seabrook's breaker is appropriately classified as a system protection facility, what obligations Seabrook has to replace the breaker. If the Seabrook LGIA obligates Seabrook to act, a description of the scope of Seabrook's obligation under the LGIA.
- ◆ Whether there exists any solution for the interconnection of the NECEC Project that may be implemented without the replacement of Seabrook's breaker.
- ◆ If replacement of Seabrook's breaker is necessary for the interconnection of the NECEC Project, whether there exists any interim solution for the interconnection of the NECEC Project that would allow energization of the NECEC Project prior to the replacement of Seabrook's breaker.

Initial briefs responsive to these questions are due on or before October 7, 2021. Reply briefs are due on or before October 22, 2021. The September 7 order was summarized for the Reliability Committee ("RC") by NEPOOL counsel at the RC's September 21 meeting. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

In a related matter, initiated a week earlier than the Avangrid Complaint, NextEra Energy Seabrook, LLC ("Seabrook") filed a Petition for a Declaratory Order ("Petition") "by which it seeks to understand the scope of its FERC-jurisdictional regulatory obligations with respect to the project ("NECEC Elective Upgrade"), and to resolve its dispute with NECEC". Specifically, Seabrook asked the FERC to declare that: (1) Seabrook is not required to incur a financial loss to upgrade, for NECEC's sole benefit, a 24.5 kV generator circuit breaker and ancillary equipment ("Generation Breaker") at Seabrook Station; (2) "Good Utility Practice" for replacement of the nuclear plant Generation Breaker is defined in terms of the practices of the nuclear power industry, such that Seabrook's proposed definition of that term is appropriate for use in a facilities agreement with NECEC; and (3) Seabrook will not be liable for consequential damages for the service it provides to NECEC under a facilities agreement (collectively, the "Requested Declarations"). Alternatively, Seabrook asked that the FERC declare that nothing in ISO-NE's Tariff requires Seabrook to enter into an agreement to replace the Generation Breaker, and therefore, 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](mailto: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,<sup>31</sup> 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*).<sup>32</sup> However, the FERC's orders were challenged, and in *Emera Maine*,<sup>33</sup> the DC Circuit vacated the FERC's prior orders, and remanded the case for further proceedings consistent with its order. The FERC's determinations in *Opinion 531* are thus no longer precedential, though the FERC remains free to re-adopt those determinations on remand as long as it provides a reasoned basis for doing so.
- **Base ROE Complaints II & III (EL13-33 and EL14-86) (consolidated).** The second (EL13-33)<sup>34</sup> and third (EL14-86)<sup>35</sup> 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.<sup>36</sup> 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 proceeding<sup>37</sup> also went to hearing before an ALJ, Judge Glazer, who issued his initial decision on March 27, 2017.<sup>38</sup> The *Base ROE IV Initial Decision* concluded that the currently-filed base ROE of 10.57%, which may reach a

<sup>31</sup> 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*").

<sup>32</sup> *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*").

<sup>33</sup> *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).

<sup>34</sup> 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%.

<sup>35</sup> 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.

<sup>36</sup> *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*").

<sup>37</sup> 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 XVI below, have been appealed to, and are pending before, the DC Circuit.

<sup>38</sup> *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 162 FERC ¶ 63,026 (Mar. 27, 2018) ("*Base ROE Complaint IV Initial Decision*").

maximum ROE of 11.74% with incentive adders, was **not** unjust and unreasonable for the Complaint IV period, and hence was not unlawful under section 206 of the FPA.<sup>39</sup> 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.<sup>40</sup> 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*<sup>41</sup> (EL14-12; EL15-45) in Section XI below). The FERC established a paper hearing on how its proposed methodology should apply to the four pending ROE proceedings.<sup>42</sup>

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%.<sup>43</sup> 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

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<sup>39</sup> *Id.* at P 2.; Finding of Fact (B).

<sup>40</sup> *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (Oct. 18, 2018) (“*Order Directing Briefs*” or “*Coakley*”).

<sup>41</sup> *Ass’n of Buss. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569-A, 171 FERC ¶ 61,154 (2020) (“*Opinion 569-A*”). The refinements to the FERC’s ROE methodology included: (i) the use of the Risk Premium model instead of only relying on the DCF model and CAPM under both prongs of FPA Section 206; (ii) adjusting the relative weighting of long- and short-term growth rates, increasing the weight for the short-term growth rate to 80% and reducing to 20% the weight given to the long-term growth rate in the two-step DCF model; (iii) modifying the high-end outlier test to treat any proxy company as high-end outlier if its cost of equity estimated under the model in question is more than 200% of the median result of all the potential proxy group members in that model before any high- or low-end outlier test is applied, subject to a natural break analysis. This is a shift from the 150% threshold applied in *Opinion 569*; and (iv) calculating the zone of reasonableness in equal thirds, instead of using the quartile approach that was applied in *Opinion 569*.

<sup>42</sup> *Id.* at P 19.

<sup>43</sup> *Id.* at P 59.

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

The FERC directed participants in the four proceedings to submit briefs regarding the proposed approaches to the FPA section 206 inquiry and how to apply them to the complaints (separate briefs for each proceeding). Additional financial data or evidence concerning economic conditions in any proceeding must relate to periods before the conclusion of the hearings in the relevant complaint proceeding. Following a FERC notice granting a request by the TOs and Customers<sup>44</sup> 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, and FERC Trial Staff.

***TOs Request to Re-Open Record and file Supplemental Paper Hearing Brief.*** On December 26, 2019, the TOs filed a Supplemental Brief that addresses the consequences of the November 21 *MISO ROE Order*<sup>45</sup> 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](mailto:ekrunge@daypitney.com)) or Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)).

## II. Rate, ICR, FCA, Cost Recovery Filings

- **VTransco Request to Defer 2021/22 Retiree Lump Sum Payment Cost Recovery (ER21-2627)**

On September 22, 2021, the FERC authorized Vermont Transco ("VTransco") to defer for future recovery costs associated with lump sum payments to employees who retire in 2021 and 2022.<sup>46</sup> As previously reported, VELCO expects a record number of employees to retire in 2021 (12) and 2022 and anticipates that many, if not most, of them will opt to take a lump sum payment, resulting in significantly higher one-time expenses to be passed through to VTransco than has historically been the case. VTransco's request is intended to mitigate the rate impact on the Vermont distribution utilities, and in turn, their retail ratepayers. The deferral was accepted effective December 31, 2021, as requested. Unless the September 22 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

On August 31, 2021, the FERC denied the request by Cross-Sound Cable Company LLC ("CSC") for authorization to establish a regulatory asset that would include all CIP-IROL Costs<sup>47</sup> that CSC prudently incurred between January 1, 2016 and May 31, 2021 (\$1.324 million) and recover those costs under Schedule 17 (from all ISO-NE transmission customers) over a five-year period (beginning on the date the FERC makes

<sup>44</sup> For purposes of the motion seeking clarification, "Customers" are CT PURA, MA AG and EMCOS.

<sup>45</sup> *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).

<sup>46</sup> *Vermont Transco LLC*, Docket No. ER21-2627 (Sep. 22, 2021) (unpublished letter order).

<sup>47</sup> Interconnection Reliability Operating Limits ("IROL") Critical Infrastructure Protection ("CIP") costs under Schedule 17 of the ISO-NE Tariff.

this rate treatment and related cost recovery effective).<sup>48</sup> Relying on its *Schedule 17 Orders*,<sup>49</sup> which found that Schedule 17 permits recovery only of CIP-IROL costs incurred on or after the effective date of a FPA section 205 filing made by an IROL-Critical Facility owner to recover such costs, and recovery of CIP-IROL costs incurred prior to the effective date of any relevant, individual FPA section 205 filing would violate the rule against retroactive ratemaking, the FERC found that permitting the recovery here proposed by CSC would violate the filed rate doctrine.<sup>50</sup> The FERC rejected the alternative bases for FERC approval proposed by CSC.<sup>51</sup>

**Request for Rehearing.** On September 30, 2021, CSC requested rehearing of the *August 31 Order*. The CSC request for rehearing is pending, with FERC action required on or before November 1, 2021, or the request will be deemed denied by operation of law.

If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

As previously reported, the FERC issued four orders in this proceeding in July 2020 (three on July 17 (together, the “*July 17 Orders*”); one on July 28, 2020). Each of the orders addressed in part or in whole the Cost-of-Service Agreement (“COS Agreement”)<sup>52</sup> 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 XVI below, each of the *July 17 Orders*<sup>53</sup> (and the earlier, underlying orders) have been appealed to the DC Circuit. On July 15, 2021, the FERC issued an order setting the base ROE for the Mystic COS Agreement at 9.33%.<sup>54</sup> Activity since the last Report includes:

**Requests for Rehearing of the Mystic ROE Order Denied by Operation of Law (-010, -011).** On September 13, 2021, the FERC issued a “Notice of Denial of Rehearings by Operation of Law and Providing for Further

<sup>48</sup> *Cross-Sound Cable Co., LLC*, 176 FERC ¶ 61,073 (Aug. 31, 2021) (“*August 31 Order*”).

<sup>49</sup> *ISO New England Inc.*, 171 FERC ¶ 61,160 (“*Schedule 17 Order*”), order on reh’g, 172 FERC ¶ 61,251 (2020) (“*Schedule 17 Rehearing Order*”) (collectively, “*Schedule 17 Orders*”), appeal pending sub nom., *Cogentrix Energy Power Mgmt., LLC v. FERC*, D.C. Cir. No. 20-1389 (filed Oct. 14, 2020) (see Section XVI).

<sup>50</sup> *August 31 Order* at P 33.

<sup>51</sup> *Id.* at PP 33-37. As previously reported, 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). In the *August 31 Order*, the FERC rejected each of these in turn.

<sup>52</sup> 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.

<sup>53</sup> 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).

<sup>54</sup> *Constellation Mystic Power, LLC*, 176 FERC ¶ 61,019 (July 15, 2021) (“*Mystic ROE Order*”).



Consideration”.<sup>55</sup> The Notice confirmed that the 60-day period during which a petition for review of the *Mystic ROE Order* can be filed with an appropriate federal court was triggered when the FERC did not act on the requests for rehearing of the *Mystic ROE Order* filed by Mystic, CT Parties,<sup>56</sup> ENECOS,<sup>57</sup> and the MA AG. 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.”

**ROE (Fifth) Compliance Filing (-012).** On August 16, 2021, Mystic filed a revised COS Agreement in a fifth compliance filing, this time in response to the *Mystic ROE Order*: (1) changing the Cost of Common Equity figures from 10.71 percent to 9.33 percent in Schedule C of the Methodology, for both Mystic 8&9 and Everett Marine Terminal (“Everett”); and (ii) reducing the Annual Fixed Revenue Requirements (“AFRR”) to \$170,605,963 for the 2022/2023 Capacity Commitment Period (“CCP”) and to \$139,668,204 for the 2023/2024 CCP. In addition, because the ROE adjustment reduces the charge for regassification service from Everett and the return on investment in Everett, Mystic also submitted for information a revised Fuel Supply Agreement (“FSA”) and Terminal Services Agreement (“TSA”) with Distrigas of Massachusetts LLC. Comments on the fifth compliance filing are due on or before September 7, 2021; none were filed. The fifth compliance filing is pending before the FERC.

