

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of February 1, 2022

The following activity, as more fully described in the attached litigation report, has occurred since the report dated January 4, 2022 (“last Report”) was circulated. New matters/proceedings since the last Report are preceded by an asterisk “*”. Page numbers precede the matter description.

COVID-19

- | | | | |
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| 1 | Remote ALJ Hearings
(AD20-12) | Jan 5 | “ Remote Hearing Guidance for Participants ” revised and posted on FERC’s website |
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I. Complaints/Section 206 Proceedings

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| 2 | 206 Investigation: ISO-NE Tariff
Schedule 25 and Section I.3.10
(EL21-94) | Jan 7

Jan 20
Jan 28 | NEPOOL , NECEC/Avangrid , NEPGA , NextEra file comments on the just & reasonableness of the ISO-NE Tariff
NextEra answers NECEC/Avangrid Jan 7 comments
NECEC answers NextEra’s Jan 20 answer; ISO-NE answers NECEC’s Jan 7 comments |
| 3 | Green Development DAF Charges
Complaint Against National Grid
(EL21-47) | Jan 20 | FERC issues “Allegheny Order”, modifying the discussion in the <i>Green Development Complaint Order</i> and continuing to reach the same result |

II. Rate, ICR, FCA, Cost Recovery Filings

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| 8 | ICR-Related Values and HQICCs –
Annual Reconfiguration Auctions
(ER22-556) | Jan 26 | FERC accepts ARA ICR-Related Values and HQICCs, eff. Jan 26, 2022 |
| 8 | FCA16 Qualification Informational
Filing (ER22-391) | Jan 21 | FERC accepts Informational Filing |
| 9 | Mystic 8/9 Cost of Service
Agreement (ER18-1639) | Jan 18

Jan 18 | FERC issues a “Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration” of Mystic’s request for rehearing of the <i>Mystic ROE Allegheny Order</i>
Mystic petitions the DC Circuit for review of the <i>Mystic ROE Allegheny Order</i> |

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

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| * 11 | Waiver Request: Queue Position
Modifications (ConnectGen South
Wrentham) (ER22-864) | Jan 20 | ConnectGen South Wrentham requests waiver of Sched. 22, § 4.4 (Queue Position Modifications) to allow it to qualify for and bid into FCA17 with its existing queue position; comment deadline Feb 10, 2022 |
| 11 | CSO Termination: Killingly Energy
Center (ER22-355) | Jan 11

Jan 18

Jan 20

Jan 28 | NTE CT files emergency motion for stay and request for rehearing of the <i>Killingly CSO Termination Order</i>
ISO-NE and NEPGA answer NTE CT’s emergency motion for stay and request for rehearing
NTE CT petitions DC Circuit for stay of the <i>Killingly CSO Termination Order</i> (see Section XVI)
FERC denies stay of the <i>Killingly CSO Termination Order</i> |
| 12 | Waiver Request: FCA16
Qualification (Andro Hydro)
(ER22-174) | Jan 7 | FERC denies Andro Hydro’s request for waiver of the FCM qualification rules to allow Andro Hydro’s Riley-Jay-Otis-Livermore hydro resource to participate in FCA16 at a reduced qualification level |

IV. OATT Amendments / TOAs / Coordination Agreements

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| * 12 | Tariff Changes Associated with
<i>Order 1000</i> Lessons Learned
(ER22-733) | Jan 10-18
Jan 18
Feb 1 | Champlain VT, Eversource, National Grid, NESCOE, the MA DPU and
RENEW Northeast intervene doc-less only
Public Systems submit comments; LS Power submits request for
clarification or protest
AEE supports LS Power's Jan 18 submission |
| * 13 | Attachment K Planning Changes
(ER22-727) | Jan 15-18
Jan 18 | Eversource, National Grid intervene
AEE , NESCOE , Public Systems file comments |
| 13 | BTM Generation Proposal
(ER21-2337) | Jan 3
Jan 18 | NEPGA again files an amended protest and comments in response to
Deficiency Letter Response II
PTO AC answers NEPGA Jan 3 amended protest and comments |

V. Financial Assurance/Billing Policy Amendments

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| * 15 | Non-Commercial Capacity Trading
FA Changes (ER22-863) | Jan 21
Jan 24-Feb 2 | ISO-NE and NEPOOL jointly file changes;
comment deadline Feb 11, 2022
Calpine, NRG intervene |
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VI. Schedule 20/21/22/23 Changes