**2021 Capital Expenditures Informational Filing.** On September 15, 2021, Mystic submitted, as required by orders in this proceeding and Sections I.B.1.i. and II.6. of Schedule 3A of the COS Agreement (“Protocols”) its “2021 Filing” informational filing to provide support for the capital expenditures and related costs that Mystic projects will be collected as an expense between June 1, 2022 to December 31, 2022 (“2022 CapEx Projects”). This filing was not noticed for public comment by the FERC.

If you have questions on any aspect of this proceeding, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **2021/22 Power Year Transmission Rate Filing (ER09-1532; RT04-2)**

On July 30, 2021, the Participating Transmission Owners (“PTOs”) Administrative Committee (“PTO AC”) submitted a filing identifying adjustments to regional transmission service charges under Section II of the ISO Tariff for the period June 1, 2021 through May 31, 2022. The filing reflected the charges to be assessed under annual transmission formula rates, reflecting actual 2020 cost data, Forecasted Annual Transmission Revenue Requirements associated with projected PTF additions for the 2019 Forecast Period, and the Annual True-up including associated interest. The PTO AC states that the annual updates results in a Pool “postage stamp” RNS Rate of \$140.98 /kW-year effective June 1, 2021, an increase of \$11.72 /kW-year from the charges that went into effect on June 1, 2020. Effective January 1, 2022 through December 31, 2022, the Pool RNS Rate will either be \$143.73/kW-year (a \$2.75 increase from the Pool RNS Rate of \$140.98/kW-year that went into effect on June 1, 2021), or will be \$142.78/kW-year (a \$1.80 increase), should the PTOs receive FERC approval in calendar year 2021 of their respective *Order 864* compliance filings. In addition, the annual update to the Schedule 1 formula rate results in a charge of \$1.869 kW-year, a \$0.124/kW-year increase from the Schedule 1 charge that last went into effect on June 1, 2021. This filing was not noticed for public comment. If there are questions on this proceeding, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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<sup>55</sup> *Constellation Mystic Power, LLC*, 176 FERC ¶ 62,127 (Sep. 13, 2021) (Notice of Denial By Operation of Law of Rehearings of Mystic ROE Order).

<sup>56</sup> “CT Parties” are: the Conn. Pub. Utils. Reg. Authority (“CT PURA”), the Conn. Dept. of Energy and Environ. Protection (“CT DEEP”), and the Conn. Office of Consumer Counsel (“CT OCC”).

<sup>57</sup> As noted in previous Reports, “ENECOS” are Braintree, Concord, Georgetown, Hingham, Littleton Electric Light & Water, Middleborough, Middleton, Norwood, Pascoag, Reading, Taunton, and Wellesley.

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

- **eTariff § III.3.1 Corrections (ER21-2850)**

On September 8, ISO-NE filed conforming changes to eTariff § III.3.1 to ensure that the eTariff Viewer reflects changes accepted in ER21-1974 (Solar Data Requirements & Relocation of Wind Data Requirements) but inadvertently omitted in later changes filed in ER21-2220 (Removal of Appendix B from Market Rule 1; Deletion of Assoc. Tariff Provisions). Comments on the corrections were due on or before September 29, 2021; none were filed. NEPOOL filed a doc-less intervention. 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](mailto:pmgerity@daypitney.com)).

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

As previously reported, the FERC accepted in part and rejected in part pieces of ISO-NE's and NEPOOL's proposals, effective June 8, 2021.<sup>58</sup> 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,<sup>59</sup> 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.

***Request for Rehearing of ORTP Jump Ball Order (-002) Denied; ORTP Jump Ball Order Discussion***

**Modified; Result Unchanged.** Clean Energy Advocates<sup>60</sup> request for rehearing of the *ORTP Jump Ball Order* was denied by operation of law on August 6, 2021.<sup>61</sup> As is its right under section 313(a) of the FPA, the FERC then later issued an order, on August 26, 2021, modifying the discussion in the *ORTP Jump Ball Order* but reaching the same result.<sup>62</sup> In the *ORTP Jump Ball Allegheny Order*, the FERC explained why it found unpersuasive Clean Energy Advocates' arguments raised on rehearing. Dissenting in part, Chairman Glick and Commission Clements again stated that the FERC should have instead adopted NEPOOL's proposed capital cost estimate for offshore wind resources, finding they "better reflect current market activity compared to ISO-NE's estimates that are based on outdated and proprietary data". Challenges, if any, to the *ORTP Jump Ball Order* and the *ORTP Jump Ball Allegheny Order* must be filed in Federal Court on or before October 25, 2021. If you have any questions concerning this proceeding, please contact Dave Doot ([dttdoot@daypitney.com](mailto:dttdoot@daypitney.com); 860-275-0102), Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)), Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)) or Rosendo Garza (860-275-0660; [rgarza@daypitney.com](mailto:rgarza@daypitney.com)).

<sup>58</sup> *ISO New England Inc.*, 175 FERC ¶ 61,195 (June 7, 2021) ("*ORTP Jump Ball Order*").

<sup>59</sup> *Id.* at P 127 et seq.

<sup>60</sup> "Clean Energy Advocates" are Conservation Law Foundation ("CLF"), Natural Resources Defense Council ("NRDC"), Sierra Club, RENEW Northeast, Inc. ("RENEW"), and Sustainable FERC Project.

<sup>61</sup> See Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration, *ISO New England Inc.*, 176 FERC ¶ 62,068 (Aug. 9, 2021).

<sup>62</sup> *ISO New England Inc.*, 176 FERC ¶ 61,125 (Aug. 26, 2021) ("*ORTP Jump Ball Allegheny Order*").

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

As previously reported, the FERC conditionally accepted on May 28, 2021,<sup>63</sup> 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,<sup>64</sup> as well as the modified definition of Net CONE, subject to a compliance filing that reflects the assumption that the reference unit has on-site compression.<sup>65</sup> ISO-NE submitted on June 11, 2021, and the FERC accepted on July 30, 2021,<sup>66</sup> that compliance filing, which updated the CONE, Net CONE and PPR values to \$12.400, \$7.468 and \$9,337, respectively, to reflect the cost of gas compression.

As summarized more fully in Section II above (EL21-26), the FERC, in its September 23, 2021 *Net Cone Allegheny Order*, addressed arguments raised in a joint request for rehearing by EPSA and NEPGA of the *May 28 Orders*, including the *Updated CONE, Net Cone and PPR Values Order* in this proceeding. The FERC modified the discussion in, but sustained the results of, the *May 28 Orders*. Neither of the *May 28 Orders* were appealed to a Federal Court and this proceeding is now concluded. If you have any questions concerning this proceeding, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)) or Rosendo Garza (860-275-0660; [rgarza@daypitney.com](mailto: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. The PTO AC answered the NEPGA protest on August 6, 2021. Answers to the PTO AC Answer were filed by NEPGA and the IMM on August 13 and August 16, respectively. Since the last Report, IECG filed an answer to the NEPGA and IMM answers.

**August 20, 2021 Deficiency Letter.** On August 20, 2021, the FERC issued a deficiency letter, directing ISO-NE to provide within 30 days additional information and clarifications. The responses to the Deficiency Letter were due and were filed by ISO-NE on September 20, 2021. The responses to the deficiency letter re-set the 60-day deadline for FERC action on this filing. Comments on ISO-NE's deficiency letter responses are due on or before

<sup>63</sup> *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).

<sup>64</sup> 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.

<sup>65</sup> 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.

<sup>66</sup> *ISO New England Inc.*, Docket No. ER21-787-002 (July 30, 2021) (unpublished letter order).

October 12, 2021. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto: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 were due on or before August 19, 2021; none were filed. National Grid filed a doc-less intervention on August 13, 2021. 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](mailto: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 were due on or before August 16, 2021; none were filed. National Grid and CSC filed doc-less interventions on August 13, 2021 and August 16, 2021, respectively. 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](mailto: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](mailto:ekrunge@daypitney.com)).

## V. Financial Assurance/Billing Policy Amendments

- **eTariff FAP Attachment 3 Corrections (ER21-2815)**

On September 1, 2021, ISO-NE filed corrections to its eTariff to reinstate in Attachment 3 to the FAP previously-accepted<sup>67</sup> text (footnote 1)<sup>68</sup> which was omitted in two subsequent filings.<sup>69</sup> Comments on this filing were due on or before September 22, 2021; none were filed. NEPOOL and Calpine filed doc-less interventions. 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](mailto:pmgerity@daypitney.com)).

<sup>67</sup> See *ISO New England Inc.*, Docket No. ER20-2145 (Sep. 2, 2020) (unpublished letter order).

<sup>68</sup> Footnote 1 reads: As used in this certification, a Certifying Entity’s “independent risk management function” can include appropriate corporate persons or bodies that are independent of the Certifying Entity’s trading functions, such as a risk management committee, a risk officer, a Certifying Entity’s board or board committee, or a board or committee of the Certifying Entity’s parent company.”

<sup>69</sup> See Revisions Related to Disclosure Information Under the FAP, *ISO New England Inc. and the New England Power Pool Participants Comm.*, Docket No. ER21-816 (filed Jan. 6, 2021; corrected Feb. 23, 2021); Revisions to Obligations of Energy Efficiency Resources Under PFP, *ISO New England Inc.*, Docket No. ER21-943 (filed Jan. 26, 2021).

**VI. Schedule 20/21/22/23 Changes**

- **Schedule 20A-UI: Vitol Phase I/II HVDC-TF Service Agreement (ER21-2662)**

On August 12, 2021, United Illuminating (“UI”) submitted a new Phase I/II HVDC-TF Service Agreement between itself and Vitol Inc. (“Vitol”) under Schedule 20A-UI for 1 MW of firm service over the Phase I/II HVDC transmission facilities (“Phase I/II HVDC-TF”). A November 20, 2020 effective date was requested (the date on which monthly firm service began). Comments on this filing were due on or before September 2, 2021; none were filed. Vitol submitted a doc-less intervention. This matter is pending before the FERC. If there are questions on this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

- **Schedule 20A-CMP: Vitol Phase I/II HVDC-TF Service Agreement (ER21-2661)**

Also on August 12, 2021, Central Maine Power (“CMP”) similarly submitted a new Phase I/II HVDC-TF Service Agreement between itself and Vitol under Schedule 20A-CMP for 1 MW of firm service over the Phase I/II HVDC-TF. A November 20, 2020 effective date was requested (the date on which monthly firm service began). Comments on this filing were due on or before September 2, 2021; none were filed. Vitol submitted a doc-less intervention. This matter is pending before the FERC. If there are questions on this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

Still pending before the FERC is 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*,<sup>70</sup> and certified by Settlement Judge Dring<sup>71</sup> to the Commission.<sup>72</sup> 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 this proceeding, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

- **Waiver Agreement: PA Board Provisions (not docketed)**

On September 24, 2021, NEPOOL and ISO-NE submitted an informational filing advising the FERC of the waiver of sections 9.2.2 and 9.2.3(a) of the Participants Agreement (related to the size of the ISO Board and the term length of one new Board member) that was required to seat the four-person slate of candidates for election to the ISO Board of Directors. The Waiver Agreement was unanimously approved by the Participants Committee in balloting and approved by the ISO Board. This filing was not docketed and will not be noticed by the FERC for

<sup>70</sup> *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.

<sup>71</sup> 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.

<sup>72</sup> *Emera Maine and BHE Holdings*, 163 FERC ¶ 63,018 (June 11, 2018).



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

### 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](mailto:pmgerity@daypitney.com)).

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

The TOs' November 2, 2015 refund report documenting resettlements of regional transmission charges by ISO-NE in compliance with *Opinions No. 531-A*<sup>73</sup> and *531-B*<sup>74</sup> also remains pending. If there are questions on this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto: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](mailto:pmgerity@daypitney.com)).

- **Capital Projects Report - 2021 Q2 (ER21-2632)**

On October 1, 2021, the FERC accepted ISO-NE's Capital Projects Report and Unamortized Cost Schedule covering the second quarter ("Q2") of calendar year 2021 (the "Report").<sup>75</sup> As previously reported, Report highlights included the following new projects: (i) Forward Capacity Tracking System Infrastructure Conversion Part III (\$3.15 million); (ii) FCM Cost Allocation & Accelerated Billing (\$1.065 million); (iii) Enterprise Application Integration Phase II (\$958,000); (iv) nGEM Hardware Phase I (\$872,900); (v) Oracle 19c Upgrade (\$653,000); (vi) Replacement of LMP Monitor (\$383,800); (vii) Secure Lightweight Directory Access Protocol Channel Binding Adaptation (\$294,400); (viii) Market Information System ("MIS") File Transfer Protocol ("FTP") Refresh (\$155,000); Single Sign-on Technology Upgrade (\$150,000). Projects with a significant changes (with amounts returned to the Emerging Work Fund following in parentheses) were (i) Communications Front End Energy Management Platform ("EMP") 3.2 Upgrade (\$172,900); (ii) Sub-Accounts for FTR Market (\$155,000); (iii) CIP Electronic Security Perimeter Redesign (\$149,900); (iv) PI Historian for Short-term m Phasor Measurement Units ("PMU") Data Repository (\$134,300); (v) FCM Qualification Enhancements (\$120,000); and (vi) Capital Projects in Planning/Conceptual Design (e Human Resources Workflow & Document Management and ESI projects) (\$299,200). The Report was accepted effective as of July 1, 2021, as requested. Unless the October 1 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; [pnbelval@daypitney.com](mailto:pnbelval@daypitney.com)).

<sup>73</sup> *Martha Coakley, Mass. Att'y Gen.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) ("*Opinion 531-A*").

<sup>74</sup> *Martha Coakley, Mass. Att'y Gen.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) ("*Opinion 531-B*").

<sup>75</sup> *ISO New England Inc.*, Docket No. ER21-2632 (Oct. 1, 2021) (unpublished letter order).



- **Interconnection Study Metrics Processing Time Exceedance Report Q2 2021 (ER19-1951)**

On August 13, 2021, ISO-NE filed, as required,<sup>76</sup> public and confidential<sup>77</sup> versions of its Interconnection Study Metrics Processing Time Exceedance Report (the “Exceedance Report”) for the second quarter of 2021 (“2021 Q2”). ISO-NE reported that one of the three 2021 Q2 *Interconnection Feasibility Study (“IFS”) reports* delivered to Interconnection Customers were delivered later than the best efforts completion timeline.<sup>78</sup> In addition, three IFS Report that has not yet been completed has exceeded the 90-day completion expectation. The average time from ISO-NE’s receipt of the executed IFS Agreement to delivery of the completed IFS report to the Interconnection Customer was 92.33 days (down from 115.4 in 2021 Q1). Four of the five *System Impact Study (“SIS”) reports* delivered to Interconnection Customers were delivered later than the best efforts completion timeline of 270 days. The average time from ISO-NE’s receipt of the executed SIS Agreement to delivery of the completed SIS report to the Interconnection Customer was 475 days (up from 434 in 2021 Q1). In addition, 12 SIS reports that are not yet completed have exceeded the 270-day completion expectation. Section 4 of the Report identified steps ISO-NE has identified to remedy issues and prevent future delays, including mitigating the impact of backlogs and initiating clustering, moving to earlier in the process certain Interconnection Customer data reviews, and enhanced information sharing and coordination efforts with Interconnecting TOs. This report was not noticed for public comment.

- **Reserve Market Compliance (31<sup>st</sup>) Semi-Annual Report (ER06-613)**

As directed by the original ASM II Order,<sup>79</sup> as modified,<sup>80</sup> ISO-NE submitted its 31st semi-annual reserve market compliance report on October 1, 2021. In the 31st report, ISO-NE stated that “is currently re-evaluating approaches to forward reserve products and will keep the Commission apprised of any plans with respect to a forward TMSR market in future reports in this docket.” The October 1 report was not noticed for public comment. If there are questions on this matter, please contact Dave Doot (860-275-0102; [dttdoot@daypitney.com](mailto:dttdoot@daypitney.com)).

## IX. Membership Filings

- **October 2021 Membership Filing (ER21-2985)**

On September 30, 2021, NEPOOL requested that the FERC accept (i) the memberships of CPV Valley, LLC [Related Person to CPV Towantic (Generation Sector)]; Generation Bridge Connecticut Holdings, LLC (Provisional Group Member) (“GB CT”); Generation Bridge M&M Holdings, LLC [Related Person to Generation Bridge CT [(Provisional Group Member)] (“GB M&M”); J.P. Morgan Ventures Energy Corporation (Supplier Sector) (“JPMVEC”); Oxford Energy Center, LLC (Provisional Group Member); Naugatuck Avenue Storage LLC [Related Person to Jupiter Power (Provisional Group Member)]; Norman Street ES LLC [Related Person to Jupiter Power (Provisional Group Member)]; and Westfield ESS LLC [Related Person to Jupiter Power (Provisional Group Member)].

<sup>76</sup> Under section 3.5.4 of ISO-NE’s Large Generator Interconnection Procedures (“LGIP”), ISO-NE must submit an informational report to the FERC describing each study that exceeds its Interconnection Study deadline, the basis for the delay, and any steps taken to remedy the issue and prevent such delays in the future. The Exceedance Report must be filed within 45 days of the end of the calendar quarter, and ISO-NE must continue to report the information until it reports four consecutive quarters where the delayed amounts do not exceed 25 percent of all the studies conducted for any study type in two consecutive quarters.

<sup>77</sup> ISO-NE requested that the information contained in Section 3 of the un-redacted version of the Exceedance Report, which contains detailed information regarding ongoing Interconnection Studies and if released could harm or prejudice the competitive position of the Interconnection Customer, be treated as confidential under FERC regulations.

<sup>78</sup> 90 days from the Interconnection Customer’s execution of the study agreement.

<sup>79</sup> See *NEPOOL and ISO New England Inc.*, 115 FERC ¶ 61,175 (2006) (“ASM II Order”) (directing the ISO to provide updates on the implementation of a forward TMSR market), *reh’g denied* 117 FERC ¶ 61,106 (2006).

<sup>80</sup> See *NEPOOL and ISO New England Inc.*, 123 FERC ¶ 61,298 (2008) (continuing the semi-annual reporting requirement with respect to the consideration and implementation of a forward market for Ten-Minute Spinning Reserve (“TMSR”).

Member)); and (ii) the name change of Rhode Island Bioenergy Facility, LLC (f/k/a Orbit Energy Rhode Island, LLC). Comments on this filing are due on or before October 21, 2021.

- **September 2021 Membership Filing (ER21-2802)**

On August 30, 2021, NEPOOL requested that the FERC accept (i) the memberships of Gravel Pit Solar, LLC [Related Person to DWW Solar II and Fusion Solar Center, LLC (AR Sector, Large RG Group Member)]; Tyr Energy (Supplier Sector); and Walden Renewables Development LLC (Provisional Member); and (ii) the termination of the Participant status of: Brookfield Energy Marketing Inc. [Related Person to Brookfield companies (Supplier Sector)]; and HIKO Energy and Perigee Energy [Related Persons to Spark Energy (Supplier Sector)]. Comments on this filing were due on or before September 21, 2021; none were filed. This filing is pending before the FERC.

- **August 2021 Membership Filing (ER21-2558)**

On September 27, 2021, the FERC accepted (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).<sup>81</sup> Unless the September 27 order is challenged, this proceeding will be concluded.

- **Suspension Notice (not docketed)**

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

<i><b>Date of Suspension/ FERC Notice</b></i>	<i><b>Participant Name</b></i>	<i><b>Default Type</b></i>	<i><b>Date Reinstated</b></i>
Sep 15/17	Manchester Methane, LLC	Financial Assurance	Oct 5

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

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

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

- **Revised Reliability Standards: CIP-004-7, CIP-011-3 (RD21-6)**

On September 15, 2021, NERC filed for approval proposed changes to Reliability Standards CIP-004-7 (Cyber Security – Personnel & Training) and CIP-011-3 (Cyber Security – Information Protection). The changes clarify the protections required for the use of third-party solutions (e.g. cloud services, which depend less on the actual storage location of the information and more on file-level rights and permissions) for BES Cyber System Information (“BCSI”). NERC asked that the changes 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. Comments on the changes are due on or before October 6, 2021.

- **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”):

<sup>81</sup> New England Power Pool Participants Committee, Docket No. ER21-2558 (Sep. 27, 2021) (unpublished letter order).

- ◆ 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.

- **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 G. 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.<sup>82</sup> On March 25, 2020, Joint Associations<sup>83</sup> requested an extension of time to submit comments and reply comments. On April 2, the FERC granted Joint Associations' request and extended the deadline for initial comments on the NOI to July 1, 2020; the deadline for reply comments, July 31, 2020. Comments were filed by NERC, the IRC, Accenture, Amazon Web Services ("Amazon"), Bonneville, the Bureau of Reclamation, Barry Jones, Georgia System Operations, GridBright, Idaho Power, Microsoft, MISO, MISO Transmission Owners, Siemens Energy Management, Tri-State Generation and Transmission Association, VMware, Inc., AEE, American Association for Laboratory Accreditation ("A2LA"), APPA, Canadian Electricity Assoc., EEI, NRECA, and Waterfall Security Solutions. Reply comments were due on or before July 31, 2020, and were filed by AEE, Amazon and Microsoft.

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<sup>82</sup> *Virtualization and Cloud Computing Services*, 170 FERC ¶ 61,110 (Feb. 20, 2020).

<sup>83</sup> "Joint Associations" are for purposes of this proceeding: EEI, APPA, NRECA, and LPPC.

In part in response to the comments filed, the FERC, in a December 17, 2020 order,<sup>84</sup> 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,<sup>85</sup> 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.”<sup>86</sup> 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.<sup>87</sup>

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*<sup>88</sup> (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).