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| * 15 | Schedule 21-NEP: 3rd Revised RI
LSAs (ER22-927) | Jan 31 | New England Power and ISO-NE submit 3rd revised LSAs with BIPCO
and Narragansett; comment deadline Feb 22, 2022 |
| * 15 | Schedule 21-NEP: 2nd Revised
Narragansett LSA (ER22-707) | Jan 18-19
Jan 19 | SEIA, Lodestar Energy, Coalition for Community Solar Access intervene
Green Development files a protest |

VII. NEPOOL Agreement/Participants Agreement Amendments*No Activity to Report***VIII. Regional Reports**

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| * 17 | Transmission Projects Annual Info
Filing (ER13-193) | Jan 31 | ISO-NE files annual informational filing of projects on the RSP project
list that had a year of need 3 years or less from the completion of the
Needs Assessment as required under OATT § 4.1(j)(iii) |
| * 17 | <i>Order 2222</i> Stakeholder Process
Status Update; Voltus Tech Conf
Request (RM18-9) | Jan 7
Jan 18 | FERC issues notice of Voltus' request that FERC convene a tech conf on
<i>Order 2222</i> -related issues, inviting comments on or before Feb 7, 2022
Fermata LLC submits comments in support of tech conf |
| * 17 | LFTR Implementation: 53rd Quarterly
Status Report (ER07-476) | Jan 14 | ISO-NE files its 53rd quarterly report |
| * 18 | IMM Quarterly Markets Reports -
2021 Fall (ZZ22-4) | Jan 25 | IMM files Fall 2021 Report; to be reviewed at Feb 8 Markets
Committee meeting |

IX. Membership Filings

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| * 18 | February 2022 Membership Filing
(ER22-945) | Jan 31 | NEPOOL requests that the FERC accept (i) the membership of Sam
Mintz; (ii) the termination of the Participant status of the following 16
Participants: Farhad Aminpour; Dick Brooks, King Forest Industries;
Michael Kuser; PNE Energy Supply; Connecticut Jet Power; Devon
Power; Middletown Power; Montville Power; Ambit Northeast;
Connecticut Gas & Electric; Energy Rewards; Everyday Energy;
Massachusetts Gas and Electric; Public Power; and Viridian Energy;
and (iii) Constellation Energy Generation LLC's name change;
comment deadline Feb 21, 2022 |
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18	December 2021 Membership Filing (ER22-502)	Jan 26	FERC accepts (i) the memberships of BP Retail Energy and PSEG Power Connecticut; (ii) the termination of the Participant status of CHI Power Marketing; J. F. Gray & Associates; Liberty Power Delaware; South Jersey Energy Company; and South Jersey Energy ISO3; and (iii) the name change of AES Renewable Holdings, LLC
* 19	Suspension Notice – NTE Connecticut, LLC (not docketed)	Jan 14	ISO-NE files notice of Jan 11 suspension of NTE Connecticut, LLC from the New England Markets
* 19	Suspension Notice – Sunwave USA Holdings Inc. (not docketed)	Jan 25	ISO-NE files notice of Jan 21 suspension of Sunwave USA Holdings Inc. from the New England Markets

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

* 19	NERC Annual Report on FFT & Compliance Exception Programs (RC11-6-014)	Jan 6	FERC issues notice of NERC's annual report on FFT and compliance exception programs; comment date Jan 20, 2022
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XI. Misc. - of Regional Interest

23	203 Application: Howard Wind / Greenbacker Wind (EC22-13)	Jan 11	FERC authorizes Greenbacker Wind acquisition of Howard Wind from Everpower
23	203 Application: Castleton Commodities/Atlas Power (GSP companies) (EC22-7)	Jan 7	Atlas and GSP Holdings file notice that Atlas has acquired the remaining interests in the upstream owner of the Granite Shore Power companies from an affiliate of Castleton Commodities Inc.
23	203 Application: Hull Street/CMEEC (EC22-3)	Jan 6	Hull Street provides notice that its Related Person (MPH) acquired CMEEC's 84 MW Wallingford generating facility on Dec 31, 2021
23	203 Application: PSEG/Generation Bridge II (ArcLight) (EC21-125)	Jan 31	Applicants renew their request for expedited consideration and FERC action on the application
24	203 Application: Exelon Generation (EC21-57)	Feb 1	Spin transaction consummated
* 24	D&E Agreement Cancellation: CL&P/UCONN (ER22-912)	Jan 28	CL&P submits notice of cancellation of D&E Agreement; comment deadline Feb 18, 2022
* 24	D&E Agreement Cancellation: NSTAR/Ocean State (ER22-911)	Jan 28	NSTAR submits notice of cancellation of D&E Agreement; comment deadline Feb 18, 2022
* 24	Cost Reimbursement Agreement: Narragansett/BIPCO (ER22-817)	Jan 13	National Grid files Cost Reimbursement Agreement; comment deadline Feb 3, 2022
25	IA Termination: CL&P/Sterling Property (ER21-2860)	Jan 10	FERC issues a "Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration" of CL&P and Brookfield requests for rehearing and/or clarification of the <i>Sterling IA Order</i>
26	Orders 864/864-A (Public Util. Trans. ADIT Rate Changes): New England Compliance Filings (various)	Jan 26	<i>ER20-2572 et al. (New England TOs (RNS))</i> . NEP requests clarification and/or rehearing of <i>TOs First Order 864 Compliance Filings Order ER20-2614 (NEP - AC Support Agreement)</i> . FERC accepts changes, eff. Jan 27, 2020
		Jan 26	<i>ER20-2610 (CL&P - Phase II BECO AC Support Agreement; Millstone TSA)</i> . FERC accepts changes, eff. Jan 27, 2020
		Jan 26	<i>ER20-2609 (NSTAR-Phase II BECO AC Support Agreement)</i> . FERC accepts changes, eff. Jan 27, 2020
		Jan 26	<i>ER20-2608 (PSNH - Seabrook TSA)</i> . FERC accepts changes, eff. Jan 27, 2020
		Jan 26	<i>ER20-2607 (NEP/PSNH -Seabrook Transmission Support Agreement)</i> . FERC accepts changes, eff. Jan 27, 2020
		Jan 26	<i>ER20-1839 (VETCO)</i> . FERC accepts changes, eff. Jan 27, 2020

XII. Misc. - Administrative & Rulemaking Proceedings

29	Joint Federal-State Task Force on Electric Transmission (AD21-15)	Jan 24	NARUC nominates Chair Thad LeVar of the Utah PSC to represent the Western Conference region (to replace Commissioner Kate Raper, who resigned her position with the Idaho PSC on Jan 21, 2022); second public Task Force meeting, Feb 16, 2022
31	Reliability Tech Conf (Sep 30) (AD21-11)	Jan 7	FERC invites post-tech conf comments, either to address the questions raised in the Jan 7 notice or any other issues raised during the tech conf; comment deadline Feb 22, 2022
32	Modernizing Electricity Market Design - Energy and Ancillary Service Markets (AD21-10)	Feb 1	PJM Power Providers Group submits comments Post-tech conf comments initial deadline Feb 4, 2022 ; reply comments deadline, Mar 7, 2022
32	Office of Public Participation (AD21-9)	Jan 5-20	Three sets of comments posted to eLibrary
* 33	Order 882: 2022 Civil Monetary Penalty Inflation Adjustments (RM22-6)	Jan 7	FERC issues <i>Order 882</i> , which increases the maximum civil monetary penalties that FERC may assess
33	NOI: Industry Assoc'n Dues & Expenses Rate Recovery, Reporting, and Acc'ting Treatment (RM22-5)	Jan 19	M. Mabee submits comments Initial comments deadline, Feb 22, 2022 ; reply comments deadline Mar 23, 2022
34	ANOPR: Transmission Planning and Allocation and Generator Interconnection (RM21-17)	Jan 11-14	WIRES files supplemental reply comments; former military leaders and former Department of Defense officials file statement
35	Order 881: Managing Transmission Line Ratings (RM20-16)	Jan 18	ATC, EEI, ITC Holdings, MISO IMM, MISO TOs request rehearing and/or clarification of <i>Order 881</i>
35	NOPR: Electric Transmission Incentives Policy (RM20-10)	Jan 14-18	APPA, CAISO, Clean Energy Parties, EDF Renewables, EEI, IECA, National Grid, PJM IMM, TAPS file post-Oct 18 workshop comments

XIII. FERC Enforcement Proceedings

39	GreenHat (IN18-9)	Jan 5	FERC denies Kittell Estate's Oct 5, 2021 motion requesting that FERC drop all enforcement action against the Estate
40	Rover/ETP (CPCN Show Cause Order) (IN19-4)	Jan 20	FERC establishes hearings to determine whether Respondents violated section 157.5 of the FERC's regulations and to ascertain certain facts relevant for any application of the FERC's Penalty Guidelines
		Jan 25	Chief ALJ designates Deputy Chief ALJ Andrew Satten as the Presiding Judge for the hearings and establishes Track II procedural time standards
		Feb 1	Respondents request stay of ALJ proceedings
42	Total Gas & Power North America, Inc. et al. (IN12-17)	Jan 19	Presiding ALJ grants Respondents' request to extend the deadline to file a consolidated motion to compel production of documents and other materials
		Jan 26	Respondents submit motion to compel production
		Feb 1	OE replies to Jan 26 motion