- **Rules of Procedure Changes (CMEP Risk-Based Approach Enhancements) (RR21-10)**

On September 29, 2021, NERC filed for approval changes to sections 400 (Compliance Monitoring and Enforcement) and 1500 (Confidential Information), Appendix 2 (Definitions) and Appendix 4C (Compliance Monitoring and Enforcement Program) of the NERC Rules of Procedure (“ROP”). The changes were proposed to further enhance the risk-based approach to the Compliance Monitoring and Enforcement Program (“CMEP”) whereby registered entities and the ERO Enterprise focus on the greatest risks to the reliability and security of the Bulk Power System (“BPS”). Comments on this filing are due on or before October 6, 2021.

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<sup>84</sup> *Virtualization and Cloud Computing Services*, 173 FERC ¶ 61,243 (Dec. 17, 2020) (“*Order Directing Jan 2022 Info. Filing*”).

<sup>85</sup> *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).

<sup>86</sup> *Order 873* at P 2.

<sup>87</sup> *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.

<sup>88</sup> *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.

- **2022 NERC/NPCC Business Plans and Budgets (RR21-9)**

On August 24, 2021, NERC submitted its proposed Business Plan and Budget, as well as the Business Plans and Budgets for the Regional Entities, including NPCC, for 2022. FERC regulations<sup>89</sup> require NERC to file its proposed annual budget for statutory and non-statutory activities 130 days before the beginning of its fiscal year (January 1), as well as the annual budget of each Regional Entity for their statutory and non-statutory activities, including complete business plans, organization charts, and explanations of the proposed collection of all dues, fees and charges and the proposed expenditure of funds collected. NERC reports that its proposed 2022 funding requirement represents an overall increase of approximately 6.2% over NERC's 2021 funding requirement. The NPCC U.S. allocation of NERC's net funding requirement is \$9.44 million. NPCC has requested \$17.5 million in statutory funding (a U.S. assessment per kWh (2020 NEL) of \$0.0000540) and \$1 million for non-statutory functions. Comments on this filing were due on or before September 14, 2021; none were filed.

On September 29, 2021, NERC amended its August 24 filing to include additional Fixed Asset expenditures NERC expects to incur in 2022 in connection with its anticipated move to a new headquarters office location in the Atlanta, Georgia, area ("Budget Amendment"). The Budget Amendment does not provide for any increase from the Original Budget in NERC's 2022 statutory assessments, nor is there any change proposed to any Regional Entity's 2022 Business Plan and Budget. Comments on the Budget Amendment are due on or before October 12, 2021.

- **Rules of Procedure Changes (Reliability Standards Development Revisions) (RR21-8)**

On August 18, 2021, NERC filed for approval revisions to sections 300 (Reliability Standards Development), Appendix 3B (Procedure for Election of Members of the Standards Committee) and Appendix 3D (Development of Registered Ballot Body Criteria) of the NERC Rules of Procedure ("ROP"), which are designed to update language, staff titles, and processes; remove unnecessary or duplicative obligations; and clarify roles and responsibilities related to the development of Reliability Standards (the "Reliability Standards Development ROP Revisions"). Comments on this filing were due on or before September 8, 2021; none were filed. This matter is pending before the FERC.

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

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

- **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.<sup>90</sup> The report concluded that

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<sup>89</sup> 18 CFR § 39.4(b) (2014).

<sup>90</sup> 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

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: PSEG/Generation Bridge II (ArcLight) (EC21-125)**

On September 2, 2021, PSEG Project Companies<sup>91</sup> and Generation Bridge II, LLC (“Purchaser”) requested authorization for a transaction pursuant to which 100% of the membership interests in the PSEG Project Companies will be sold to Generation Bridge II, a wholly-owned, indirect subsidiary of ArcLight Fund VII, which is itself affiliated with Great River Hydro. On September 28, 2021, applicants submitted revised pages of an affidavit included in the original filing to correct statements regarding the ownership of certain assets. Applicants stated that the correction did not affect the analysis or conclusions presented in the original filing. Comments on the correction are due on or before November 29, 2021. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **203 Application: Valcour Wind Energy/AES (EC21-114)**

On August 13, 2021, Valcour Wind Energy, LLC (“Valcour”) and AES Corporation, among others, requested authorization for a transaction pursuant to which Valcour will become, ultimately, a Related Person of AES. Consummation of this transaction will make Valcour Wind Energy and AES Distributed Energy, Inc. Related Persons. Comments on this filing were due on or before September 3, 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](mailto:pmgerity@daypitney.com); 860-275-0533).

- **203 Application: Covanta/EQT (EC21-113)**

On August 11, 2021, Covanta Holding Corporation, on behalf of and together with its public utility subsidiaries, including NEPOOL member Covanta Energy Marketing, LLC (“Covanta”), requested authorization for a transaction pursuant to which Covanta will become a wholly-owned subsidiary Covert Intermediate, Inc., itself an indirectly, wholly-owned affiliate of EQT AB (“EQT”). Consummation of this and the Cypress Creek Holdings transaction summarized just below, will make Covanta and Cypress Creek Renewables Related Persons. Comments on this filing were due on or before September 1, 2021; none were filed. Doc-less interventions were filed by the PJM IMM and Covert Mergeco, Inc. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **203 Application: Cypress Creek/EQT (EC21-108)**

On October 1, 2021, the FERC authorized a transaction pursuant to which Cypress Creek Renewables, LLC, among others, will become a wholly-owned subsidiary Catalyst AcquisitionCo, Inc. (“Catalyst”), itself an indirectly, wholly-owned affiliate of EQT.<sup>92</sup> Consummation of this and the Covanta transaction summarized just above, will

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maintain situational awareness. The review included on-site discussions with representatives of nine participating reliability coordinators and transmission operators.

<sup>91</sup> The “PSEG Project Companies” are: PSEG New Haven LLC (“PSEG New Haven”), PSEG Power Connecticut LLC (“PSEG Power CT”), PSEG Power New York LLC (“PSEG Power NY”).

<sup>92</sup> *Cypress Creek Holdings, LLC*, 177 FERC ¶ 62,003 (Oct. 1, 2021).



make Cypress Creek Renewables and Covanta Energy Marketing Related Persons. Unless the October 1 order is challenged, this proceeding will be concluded. Also, pursuant to the October 1 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](mailto:pmgerity@daypitney.com); 860-275-0533).

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

On September 23, 2021, the FERC authorized a transaction pursuant to which a wholly-owned subsidiary of PPL Corporation will acquire 100% of the outstanding shares of common stock of The Narragansett Electric Company (“Narragansett”).<sup>93</sup> This transaction is expected to close in the fourth quarter of 2021. Pursuant to the September 23 order, notice must be filed within 10 days of consummation of the transaction. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

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

On September 24, 2021, Archaea Energy, LLC (“Archaea”) provided notice that the FERC-authorized transaction,<sup>94</sup> 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, was consummated on September 15, 2021. As previously summarized, Aria affiliates now hold approximately 20% of the outstanding voting shares; Archaea and its members, 29%; Rice and its shareholders, the remaining shares. Seneca remains, for the time being, a Related Person to Generation Sector member Kleen Energy. Reporting on this matter is concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

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

On August 18, 2021, the FERC authorized a transaction pursuant to which 100% of the membership interest in certain NRG Project Companies<sup>95</sup> 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.<sup>96</sup> Pursuant to the August 18 order, notice must be filed within 10 days of consummation of the transaction, which as of the date of this Report has not yet occurred. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

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

On August 24, 2021, the FERC authorized a “spin” transaction in which, after completion of an internal reorganization, the ownership of the public utility subsidiaries (“ExGen Utility Subsidiaries”) of Exelon Generation Company, LLC (“ExGen”) intermediate holding company owner, HoldCo, will be distributed to the shareholders of Applicants’ current ultimate upstream owner, Exelon Corporation (the “Transaction”).<sup>97</sup> 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. 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](mailto:pmgerity@daypitney.com); 860-275-0533).

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<sup>93</sup> *PPL Corp. and The Narragansett Elec. Co.*, 176 FERC ¶ 61,175 (Sep. 23, 2021).

<sup>94</sup> *Seneca Energy, II LLC et al.*, 175 FERC ¶ 62,170 (June 14, 2021).

<sup>95</sup> The New England “NRG Project Companies” are Connecticut Jet Power LLC (“Connecticut Jet”), Devon Power LLC (“Devon”), Middletown Power LLC (“Middletown”), and Montville Power LLC (“Montville”).

<sup>96</sup> *Arthur Kill Power LLC et al.*, 176 FERC ¶ 62,086 (Aug. 18, 2021).

<sup>97</sup> *Exelon Generation Co., LLC*, 176 FERC ¶ 61,121 (Aug. 24, 2021).

- **CL&P/EIP E&P Agreement (ER21-2880)**

On September 13, 2021, CL&P filed an Engineering, Design & Procurement Agreement (“E&P Agreement”) between itself and EIP Investments, LLC (“EIP”). The E&P Agreement (designated as Service Agreement IA-ESCLP-009) provides the terms and conditions under which CL&P will undertake certain engineering and design services for the upgrades identified in the System Impact Study for the interconnection to CL&P’s 69 kV transmission line connected to CL&P’s Black Rock substation located in New Britain, Connecticut. A September 14, 2021 effective date was requested. Comments on this filing were due on or before October 5, 2021; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **IA Termination: CL&P / Sterling Property (ER21-2860)**

On September 9, 2021, CL&P filed a notice of termination of a 2002 Interconnection Agreement (“IA”) governing interconnection service to a since decommissioned 26 MW waste-tire fueled generator located in Sterling, Connecticut (the “Facility”).<sup>98</sup> The IA was accepted in Docket No. ER03-434,<sup>99</sup> and according to CL&P can be terminated under Section 2 of the IA because the Facility has been decommissioned. A November 8, 2021 effective date was requested. Comments on the notice were due on or before September 30, 2021. On September 30, Sterling Property, LLC (“Sterling”), owner of the Facility, filed a protest, asserting that the facility has not been decommissioned, and the regulatory proceeding before the Connecticut Department of Energy and the Environment (“CT DEEP”) referenced in CL&P’s termination notice, remains open and ongoing. Sterling stated that the FERC should “decline to exercise primary jurisdiction over this matter, given that the parties’ dispute involves a factual dispute regarding a state regulatory proceeding, and further involves issues of contract interpretation that do not require the [FERC]’s specialized expertise to resolve or implicate the [FERC]’s regulatory responsibilities”. Brookfield submitted a doc-less intervention. This matter is now pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **TSAs: Third Amendments to NECEC Transmission TSAs (ER21-2738 et al.)**

On August 23, 2021, NECEC Transmission filed executed third amendments to 7 of its previously-filed and accepted, cost-based transmission service agreements (“TSAs”) with the participants that will fund the construction, operation and maintenance of the New England Clean Energy Connect Project.<sup>100</sup> The amendments are intended to (i) clarify the scope of the NECEC Project, specifically the Network Upgrades needed to interconnect the project to the New England Transmission System, based on the results of the applicable ISO-NE system impact studies; and (ii) allow NECEC Transmission to certify achievement of certain critical milestones related to construction authorizations and other approvals from governmental organizations and ISO-NE, based on the clarified scope. An August 24, 2021 effective date was requested. Comments on the third amendments were due on or before September 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](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Seabrook/NECEC E&P Agreement (ER21-2719)**

On October 4, 2021, the FERC accepted an Engineering & Procurement Agreement (“E&P Agreement”) between NextEra Energy Seabrook, LLC (“Seabrook”) and NECEC Transmission, LLC.<sup>101</sup> As previously reported,

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<sup>98</sup> The IA originally was between CL&P and Exeter Energy Limited Partnership (“Exeter”). The IA was assumed by Exeter’s successor-in-interest, EmpireCo Limited Partnership (“EmpireCo”), who later assigned the IA to Sterling Property, LLC.