XIV. Natural Gas Proceedings

43	Iroquois ExC Project (CP20-48)	Jan 27-28	Iroquois, ConEd and National Grid answer/reply to the Dec 20, 2021 comments on the EPA's final Environmental Impact Statement
43	Atlantic Bridge Project (CP16-9)	Jan 20	FERC issues order sustaining the <i>Authorization Order</i>

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|----|------------------------------------|--------|---|
| 45 | Northern Access Project (CP15-115) | Jan 28 | Applicants again request an additional extension of time, this time until Dec 31, 2024, to complete construction of the Project and enter service; comments deadline on that request, Feb 16, 2022 |
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XV. State Proceedings & Federal Legislative Proceedings



No Activity to Report

XVI. Federal Courts



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|------|---|--|--|
| * 47 | NTE CT Petition to Stay FERC Order
Accepting Killingly CSO Termination
(21-1011) | Jan 20
Jan 21
Jan 24
Jan 27
Jan 28
Jan 31
Feb 1 | NTE CT petitions DC Circuit for stay of the <i>Killingly CSO Termination Order</i>
Court orders FERC to respond by noon on Jan 31, 2022
ISO-NE moves to intervene
ISO-NE supplements the record
Court grants ISO-NE intervention
FERC responds to the Petition
NTE CT responds to the FERC's Jan 31 response |
| 47 | CSC Request for Regulatory Asset
Recovery of Previously-Incurred CIP
IROL Costs (21-1275) | Jan 28
Feb 2

Feb 2 | NESCOE intervenes
FERC moves to have the petition for review held in abeyance, including suspending the initial filing schedule, until the Commission issues an order addressing Petitioner's request for rehearing
CSC files docketing statement and statement of issues |
| 48 | Mystic ROE (21-1198) (consol.) | Jan 12

Jan 13

Jan 17
Jan 18
Jan 20

Jan 26
Jan 27
Jan 28 | Clerk consolidates 22-1001 into 21-1198 and directs CT Parties to file a Docketing Statement Form and Statement of Issues to be Raised by Feb 11, 2022
Clerk orders that petitions for review in Nos. 21-1223 and 21-1224 can be amended, without prejudice to a determination by the merits panel whether a new petition for review, rather than an amended petition, was required
ENECOS and MA AG file amended petitions
Mystic appeals <i>Mystic ROE Allegheny Order</i> (22-1008)
Clerk consolidates 22-1008 into 21-1198 and directs Mystic to file a Docketing Statement Form and Statement of Issues to be Raised by Feb 22, 2022
FERC asks for further 60-day extension of time, to Mar 29, 2022, to file the Certified Index to the Record
Mystic opposes the FERC's Jan 26 request
FERC answers Mystic's Jan 27 opposition |
| 48 | ISO-NE Implementation of <i>Order 1000</i>
Exemptions for Immediate Need
Reliability Projects (20-1422) | Jan 27 | Oral argument held before Judges Rogers, Pillard, Randolph |
| 49 | CIP IROL Cost Recovery Rules
(20-1389) | Jan 28 | Court denies Cogentrix's and Vistra's Petition for Review |

M E M O R A N D U M

TO: NEPOOL Participants Committee Members and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: February 2, 2022

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

We have summarized below the status of key ongoing proceedings relating to NEPOOL matters before the Federal Energy Regulatory Commission (“FERC”),¹ state regulatory commissions, and the Federal Courts and legislatures through February 1, 2022. If you have questions, please contact us.

COVID-19

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

All hearings before Administrative Law Judges (“ALJs”) are being held remotely through video conference software (WebEx and SharePoint) until further notice.² The Presiding Judge in each remote hearing will ensure that the participants have access to an “IT Day” prior to the hearing to allow all participants, witnesses, and the public who will attend the hearing to learn more about the remote hearing software and to get their technical questions answered by the appropriate FERC staff. Uniform Hearing Rules for all Office of the ALJ hearings were adopted effective September 15, 2020.³ The “Remote Hearing Guidance for Participants” was revised on May 18, 2021 to make two additional changes.⁴ The [Uniform Hearing Rules](#) and [Remote Hearing Guidance for Participants](#) are publicly available in this proceeding in eLibrary and on the [FERC’s Administrative Litigation webpage](#).

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

On December 8, 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 three months, through March 31, 2022**.⁵ The December 8 notice extended the waiver first noticed in May, 2020⁶ for a fourth time. As previously reported, Entities may also seek waiver of FERC orders, regulations, tariffs and rate schedules, including motions for waiver of regulations that govern the form of filings, as appropriate, to address needs resulting from steps they have taken in response to the coronavirus.⁷ The FERC does not anticipate issuing any

¹ Capitalized terms used but not defined in this filing are intended to have the meanings given to such terms in the Second Restated New England Power Pool Agreement (the “Second Restated NEPOOL Agreement”), the Participants Agreement, or the ISO New England Inc. (“ISO” or “ISO-NE”) Transmission, Markets and Services Tariff (the “Tariff”).

² *Chief Administrative Law Judge’s Notices to the Public*, Docket No. AD20-12 (June 17, 2020).

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

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

⁵ *See Extension of Non-Statutory Deadlines*, Docket No. AD20-11-000 (Dec. 8, 2021) (“Fourth Extension”).

⁶ *Extension of Non-Statutory Deadlines*, Docket No. AD20-11-000 (May 8, 2020) (“First Extension”); *Extension of Non-Statutory Deadlines*, Docket No. AD20-11-000 (Jan. 25, 2021) (“Second Extension”); *Extension of Non-Statutory Deadlines*, Docket No. AD20-11-000 (July 26, 2021) (“Third Extension”).

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

further blanket extensions after March 31, 2022, but is closely monitoring developments and will make that decision in light of conditions near the end of the Fourth Extension period.

- **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 December 8, 2021, **for an additional 3 months, through March 31, 2022**, the blanket waivers of ISO/RTO Tariff *in-person*⁸ meeting and notarization requirements.⁹ The July 26 order extended for a fourth time the blanket waivers first granted in the FERC's April 2, 2020 order and extended in orders issued August 20, 2020, January 25, 2021, and July 26, 2021.¹⁰ The FERC does not anticipate issuing any further blanket extensions after March 31, 2022, but is closely monitoring developments and will make that decision in light of conditions near the end of this fourth extension.

I. Complaints/Section 206 Proceedings

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

As previously reported, the FERC instituted on September 7, 2021 a proceeding under FPA Section 206 to consider whether Schedule 25 and Tariff section I.3.10 may be unjust and unreasonable.¹¹ This proceeding arises out of issues raised in the NECEC Transmission LLC ("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 [FERC]'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.¹²

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. On September 8, 2021, the FERC issued a notice of the proceeding and of the refund 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, 2021.¹³ NEPOOL, NESCOE, Brookfield, Calpine, Dominion, Eversource, HQ US, LS Power, MA AG, MMWEC, National Grid, NECEC Transmission, NEPGA, NextEra, NRG, CT DEEP, MA DOER, Pixelle Androscoggin (out-of-time), Vistra (out-of-time), American Clean Power Association ("ACPA"), EPSA, RENEW Northeast, and Public Citizen intervened.

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

⁹ *Temporary Action to Facilitate Social Distancing*, 177 FERC ¶ 61,174 (Dec. 8, 2021).

¹⁰ *Temporary Action to Facilitate Social Distancing*, 171 FERC ¶ 61,004 (Apr. 2, 2020) (waiving notarization requirements through Sep. 1, 2020, contained in any tariff, rate schedule, service agreement, or contract subject to the FERC's jurisdiction under the Federal Power Act ("FPA"), the Natural Gas Act ("NGA"), or the Interstate Commerce Act); 172 FERC ¶ 61,151 (Aug. 20, 2020) (extending the waivers through Jan. 29, 2021); 174 FERC ¶ 61,047 (Jan. 25, 2021) (extending the waivers through July 31, 2021); 176 FERC ¶ 61,044 (July 26, 2021) (extending the waivers through Jan. 1, 2022).

¹¹ *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").

¹² *Id.* at P 20.

¹³ The Notice was published in the *Fed. Reg.* on Sep. 14, 2021 (Vol. 86, No. 175) p. 51,140.

ISO-NE Answer. On November 8, 2021, ISO-NE submitted its answer explaining why Schedule 25 and Tariff section I.3.10 remain just and reasonable. ISO-NE called for the FERC to “assist Affected Parties and Interconnection Customers in resolving any disputes pertaining to upgrades on Affected Systems—such as the dispute between NECEC Transmission and NextEra Energy Seabrook, LLC in Docket No. EL21-6—as quickly as possible.” Interested parties had 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.