<sup>99</sup> *Northeast Utils. Serv. Co.*, Docket No. ER03-434 (Mar. 17, 2003) (unpublished letter order).

<sup>100</sup> The third amendments to the 7 TSAs were separately docketed as follows: Eversource (ER21-2738); National Grid (ER21-2739); Unitil (ER21-2742); HQUS/Eversource (ER21-2743); HQUS/National Grid (ER21-2744); HQUS/Unitil (ER21-2745); and HQUS Additional (ER21-2747).

<sup>101</sup> *NextEra Energy Seabrook, LLC*, Docket No. ER21-2719 (Oct. 4, 2021) (unpublished letter order).

the E&P Agreement (designated as Seabrook Rate Schedule No. 2) provides the terms and conditions “concerning the engineering and procurement of long lead-time items” associated with work to be engaged in by Seabrook at NECEC’s request “for the design, engineering, planning, permitting, and procurement of material and equipment” necessary to address the Significant Adverse Impact on Seabrook. Seabrook reported that all of the terms and conditions of the E&P Agreement had been mutually agreed upon. The E&P Agreement was accepted effective August 20, 2021, as requested. Unless the October 4 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **ISA: NSTAR/Servistar (ER21-2696)**

On August 16, 2021, NSTAR filed an interconnection study agreement (“ISA”) between itself and Servistar LLC (“Servistar”). Servistar is proposing to interconnect a 150 MW data center facility to Eversource’s 1293 and 1302 115 kV transmission lines (ISO-NE queue position #1140). The ISA sets forth the terms and conditions under which NSTAR will study the feasibility of the project’s interconnection ahead of the commencement of the ISO-NE study to give a preliminary review of possible adverse impacts to the system which the project will be responsible to mitigate. Comments on the ISA were due on or before September 7, 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](mailto:pmgerity@daypitney.com); 860-275-0533).

- **D&E Agreement: NSTAR/Medway Grid II (ER21-2684)**

On August 16, 2021, NSTAR filed a second D&E Agreement between itself and Medway Grid, LLC (“Medway”). The second Medway D&E Agreement sets forth the terms and conditions under which NSTAR will undertake certain preliminary design and engineering activities related to the upgrades identified in the System Impact Study for queue position #844, Medway’s request to interconnect to NSTAR’s 3445 kV West Medway Substation. Comments on the NSTAR/Medway Grid II D&E Agreement were due on or before September 7, 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](mailto:pmgerity@daypitney.com); 860-275-0533).

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

On September 24, 2021, the FERC accepted a First Revised LGIA between National Grid, ISO-NE (“Filing Parties”) and New England Wind.<sup>102</sup> The First Revised LGIA includes details regarding the Direct Assignment Facilities charge omitted from the original LGIA and updates 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 respective Electric Quarterly Reports. The First Revised LGIA was accepted effective as of March 19, 2021, as requested. Unless the September 24 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto: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 were due on or before August 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](mailto:pmgerity@daypitney.com); 860-275-0533).

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

On September 27, 2021, the FERC dismissed Versant Power’s request for a limited waiver of the application of its posted policy statement regarding penalties for unreserved transmission use that was in

<sup>102</sup> *ISO New England Inc. and New England Power Co.*, Docket No. ER21-2548 (Sep. 24, 2021) (unpublished letter order).

effect from January through March 2021 (“Prior Policy”) to Black Bear SO, LLC and Black Bear Hydro Partners, LLC (jointly, “Black Bear”).<sup>103</sup> The FERC dismissed the waiver request because Versant Power’s Prior Policy was a business rule that was not part of the tariff on file with the FERC.<sup>104</sup> In addition, the FERC stated that “calculating Black Bear’s unreserved-use penalties pursuant to the Current Policy is consistent with section 9.3 of Schedule 21-VP, which is the filed rate that determines the penalty cap.”<sup>105</sup> Unless the September 27 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

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

On September 16, 2021, the FERC accepted<sup>106</sup> the remaining pending compliance filing with revised tariff records in eTariff format reflecting the FERC’s approval of the settlement<sup>107</sup> that amended and restated four Support Agreements and an Agreement with Respect to Use of Québec Interconnection (“Use Agreement”).<sup>108</sup> Reporting on this matter is now concluded. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

In accordance with *Order 864*<sup>109</sup> and *Order 864-A*,<sup>110</sup> 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 Apr 16, 2021	ER21-311 ER21-1694	Green Mountain Power	pending pending
Aug 5, 2020	ER20-2614	New England Power AC Support Agreement	pending
Aug 5, 2020	ER20-2610	CL&P	pending

<sup>103</sup> *Versant Power*, 176 FERC ¶ 61,210 (Sep. 27, 2021).

<sup>104</sup> *Id.* at P 16.

<sup>105</sup> *Id.*

<sup>106</sup> Vermont Elec. Transmission Co., Docket No. ER21-2158 (

Issued: September 16, 2021

<sup>107</sup> *New England Hydro-Transmission Electric Company, Inc. et al.*, 175 FERC ¶ 61,140 (May 20, 2021).

<sup>108</sup> The Support Agreements are separate contracts between the IRH and each of the Asset Owners under which the IRH agree to financially support the elements of the Phase I/II HVDC-TF owned by each Asset Owner in exchange for rights to use the transmission capacity of the Phase I/II HVDC-TF to transmit power to and from the HQ system (“Use Rights”). The Use Agreement is a contract among the IRH that provides the rules for the exercise of the Use Rights, for making the Use Rights available to others, and for the collective management of those individual contractual rights through the IRH Management Committee. The term of the Support Agreements (and thereby the Use Agreement) was extended for another 20 years, until October 31, 2040.

<sup>109</sup> *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.

<sup>110</sup> *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*”).

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	ER20-2572 ER21-1130	New England TOs	pending
Jul 30, 2020	ER20-2553	NEP – LSA with MECO/Nantucket	pending
Jul 30, 2020	ER20-2551	New England Power	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 (CMP)**. On September 15, 2021, the FERC issued a second deficiency letter. CMP responses were initially due on or before September 30, 2021. However, following a September 29, 2021 CMP request for an extension of time, CMP's responses to the second deficiency letter are now due October 22, 2021.

## 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").<sup>111</sup> 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."<sup>112</sup> On July 19, 2021, NARUC nominated the 10 state

<sup>111</sup> *Joint Federal-State Task Force on Electric Transmission*, 175 FERC ¶ 61,224 (June 18, 2021).

<sup>112</sup> 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



commissioners to the Transmission Task Force, including New England Commissioners Riley Allen (VT PUC) and Matt Nelson (Chair, MA DPU).

On August 30, 2021, the FERC issued an order listing the 10 state commissioner members (confirming the nominations of Commissioner Allen and Chairman Nelson), announcing the first public meeting of the Task Force (to be held Wednesday, November 10, 2021, from approximately 1:00 pm to 6:00 p.m., in Louisville, Kentucky, in conjunction with the NARUC meeting scheduled to be held there), and inviting agenda topics (all interested persons, including all state commissions, were invited to file comments in this docket on agenda topics for the first public meeting on or before September 10, 2021).<sup>113</sup> Comments on the agenda were filed by [AEP](#), [APPA](#), the [Environmental Law and Policy Center and National Audubon Society](#), [ITC](#), [NYU's Institute for Policy Integrity](#), [Shell](#), [Southern Company Services](#), [Wires](#).

- **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.

On August 11, 2021, the FERC issued a [notice inviting post-technical conference comments](#). Comments could address the questions raised in the notice, as well as any other issues raised during the technical conference or identified in the Supplemental Notices of Technical Conference issued March 15 and May 21, 2021. Comments were due on or before September 27, 2021 and were filed by: [CAISO](#); [MISO](#); [NYISO](#); [PJM](#); [AEP](#); [City of New Orleans](#); [City of New York](#); [Columbia Law School's Sabin Center for Climate Change Law](#); [EDF and Sabin Center for Climate Change Law](#); [EEI](#); [EPSA](#); [Eversource](#); [Exelon](#); [Jupiter Intelligence](#); [Louisville Gas and Electric Company and Kentucky Utilities Company](#); [MI PSC](#); [NRDC](#), [Sierra Club](#), [Sustainable FERC Project](#), and [UCS](#); [Old Dominion Electric Cooperative](#) ("ODEC"); [NERC](#); and [C. Wright](#). This matter is pending before the FERC.

- **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

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transmission investment is cost effective, including approaches to enhance transparency and improve oversight of transmission investment including, potentially, through enhanced federal-state coordination.

<sup>113</sup> *Joint Federal-State Task Force on Electric Transmission*, 176 FERC ¶ 61,131 (Aug. 30, 2021).



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, National Grid, and R Street Institute. Since the last Report, the FERC posted to eLibrary a transcript of the April 29 technical conference. This matter remains pending before the FERC.

- **Reliability Technical Conference (Sep 30) (AD21-11)**

On September 30, 2021, the FERC convened its annual Commissioner-led technical conference to discuss policy issues related to the reliability of the Bulk-Power System (“BPS”). Panel discussions addressed: (1) BPS reliability and security (current state, challenges and initiatives); (2) extreme weather, risks and challenges; (3) managing cyber risks in the electric power sector; and (4) maintaining electric reliability with changing resource mix. A detailed final agenda, identifying the presenters and panelists, is available [here](#). Speaker materials have been posted to eLibrary.

- **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 September 14, 2021, the FERC held the first of two staff-led technical conferences addressing ISO/RTO energy and ancillary services markets. As previously reported, 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 second technical conference will be held on Tuesday, October 12, 2021 (9-5 p.m.).

**Tech Conf I (Sep 14).** The FERC convened the first technical conference on September 14, 2021, a full-day technical conference discussing 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. In a supplemental notice issued on August 17, 2021, the FERC identified the following four panels and the topics and questions to be discussed: (1) Understanding the Need for Additional Operational Flexibility in RTO/ISO Energy and Ancillary Services Markets; (2) Revising Existing Operating Reserve Demand Curves (“ORDCs”) to Address Operational Flexibility Needs in RTOs/ISOs; (3) Creating New Products to Address Operational Flexibility Needs in RTOs/ISOs; and (4) Market Design Issues and Tradeoffs to Consider in Reforms to Increase Operational Flexibility in RTO/ISO Energy and Ancillary Services Markets. Speakers were identified in a second supplemental notice issued on September 3, 2021.

**Tech Conf II (Oct 12).** The FERC will also convene remotely on October 12, 2021 a second full-day technical conference to discuss potential energy and ancillary services market reforms. On October 1, 2021, the FERC issued a supplemental notice of the October 12 technical conference, identifying the following four panels and topics to be discussed: (1) Incenting Resources to Reflect Their Full Operational Flexibility in Energy and Ancillary Services Offers; (2) Maximizing the Operational Flexibility Available from New and Emerging Resource Types; (3) Revising RTO/ISO Market Models, Optimization, and Other Software Elements to Address Operational Flexibility Needs; and (4) Out-of-Market Operator Actions Used to Manage Net Load Variability and Uncertainty.

**White Paper.** On September 7, 2021, FERC staff issued a White Paper entitled “[Energy and Ancillary Services Market Reforms to Address Changing System Needs](#)”. The White Paper summarizes recent energy and ancillary services markets reforms as well as reforms currently under consideration and was prepared in an effort to frame discussions at the two technical conferences.

- **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. A report, prepared by M.J. Bradley & Associates for NRDC’s Sustainable FERC Project, summarizing stakeholder feedback provided to the FERC through listening sessions and written comments, was posted to the FERC’s eLibrary on August 3, 2021.

On August 23, 2021, the FERC issued a notice of a virtual workshop to be held on September 16, 2021, from 1:00 p.m. to 4:30 p.m., to discuss technical assistance in electric proceedings, solicit public input on their technical assistance needs, and explore ways OPP could work with external entities to facilitate technical assistance to interested parties. Further details on the agenda, including registration information, can be found on the U.S. Department of Energy’s (“DOE”) Pacific Northwest National Laboratory (“PNNL”) [website](#). Information on this technical workshop will also be posted on the Calendar of Events on the FERC’s website, [www.ferc.gov](http://www.ferc.gov), prior to the workshop. Since the last Report, M.J. Bradley & Associates submitted a summary of stakeholder feedback provided through listening sessions and written comments and the FERC issued a supplemental notice of the workshop that indicated that the workshop would be held October 7, 2021, rather than on September 16 as previously noticed.

- **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](#), [EEL](#), [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](#), [EEL](#), [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 now due September 20, 2021.<sup>114</sup>

**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 will also be due on September 20, 2021.

**Comments.** Comments on the RTO filing and on the FERC's Hybrid Resources White Paper were submitted by the American Council on Renewable Energy ("ACRE"), Clean Grid Alliance, EEI, the City of New York, Hybrid Resource Coalition, NRECA, Pine Gate Renewables, PJM IMM, and UCS. These matters are now pending before the FERC.

- **ANOPR: Transmission Planning and Allocation and Generator Interconnection (RM21-17)**

On July 15, 2021, the FERC issued an advanced notice of proposed rulemaking ("ANOPR")<sup>115</sup> to consider whether there should be changes in the regional transmission planning and cost allocation and generator interconnection processes and, if so, which changes are necessary to ensure that transmission rates remain just and reasonable and not unduly discriminatory or preferential and that reliability is maintained. Specifically, the ANOPR discusses proposals or concepts for changes to existing processes in several broad categories: regional transmission planning, regional cost allocation, generator interconnection funding, generator interconnection queueing processes and consumer protection, and in several instances the ANOPR also offers a potential rationale or argument for potential proposals. The FERC seeks comments from the public on these proposals and welcomes commenters to offer additional or alternative proposals for consideration.

**Comment Deadline: October 12, 2021.** On September 3, 2021, the FERC issued a notice *denying* the requests for an extension of time to submit comments filed by the ISO/RTO Council ("IRC"), Organization of MISO States ("OMS"), and Organization of PJM States ("OPSI"). Comments on the *Transmission Planning & Allocation/Generation Interconnection ANOPR* are still due October 12, 2021. The deadline for reply comments was extended in that September 3 notice from November 9, 2021 to November 30, 2021.

**November 15, 2021 Tech Conf.** On September 16, 2021, the FERC announced that it will convene remotely a staff-led technical conference regarding regional transmission planning on Monday, November 15, 2021. The technical conference will seek to examine in detail issues and potential reforms related to regional transmission planning as described in the July 15, 2021 ANOPR. Specifically, the technical conference will examine issues related to incorporating sufficiently long-term and comprehensive forecasts of future transmission needs during regional transmission planning processes, including considering the needs of anticipated future generation in identifying needed transmission facilities. This may include: approaches to planning regional transmission facilities that identify transmission needs for anticipated future generation, e.g., use in regional transmission planning of future scenarios or geographic zones where future generation is anticipated to locate; factors shaping future transmission needs that are appropriate to consider as inputs into transmission planning studies; and evaluation criteria used by the transmission planning regions to identify and select the more efficient or cost-effective regional transmission facilities.

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<sup>114</sup> Public comments were initially due August 18, 2021. However, in response to a request by the Energy Storage Association ("ESA"), the American Clean Power Association ("ACP"), and Solar Energy Industry Association ("SEIA"), the FERC granted a 30-day extension of time, to September 20, 2021, to file comments in response to the ISO/RTO reports.

<sup>115</sup> *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 176 FERC ¶ 61,024 (July 15, 2021) ("*Transmission Planning & Allocation/Generation Interconnection ANOPR*").

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

On March 18, 2021, the FERC issued a NOI<sup>116</sup> 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 before July 23, 2021 and were filed by nearly 30 parties, including by [AEE](#), [Voltus](#), [AEMA](#), [APPA/NRECA](#), [EEI](#), and [NARUC](#). Reply comments were due on or before August 23, 2021, and were filed by [AEP](#), [Armada Power](#), [Entergy](#), [Southern Pioneer Electric](#), [Voltus](#), State Commissions from [LA/MS](#), [MI](#), [MO](#), [NC](#), [APPA/NRECA](#), Assoc. of Bus. Advocating Tariff Equity (“[ABATE](#)”), and [PIOs](#).

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

On December 17, 2020, the FERC issued a NOPR<sup>117</sup> 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.](#),<sup>118</sup> [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, 2021<sup>119</sup> 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 NOPR<sup>120</sup> 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.<sup>121</sup> Comments were submitted by over 50 parties, including by ISO-NE, DC Energy, Dominion, EDF, ENEL/EnerNOC, Eversource, Exelon, NRDC,

<sup>116</sup> *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*”).

<sup>117</sup> *Cybersecurity Incentives*, 173 FERC ¶ 61,240 (Dec. 17, 2020) (“*Cybersecurity Incentives NOPR*”).

<sup>118</sup> These joint comments were filed by aDolus Inc., Fortress Information Security, GMO GlobalSign Inc., Ion Channel, ReFirm Labs and Reliable Energy Analytics LLC.

<sup>119</sup> The *Cybersecurity Incentives NOPR* was published in the *Fed. Reg.* on Feb. 5, 2021 (Vol. 86, No. 23) pp. 8,309-8,325.

<sup>120</sup> *Managing Transmission Line Ratings*, 173 FERC ¶ 61,165 (Nov. 19, 2020) (“*Managing Transmission Line Ratings NOPR*”).

<sup>121</sup> 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.



Vistra, EEI, EPRI, EPSA, New England State Agencies,<sup>122</sup> NRECA/LPPC, and Potomac Economics. Reply comments were submitted by the Enel Companies, EPSA, PJM, OMS, Potomac Economics, NRECA/LPCC, and ITC Holdings Corp and the Utah Division of Public Utilities. 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,<sup>123</sup> the FERC issued on April 15, 2021 a *Supplemental NOPR*<sup>124</sup> to propose and seek comment on a revised incentive for transmitting and electric utilities that join Transmission Organizations (“Transmission Organization Incentive”). The Incentive would be reduced from 100 to 50 basis points and would be available only for three years. The FERC seeks comment on whether voluntary participation should be a requirement, and if so, how “voluntary” should be determined. In 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*.<sup>125</sup> 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](#).<sup>126</sup> Since the

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<sup>122</sup> “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.

<sup>123</sup> 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.

<sup>124</sup> *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, 175 FERC ¶ 61,035 (Apr. 15, 2021) (“*Supplemental NOPR*”).

<sup>125</sup> 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.

<sup>126</sup> “Public Interest Groups” are NRDC, Sierra Club, Sustainable FERC Project, and Western Grid Group.



last Report, reply comments were posted from New England State Parties,<sup>127</sup> Alliant/Consumers/DTE, AEP, Pacific Gas & Electric, Joint Consumer Advocates, and the American Clean Power Association.

**September 10, 2021 Workshop.** The FERC convened a workshop on September 10, 2021<sup>128</sup> 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 also discussed 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. The FERC issued an agenda for the workshop, which included the final workshop program and expected speakers, on August 23, 2021. The FERC supplemented that notice on September 9, 2021.

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

- **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”)<sup>129</sup> adopting reforms to remove what it found were barriers to the participation of distributed energy resource (“DER”)<sup>130</sup> 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;

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<sup>127</sup> “New England State Parties” are CT PURA, CT DEEP and the MA AG.

<sup>128</sup> 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).

<sup>129</sup> *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”).

<sup>130</sup> 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.”

- (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*.<sup>131</sup> 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.<sup>132</sup> ISO-NE submitted its second report on September 21, 2021. 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*,<sup>133</sup> 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*.<sup>134</sup> 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."<sup>135</sup>

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<sup>131</sup> *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*").

<sup>132</sup> *Id.* at P 5.

<sup>133</sup> *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*").

<sup>134</sup> *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*").

<sup>135</sup> *Id.*

**Order 2222-B.** On June 17, 2021, the FERC issued *Order 2222-B*,<sup>136</sup> 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.<sup>137</sup>

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

As previously reported, *Order 860*,<sup>138</sup> issued three years after the FERC's *Data Collection NOPR*,<sup>139</sup> (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* became effective July 1, 2021, and submitters 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,<sup>140</sup> 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,<sup>141</sup> 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](#).

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<sup>136</sup> *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*").

<sup>137</sup> *Order 2222-B* was published *Fed. Reg.* on June 28, 2021 (Vol. 86, No. 121) pp. 33,853-33,861.

<sup>138</sup> *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).

<sup>139</sup> *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (July 21, 2016) ("*Data Collection NOPR*").

<sup>140</sup> 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.

<sup>141</sup> *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*").

**March 18 Notice.** 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.<sup>142</sup> 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,<sup>143</sup> and were filed by [EEL](#), [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: July 1, 2021; Baseline Submissions November 2, 2021; First change in Status Filings, 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 was July 1, 2021, and the deadline for baseline submissions will be to and including November 2, 2021. First change in status filings under these new timelines will be due November 30, 2021.

**Order Adopting Changes to MBR Database.** On August 19, 2021, the FERC issued an order revising the MBR Data Dictionary as proposed in the March 18 Notice.<sup>144</sup> Specifically, Sellers whose ultimate upstream affiliate(s) own their voting securities pursuant to a section 203(a)(2) blanket authorization must provide, in the MBR Database, three additional data fields: (1) the docket number of the section 203(a)(2) blanket authorization, (2) the Utility\_ID\_Type\_CD of the utility whose securities were acquired under the corresponding section 203(a)(2) blanket authorization docket number, and (3) the Utility ID of that utility.

- **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,<sup>145</sup> 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* became effective August 2, 2021.<sup>146</sup> 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.

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<sup>142</sup> *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 174 FERC ¶ 61,214 (Mar. 18, 2021).