Comments. Comments were filed by the January 7 deadline by [NEPOOL](#), [NECEC/Avangrid](#), [NEPGA](#), [NextEra](#). On January 20 [NextEra](#) answered the NECEC/Avangrid comments. On January 28, [NECEC](#) answered NextEra’s January 20 answer and [ISO-NE](#) answered NECEC’s Jan 7 comments.

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).

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

As previously reported, on September 23, 2021, the FERC denied in part, but granted in part, the complaint (“Complaint”)¹⁴ by Green Development, LLC (“Green Development”) against New England Power Company (“NEP”) and Narragansett Electric Company (together with NEP, “National Grid” or “Grid”).¹⁵ The *Complaint Order* partially denied the Complaint, finding that Green Development did not meet its burden of proof that the assignment of Direct Assignment Facility (“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).¹⁶ 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.”¹⁷ 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.¹⁸

Request for Partial Rehearing Denied by Operation of Law. On November 26, 2021, the FERC issued a “Notice of Denial of Rehearings by Operation of Law and Providing for Further Consideration”.¹⁹ The Notice confirmed that the 60-day period during which a petition for review of the *Green Development Complaint Order* could be filed with an appropriate federal court was triggered when the FERC did not act on Green Development’s request for partial rehearing of the *Complaint Order*.²⁰ 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.”

¹⁴ 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”).

¹⁵ *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*”).

¹⁶ *Id.* at PP 54-55, 59-60.

¹⁷ *Id.* at PP 54, 61-62.

¹⁸ *Id.* at P 62.

¹⁹ Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration, *Green Development, LLC v. New England Power Co. and Narragansett Elec. Co.*, 177 FERC ¶ 62,099 (Nov. 26, 2021).

²⁰ On October 25, 2021, Green Development requested partial rehearing of the *Green Development Complaint Order*, asking the FERC to reverse its 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 DAF (requiring that the facilities be constructed for the sole use/benefit of a particular Transmission Customer requesting service under the ISO-NE Tariff), and grant its Complaint in full.

Green Development Complaint Allegheny Order. As is its right under section 313(a) of the FPA, the FERC issued an order, on January 20, 2022, modifying the discussion in the *Complaint Order* but reaching the same result.²¹ Challenges, if any, to the *Complaint Order* and the *Green Development Complaint Allegheny Order* would have had to have been filed in Federal Court on or before January 21, 2022. **No challenges having been filed in Federal Court, this matter is concluded.** If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

As previously reported, 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 relief²² 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.

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).²³ Initial briefs²⁴ were due on or before October 7, 2021, and were filed by [ISO-NE](#), [Avangrid](#), [NextEra](#), [MA AG](#), [NEPGA/EPSC](#), [MA DOER](#). Reply briefs were due on or before October 22, 2021, and were filed by [Avangrid](#), [NextEra](#), [ISO-NE](#). Avangrid answered NextEra’s November 4 answer, NextEra moved to lodge a letter from a Branch Chief of the Nuclear Regulatory

²¹ *Green Development, LLC v. New England Power Co. and Narragansett Elec. Co.*, 178 FERC ¶ 61,036 (Jan. 20, 2022) (“*Green Development Complaint Allegheny Order*”)

²² 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.

²³ *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).

²⁴ The FERC requested additional briefing from the Parties, as well as from ISO-NE, on the following issues: (i) whether or not Seabrook’s breaker is properly identified as a part of Seabrook’s generating facility; (ii) 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; (iii) 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; (iv) whether there exists any solution for the interconnection of the NECEC Project that may be implemented without the replacement of Seabrook’s breaker; and (v) 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.

Commission (“NRC”), including an Inspection Report for Seabrook Station for the time period from July 1, 2021 through September 30, 2021 (together, the “NRC Seabrook Report”), to directly refute a central claim of Avangrid (that Seabrook should have already replaced the Generation Breaker at issue in this proceeding), and Avangrid opposed that motion to lodge (asserting that the NRC Seabrook Report is outside the scope of these proceedings and will not assist the FERC in its decision making). With briefing complete, this matter is again before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