<sup>143</sup> The Notice was published *Fed. Reg.* on Apr. 6, 2021 (Vol. 86, No. 64) pp. 17,823-17,828.

<sup>144</sup> *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 176 FERC ¶ 61,109 (Aug. 19, 2021).

<sup>145</sup> *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-J, 175 FERC ¶ 61,139 (May 20, 2021) (“*Order 676-J*”).

<sup>146</sup> *Order 676-J* was published *Fed. Reg.* on June 2, 2021 (Vol. 86, No. 104) pp. 29,491-29,503.

- **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.<sup>147</sup> The *Proposed Policy Statement* sets forth the approach the FERC would take going forward to ensure compliance with the filed rate doctrine and the rule against retroactive making. The proposed policy will both clarify and modify waiver standards, and in some instances, make it harder to obtain waivers.

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

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

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

The FERC proposed to incorporate its current four-part analysis<sup>148</sup> 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

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<sup>147</sup> *Waiver of Tariff Requirements*, 171 FERC ¶ 61,156 (May 21, 2020) (“*Proposed Policy Statement*”).

<sup>148</sup> Under current practice, the FERC grants tariff provision waivers where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.

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

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

With respect to prospective requests to waive the 60-day prior notice requirement under FPA section 205(d) (or the 30-day prior notice requirement under NGA section 4(d)), which the FERC has discretion to waive “for good cause shown,” the FERC proposes to leave in effect its policy of generally granting such waivers,<sup>149</sup> 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,<sup>150</sup> 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,<sup>151</sup> KEPC, and the Sustainable FERC Project. The proposed Policy Statement remains pending before the FERC.

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

On May 21, 2020, the FERC issued a Policy Statement that applies to natural gas and oil pipelines, with certain exceptions to account for the statutory, operational, organizational and competitive differences among the electric, natural gas and oil pipeline industries, the FERC’s ROE methodology adopted in *Opinion No. 569-A*.<sup>152</sup> 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”).<sup>153</sup> 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.<sup>154</sup> 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.

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<sup>149</sup> 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.

<sup>150</sup> “Indicated Generators” are Vistra, NRG, FirstLight, Cogentrix, and LS Power.

<sup>151</sup> “Joint Trade Associations” are AEE, AWEA, EEI, EPSA, INGAA, NGSA, NRECA and SEIA.

<sup>152</sup> *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*”).

<sup>153</sup> 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.<sup>153</sup> 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).

<sup>154</sup> The *Natural Gas and Oil Pipeline ROE Policy Statement* was published *Fed. Reg.* on May 27, 2020 (Vol. 85, No. 102) pp. 31,760-31,773.



Complainant-Aligned Parties<sup>155</sup> answered the New England TO's May 10 supplemental comments. On June 15, 2020, Joint Parties<sup>156</sup> 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.<sup>157</sup> 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.<sup>158</sup> The 2021 NOI is to provide an opportunity for stakeholders to refresh the record and provide updated information and additional viewpoints to help the FERC assess its policy.<sup>159</sup> 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

- **PacifiCorp (IN21-6)**

On April 15, 2021, in the FERC's first-ever Show Cause Order addressing alleged violations of NERC Reliability Standards,<sup>160</sup> 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

<sup>155</sup> 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.

<sup>156</sup> "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.

<sup>157</sup> "Six Cities" are the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California.

<sup>158</sup> *Certification of New Interstate Natural Gas Facilities*, 174 FERC ¶ 61,125 (Feb. 18, 2021) ("2021 NOI").

<sup>159</sup> *Id.* at P 3.

<sup>160</sup> *PacifiCorp*, 175 FERC ¶ 61,039 (Apr. 15, 2021) ("*PacifiCorp Show Cause Order*").

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**.

On July 16, 2021, PacifiCorp answered the PacifiCorp Show Cause Order, denying the alleged violations of FAC-009. Enforcement filed its reply on September 14, 2021. Should the FERC choose to pursue a civil penalty against PacifiCorp for the alleged 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](mailto: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.<sup>161</sup> 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.

Respondents answered the *GreenHat Show Cause Order* on July 6, 2021. On July 27, Enforcement Litigation Staff answered Respondents' July 6 answers. On August 23, 2021, the Estate of Andrew Kittell submitted a reply to Enforcement's July 27 answer. This matter is again before the FERC. As 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. Since the last Report, OE issued a notice that, should the FERC decide to issue a penalty order, the date by which the FERC needs to do so to ensure that a lawsuit against the Kittell Estate will be timely is October 11, 2021. In an interesting twist, OE lawyers reported on October 1, 2021 on improper communications (forwarding some precedential decisions regarding statute of limitations) from a decisional staff member to another lawyer who is working on the GreenHat litigation. In response, the Kittell Estate requested on October 5, 2021 that the FERC drop all enforcement action against the Estate, ban OE staff Messrs. Tabackman and Olson from any future involvement, and order other offices within the FERC to investigate.

If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto: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 order<sup>162</sup> 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

<sup>161</sup> *GreenHat Energy, LLC et al.*, 175 FERC ¶ 61,138 (May 20, 2021) ("*GreenHat Show Cause Order*").

<sup>162</sup> *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 174 FERC ¶ 61,208 (Mar. 18, 2021) ("*Rover/ETP Show Cause Order*").

Application for Certificate of Public Convenience and Necessity under NGA section 7(c).<sup>163</sup> 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*. Rover answered the July 21 answer on September 15. This matter is pending before the FERC.

- **BP (IN13-15)**

On December 17, 2020, the FERC issued *Opinion 549-A*,<sup>164</sup> a 159-page decision addressing arguments raised on rehearing requested of *Opinion 549*.<sup>165</sup> *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.<sup>166</sup> *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.<sup>167</sup>

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 order<sup>168</sup> 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

<sup>163</sup> 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.

<sup>164</sup> *BP America Inc. et al.*, Opinion No. 549-A, 173 FERC ¶ 61,239 (Dec. 17, 2020) ("*BP Penalties Allegheny Order*")

<sup>165</sup> *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*"))).

<sup>166</sup> *BP Penalties Allegheny Order* at P 1.

<sup>167</sup> *Id.* at P 319.

<sup>168</sup> *Total Gas & Power North America, Inc.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) ("*TGPNA Show Cause Order*").

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.<sup>169</sup>

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

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.<sup>170</sup> On July 27, Chief Judge Cintron designated Judge Suzanne Krolikowski as the Presiding ALJ and established an extended Track III Schedule<sup>171</sup> for the proceeding. Judge Krolikowski scheduled and convened on August 26, 2021 a prehearing conference in this proceeding.

Since the last Report, Judge Krolikowski issued an order confirming her rulings from the August 26 prehearing conference and establishing a procedural schedule that calls for, among other dates, pre-hearing briefs by July 25, 2022, hearings (estimated to take 2-3 weeks) to begin on August 15, 2022, and an initial decision on January 9, 2023. However, on September 21, Chief Judge Cintron concurrently designated Judge Joel deJesus as Settlement Judge to convene a settlement conference, explore the possibility of settlement, discuss the differences between the parties, and generally conduct settlement negotiations in this matter, directing Judge deJesus to issue status reports to her every 60 days. In light of that development, Respondents and OE Staff moved to temporarily suspend the procedural schedule for about six weeks to "allow the Participants to direct all of their resources towards fully participating in settlement discussions." Chief Judge Cintron granted the motion, extending the hearing commencement and initial decision deadlines to September 26, 2022, and February 20, 2023, respectively. Settlement judge procedures are underway, with a first settlement conference scheduled for October 15, 2021.

<sup>169</sup> 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.

<sup>170</sup> *Total Gas & Power North America, Inc. et al.*, 176 FERC ¶ 61,026 (July 15, 2021).

<sup>171</sup> 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.

**XIV. Natural Gas Proceedings**

For further information on any of the natural gas proceedings, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto: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 were due on or before August 9, 2021. Since the last Report, 93 sets of individual comments were filed, bring to nearly 300 the number of individual comments have been filed. Algonquin responded to those comments on August 24, 2021.
  - ▶ On September 2, 2021, FERC staff modified the issuance date of its final EIS for the Project, due to the "complexity of comments received on the draft EIS". Issuance of a final EIS is now expected on November 12, 2021; the 90-day Federal Authorization Decision Deadline, February 9, 2022.
  - ▶ On September 3, 2021, FERC staff issued environmental information request #4, to which Iroquois responded on September 13, 2021.
- ***Atlantic Bridge Project (CP16-9)***
  - ▶ On February 24, 2020, the FERC authorized Algonquin Gas Transmission, LLC ("Algonquin") and Maritimes & Northeast Pipeline, LLC ("Maritimes") to place facilities associated with the Atlantic Bridge Project into service.<sup>172</sup> Rehearing of the *Authorization Order* was timely requested, but denied by operation of law.
  - ▶ *Briefing Order*. In a fairly unprecedented order issued February 18, 2021,<sup>173</sup> 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,

<sup>172</sup> *Algonquin Gas Transmission, LLC*, Docket No. CP16-9 at 1 (Sep. 24, 2020) (delegated order) ("*Authorization Order*").

<sup>173</sup> *Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, LLC*, 174 FERC ¶ 61,126 (Feb. 18, 2021) ("*Briefing Order*").

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".<sup>174</sup> 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,<sup>175</sup> 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. On July 16, 2021, the FERC issued a Notice of Denial of Rehearings by Operation of Law of the requests for rehearing of the *May 19 Order*.
  - ▶ 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*.<sup>176</sup>
  - ▶ This matter is before the DC Circuit (see Section XVI below).

### Non-New England Pipeline Proceedings

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

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

- ▶ The New York State Department of Environmental Conservation ("NY DEC") and the Sierra Club requested rehearing of the *Northern Access Certificate Rehearing Order* on August 14 and September 5, 2018, respectively. On August 29, National Fuel Gas Supply Corporation and Empire Pipeline ("Applicants") answered the NY DEC's August 14 rehearing request and request for stay. On April 2, 2019, the FERC denied the NY DEC and Sierra Club requests for rehearing.<sup>177</sup> Those orders have been challenged on appeal to the US Court of Appeals for the Second Circuit (19-1610).

<sup>174</sup> *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*").

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

<sup>176</sup> *Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, LLC*, 176 FERC ¶ 62,029 (July 16, 2021) ("*July 16 Notice of Denial of Rehearings by Operation of Law*").

<sup>177</sup> *Nat'l Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 167 FERC ¶ 61,007 (Apr. 2, 2019).



- ▶ As previously reported, the August 6, 2018 *Northern Access Certificate Rehearing Order* dismissed or denied the requests for rehearing of the *Northern Access Certificate Order*.<sup>178</sup> 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,<sup>179</sup> 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.<sup>180</sup> 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.<sup>181</sup> On February 2, 2019, the 2nd Circuit vacated the decision of the NY DEC and remanded the case with instructions for the NY DEC to more clearly articulate its basis for the denial and how that basis is connected to information in the existing administrative record. The matter is again before the NY DEC.
- ▶ On November 26, 2018, the Applicants filed a request at FERC for a 3-year extension of time, until February 3, 2022, to complete construction and to place the certificated facilities into service. The Applicants cited the fact that they “do not anticipate commencement of Project construction until early 2021 due to New York’s continued legal actions and to time lines required for procurement of necessary pipe and compressor facility materials.” The extension request was granted on January 31, 2019.
- ▶ On August 8, 2019, the NY DEC again denied Applicants request for a Water Quality Certification, and as directed by the Second Circuit,<sup>182</sup> 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.<sup>183</sup>

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<sup>178</sup> *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).