In a related matter, initiated a week earlier than the Avangrid Complaint, NextEra Energy Seabrook, LLC (“Seabrook”) filed a Petition for a Declaratory Order (“Petition”) “by which it seeks to understand the scope of its FERC-jurisdictional regulatory obligations with respect to the project (“NECEC Elective Upgrade”), and to resolve its dispute with NECEC”. Specifically, Seabrook asked the FERC to declare that: (1) Seabrook is not required to incur a financial loss to upgrade, for NECEC’s sole benefit, a 24.5 kV generator circuit breaker and ancillary equipment (“Generation Breaker”) at Seabrook Station; (2) “Good Utility Practice” for replacement of the nuclear plant Generation Breaker is defined in terms of the practices of the nuclear power industry, such that Seabrook’s proposed definition of that term is appropriate for use in a facilities agreement with NECEC; and (3) Seabrook will not be liable for consequential damages for the service it provides to NECEC under a facilities agreement (collectively, the “Requested Declarations”). Alternatively, Seabrook asked that the FERC declare that nothing in ISO-NE’s Tariff requires Seabrook to enter into an agreement to replace the Generation Breaker, and therefore, 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. NextEra moved to lodge both an August 29, 2021 filing containing an executed Engineering and Procurement Agreement (“E&P Agreement”) between Seabrook and NECEC Transmission, LLC (“NECEC”) that was filed with the FERC on August 19, 2021 and the NRC Seabrook Report. Avangrid answered that motion, asserting that the NRC Seabrook Report was outside the scope of the proceeding and the motion to lodge should be denied. 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).

- **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,²⁵ 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*

²⁵ 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*”).

531-A).²⁶ However, the FERC's orders were challenged, and in *Emera Maine*,²⁷ 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)²⁸ and third (EL14-86)²⁹ 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.³⁰ 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 proceeding³¹ also went to hearing before an ALJ, Judge Glazer, who issued his initial decision on March 27, 2017.³² The *Base ROE IV Initial Decision* concluded that the currently-filed base ROE of 10.57%, which may reach a maximum ROE of 11.74% with incentive adders, was **not** unjust and unreasonable for the Complaint IV period, and hence was not unlawful under section 206 of the FPA.³³ 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*.

²⁶ *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*").

²⁷ *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).

²⁸ 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%.

²⁹ 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.

³⁰ *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*").

³¹ 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.

³² *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 162 FERC ¶ 63,026 (Mar. 27, 2018) ("*Base ROE Complaint IV Initial Decision*").

³³ *Id.* at P 2.; Finding of Fact (B).

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.³⁴ 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*³⁵ (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.³⁶

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%.³⁷ The new ROE would be effective as of the date of *Opinion 531-A*, or October 16, 2014. Accordingly, the issue to be addressed in the Base ROE Complaint II proceeding is whether the ROE established on remand in the first complaint proceeding remained just and reasonable based on financial data for the six-month period September 2013 through February 2014 addressed by the evidence presented by the participants in the second proceeding. Similarly, briefing in the third and fourth complaints will have to address whether whatever ROE is in effect as a result of the immediately preceding complaint proceeding continues to be just and reasonable.

The FERC directed participants in the four proceedings to submit briefs regarding the proposed approaches to the FPA section 206 inquiry and how to apply them to the complaints (separate briefs for each

³⁴ *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (Oct. 18, 2018) (“*Order Directing Briefs*” or “*Coakley*”).

³⁵ *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*.

³⁶ *Id.* at P 19.

³⁷ *Id.* at P 59.

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 Customers³⁸ 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*³⁹ and requested that the FERC re-open the record to permit that additional testimony on the impacts of the *MISO ROE Order*'s changes. On January 21, 2020, EMCOS and CAPs opposed the TOs' request and brief.

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

II. Rate, ICR, FCA, Cost Recovery Filings

- **ICR-Related Values and HQICCs – Annual Reconfiguration Auctions (ER22-556)**

On January 26, 2022, the FERC accepted the materials that identify the Installed Capacity Requirement ("ICR"), Local Sourcing Requirements ("LSR"), Maximum Capacity Limits ("MCL"), Hydro Quebec Interconnection Capability Credits ("HQICCs"), and capacity requirement values for the System-Wide and Marginal Reliability Impact Capacity Demand Curves (collectively, the "ICR-Related Values") for the third annual reconfiguration auction ("ARA") for the 2022-23 Capability Year, the second ARA for the 2023-24 Capability Year, and the first ARA for the 2024-25 Capability Year.⁴⁰ The ICR-Related Values were accepted effective January 29, 2022, as requested. Unless the January 26 order is challenged, this proceeding will be concluded. If you have any questions concerning these matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **FCA16 Qualification Informational Filing (ER22-391)**

On January 21, 2022, the FERC accepted ISO-NE's informational filing (the "FCA16 Informational Filing") for qualification in FCA16.⁴¹ As previously reported, the Informational Filing contained ISO-NE's determinations that four Capacity Zones will be modelled for FCA16 -- Southeastern New England ("SENE"), Northern New England ("NNE"), the Maine Capacity Zone ("Maine"), and Rest of Pool. SENE will again be modeled as import-constrained; NNE will be modeled as export-constrained. The Maine Load Zone will be modeled as a separate nested export-constrained Capacity Zone within NNE. The Informational Filing reported that there will be 33,356 MW of existing capacity in FCA16 competing with 5,246 MW of new capacity under a Net ICR of 31,645 MW (ICR minus HQICCs). ISO-NE reported also that there were a total of 503 MW of Static De-List Bids. A summary of the De-List Bids accepted and those rejected for reliability purposes was included in a privileged Attachment E to the FCA16 Informational Filing. ISO-NE qualified 15

³⁸ For purposes of the motion seeking clarification, "Customers" are CT PURA, MA AG and EMCOS.