<sup>179</sup> 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).

<sup>180</sup> *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*”).

<sup>181</sup> *Nat’l Fuel Gas Supply Corp. v. NYSDEC et al.* (2d Cir., Case No. 17-1164).

<sup>182</sup> 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).

<sup>183</sup> See *Sierra Club v. FERC*, No. 19-01618 (2d Cir. filed May 30, 2019); *NYSDEC v. FERC*, No. 19-1610 (2d. Cir. filed May 28, 2019) (consolidated).

- ▶ On October 16, 2020, Applicants requested, due to ongoing legal and regulatory delays, an additional 2-year extension of time, until December 1, 2024, to complete construction of the Project and enter service. More than 50 sets of comments on the requested extension were filed and on December 1, 2020, the FERC dismissed, without prejudice, Applicants' request for an extension of time,<sup>184</sup> 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.<sup>185</sup>

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

**ISO-NE Board Response.** On September 23, 2021, the ISO-NE Board responded to the New England States' Vision Statement and Advancing the Vision Report. A copy of that response was included with the materials for the October 7 Participants Committee meeting and is posted on the ISO-NE website [here](#).

## XVI. Federal Courts

The following are matters of interest, including petitions for review of FERC decisions in NEPOOL-related proceedings, that are currently pending before the federal courts (unless otherwise noted, the cases are before the U.S. Court of Appeals for the District of Columbia Circuit ("DC 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

<sup>184</sup> *National Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 173 FERC ¶ 61,197 (Dec. 1, 2020).

<sup>185</sup> *Id.* at P 10.

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](mailto:pmgerity@daypitney.com)).

- **ISO-NE Implementation of Order 1000 Exemptions for Immediate Need Reliability Projects (20-1422)**  
**Underlying FERC Proceeding: EL19-90<sup>186</sup>**

**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, 2021. Briefing is now complete and this matter is pending before the Court.

- **CIP IROL Cost Recovery Rules (20-1389)**  
**Underlying FERC Proceeding: ER20-739<sup>187</sup>**

**Petitioner: Cogentrix, Vistra**

**Status: Briefing Complete; Oral Argument Scheduled for Nov 12**

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. 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. On September 22, 2021, the Court scheduled oral argument for Friday, November 12, 2021. The composition of the argument panel will be revealed on or about October 12, 2021 on the Court’s web site at [www.cadc.uscourts.gov](http://www.cadc.uscourts.gov).

- **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: EL18-1639<sup>188</sup>**  
**Petitioners: Mystic (20-1343), NESCOE (20-1361, 21-1067), MA AG (20-1362), CT Parties (20-1365, 20-1368, 21-1070)**

**Status: Briefing Underway**

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.<sup>189</sup> 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

<sup>186</sup> *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).

<sup>187</sup> *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*”).

<sup>188</sup> *July 2018 Order; July 2018 Rehearing Order; Dec 2018 Order; Dec 2018 Rehearing Order; Jul 17 Compliance Order*.

<sup>189</sup> 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.

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. Thus far, FERC filed a Certified Index to the Record (on July 12, 2021); Mystic and State Petitioners filed Opening Briefs (September 7, 2021); and Intervenor for State Petitioners filed their Brief (September 21, 2021). Next up are Respondent's (FERC's) Brief (December 6, 2021); Intervenor's 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.

- **CASPR (20-1333, 20-1331) (consolidated)\*\***  
Underlying FERC Proceeding: ER18-619<sup>190</sup>  
Petitioners: Sierra Club, NRDC, RENEW Northeast, and CLF  
**Status: Being Held in Abeyance**

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

On January 12, 2021, the Court dismissed as moot the FERC's October 19 motion to hold this proceeding in abeyance and ordered that the motion to dismiss be referred to the merits panel (Judges Pillard, Katsas and Walker) and addressed by the parties in their briefs. On January 25 and 26, CT Parties and MMWEC and NHEC filed statements of issues and notices that they intend to participate in support of Petitioners. On January 27, the Court ordered the parties to submit by February 26, 2021, proposed formats for the briefing of these cases. On March 24, 2021, the Court granted NEPOOL's intervention and established a briefing schedule that, as explained just below, has since been superseded.

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

- **Opinion 531-A Compliance Filing Undo (20-1329)**  
Underlying FERC Proceeding: ER15-414<sup>191</sup>  
Petitioners: TOs' (CMP et al.)  
**Status: Being Held in Abeyance**

On August 28, 2020, the TOs<sup>192</sup> 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

<sup>190</sup> *ISO New England Inc.*, 162 FERC ¶ 61,205 (Mar. 9, 2018) ("*CASPR Order*").

<sup>191</sup> *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) ("*Order Rejecting Filing*").

<sup>192</sup> 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.

FERC's orders later vacated by the DC Circuit's *Emera Maine*<sup>193</sup> 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. On August 24, the FERC submitted a status report indicating that the proceedings before the Commission remain ongoing and that this appeal should continue to remain in abeyance.

- **2013/14 Winter Reliability Program Order on Compliance and Remand (20-1289, 20-1366 ) (consol.)**  
**Underlying FERC Proceeding: ER13-2266**<sup>194</sup>  
**Petitioner: TransCanada**  
**Status: Briefing Complete; Oral Argument Scheduled for Oct 15**

On July 30, 2020, TransCanada Power Marketing ("Petitioner" or "TransCanada") again petitioned the DC Circuit Court of Appeals for review of the FERC's action on the 2013/2014 Winter Reliability Program, this time in the FERC's April 1, 2020 *2013/14 Winter Reliability Program Order on Compliance and Remand*.<sup>195</sup> 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. On August 6, the Court scheduled oral argument for Friday, October 15, 2021. Petitioner and Respondents were each allotted 10 minutes. The argument panel will be comprised of Judges Srinivasan, Henderson and Edwards.

<sup>193</sup> *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*").

<sup>194</sup> 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*").)

<sup>195</sup> 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.

- **ISO-NE's Inventoried Energy Program (Chapter 2B) Proposal (19-1224\*\*\*; 19-1247; 19-1252; 19-1253)(consolidated); Underlying FERC Proceeding: ER19-1428<sup>196</sup>**  
**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; Oral Argument Scheduled for Oct 21**

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. Briefing is now complete. The argument panel for the October 21 oral argument will be comprised of Judges Wilkins, Katsas and Jackson.

#### Other Federal Court Activity of Interest

- **Order 872 (20-72788,\* 21-70113; 20-73375, 21-70113) (consol.) (9<sup>th</sup> Cir.)**  
**Underlying FERC Proceeding: RM19-15<sup>197</sup>**  
**Petitioners: SEIA et al.**

**Status: Briefing Again Underway**

On September 17, 2020, SEIA petitioned the 9<sup>th</sup> Circuit Court of Appeals for review of *Order 872*.<sup>198</sup> On October 9, the FERC filed an unopposed motion for the Court to hold this appeal in abeyance, suspend filing of the certified index to the record, and issue a new briefing schedule after January 4, 2021. The abeyance was to permit the FERC to address the pending rehearing requests in a future order. On October 26, 2020, the Court granted the FERC's motion. On January 29, 2021, SEIA requested that this case be consolidated with the others, and that the abeyance period be extended to give the parties additional time to coordinate and develop a unified, efficient briefing schedule.

On March 25, 2021, the Court granted SEIA's unopposed March 5, 2021 motion to lift the stay in this proceeding. Briefing has resumed. On May 27, 2021, Petitioners' briefs were filed by SEIA and Other Petitioners.<sup>199</sup> 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. NewSun Energy filed an Intervenor Brief on July 28. Since the last Report, Respondent's brief was filed on September 27. Next up will be: 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).

<sup>196</sup> 162 FERC ¶ 61,127 (Feb. 15, 2018) ("*Order 841*"); 167 FERC ¶ 61,154 (May 16, 2019) ("*Order 841-A*").

<sup>197</sup> *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).

<sup>198</sup> *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.

<sup>199</sup> "Other Petitioners" are Montana Environmental Information Center, Sierra Club, Center for Biological Diversity, Vote Solar, Appalachian Voices, Energy Alabama, Georgia Interfaith Power & Light, North Carolina Sustainable Energy Association, Upstate Forever, and Community Renewable Energy Association.



- **PennEast Project (18-1128)**  
**Underlying FERC Proceeding: CP15-558<sup>200</sup>**  
**Petitioners: NJ DEP, DE and Raritan Canal Commission, NJ Div. of Rate Counsel**  
**Status: Briefing Again Underway**

The Supreme Court proceedings up on which abeyance in this proceeding had been based ended on August 2, 2021. The parties filed a motion to govern future proceedings on September 1, 2021, suggesting that supplemental briefing was in order. On September 13, 2021, the Court ordered that Petitioners and Respondents file supplemental briefs on November 12, 2021.

- **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; EL15-45<sup>201</sup>**  
**Petitioners: MISO TOs, Transource Energy, Dec 23 Petitioners et al.**  
**Status: Briefing Complete; Oral Argument Scheduled for Nov 18**

The MISO Transmission Owners (TOs), Transource and "Dec 23 Petitioners",<sup>202</sup> 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, 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 Petitioners<sup>203</sup> filed their Brief. FERC filed its Respondent brief on June 8 and Intervenor in Support of FERC their Joint Brief on June 22, 2021. Petitioners' and Joint Petitioners' Reply Briefs were filed on July 8, 2021; Intervenor in Support of Petitioners Reply Briefs, July 22, 2021. The Joint Deferred Appendix was filed on August 5, 2021; Final Briefs on August 19, 2021. Briefing is now complete. On September 22, 2021, the Court scheduled oral argument for November 18, 2021. The composition of the argument panel will be revealed on or about October 18, 2021 on the Court's web site at [www.cadc.uscourts.gov](http://www.cadc.uscourts.gov).

- **Algonquin Atlantic Bridge Project Briefing Order (21-1115\*, 21-1138, 21-1153, 21-1155) (consol.);**  
**Underlying FERC Proceeding: CP16-9-012<sup>204</sup>**  
**Petitioners: LS Power, Algonquin, INGA**  
**Status: Case Being Held in Abeyance**

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."

<sup>200</sup> *PennEast Pipeline Co., LLC*, 162 FERC ¶ 61,053 (Jan. 19, 2018), *reh'g denied*, 163 FERC ¶ 61,159 (May 30, 2018).

<sup>201</sup> *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).

<sup>202</sup> "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.

<sup>203</sup> 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.

<sup>204</sup> *Briefing Order; April 19 Notice of Denial of Rehearings by Operation of Law*

The Court granted the first abeyance motion. On August 27, 2021, the Court granted a second abeyance motion by the FERC, directing the parties to file motions to govern future proceedings by October 29, 2021.

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