³⁹ *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).

⁴⁰ *ISO New England Inc. and New England Power Pool Participants Comm.*, Docket No. ER22-556-000 (Jan. 26, 2022) (unpublished letter order).

⁴¹ *ISO New England Inc.*, 178 FERC ¶ 61,050 (Jan. 21, 2022) ("*FCA16 Qual Info Filing Order*").

demand bids, totaling 994 MW, and 193 supply offers, totaling 779 MW, to participate in the substitution auction.

In accepting the FCA16 Informational Filing, the FERC rejected protests filed by Borrego Solar Systems (“Borrego”) and jointly by Anbaric Development Partners, LLC (“Anbaric”) and Massachusetts Municipal Wholesale Electric Company (“MMWEC”), which had each protested the basis for the IMM’s mitigation of a storage resource.⁴² The FERC dismissed Borrego’s protest as moot since the Build Back Better Act, upon which its request were contingent, had not yet become law.⁴³ With respect to the Anbaric/MMWEC protest, the FERC found that Anbaric and MMWEC did not provide sufficient documentation and information to support certain component values they used to calculate their proposed Offer Floor Price for the Westover Project and that the IMM was therefore authorized by, and acted consistently with, the Tariff when it set the final Offer Floor Price for the Project to the storage ORTP.⁴⁴ In addition, consistent with ISO-NE representations in the proceeding that it must make minor modifications to certain incorrect Qualified Capacity values, the FERC directed ISO-NE to modify the incorrect values for the identified resources on or before February 7, 2022.⁴⁵ Of note, Chairman Glick and Commissioner Clements, in a joint concurrence, wrote separately to explain their concerns with the Minimum Offer Price Rule (“MOPR”), encouraging ISO-NE to “promptly put forward a proposal that addresses [their concerns] and provides a path to a more durable approach to the issue of buyer-side market power”.⁴⁶

Unless the *FCA16 Qual Info Filing Order* is challenged, with any challenges due on or before February 22, 2022, this proceeding will be concluded. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Rosendo Garza (860-275-0660; rgarza@daypitney.com).

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

Each of the *July 17 Orders*⁴⁷ and the *Mystic ROE Order*,⁴⁸ which addressed in part or in whole the Cost-of-Service Agreement (“COS Agreement”)⁴⁹ among Constellation Mystic Power (“Mystic”), Exelon Generation Company (“ExGen”), have been appealed to the DC Circuit (*see* Section XVI below).

⁴² Borrego protested the mitigation to zero of an assumed 26.2% percent value for a storage Investment Tax Credit (“ITC”) included in the “Build Back Better Act” that had not yet, but has since, been passed; Anbaric/MMWEC protested the IMM’s rejection of project-specific offer components that rely on either documented competitive advantages enjoyed by each of Anbaric/MMWEC or on FERC-approved storage ORTP offer components.

⁴³ *Id.* at P 22.

⁴⁴ *Id.* at PP 36-37.

⁴⁵ *Id.* at P 18.

⁴⁶ *Id.*, Glick and Clements *concurring*, at P 6.

⁴⁷ 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).

⁴⁸ *Constellation Mystic Power, LLC*, 176 FERC ¶ 61,019 (July 15, 2021) (“*Mystic ROE Order*”) (setting the base ROE for the Mystic COS Agreement at 9.33%).

⁴⁹ 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 ROE Allegheny Order. On November 18, 2021, the FERC issued an “Allegheny Order”⁵⁰ modifying the discussion in the *Mystic ROE Order* and setting aside that *Order*, in part.⁵¹ In particular, agreeing with Connecticut Parties that “Otter Tail is properly excluded [as an outlier] from the [Discounted Cash Flow model (“DCF”)] under the natural break analysis”, the FERC found that the resulting average of the medians of the DCF, Capital Asset Pricing, and Risk Premium models (which sets the ROE) is 9.19%.⁵² According the FERC directed Mystic to submit a compliance filing revising the Mystic Agreement to reflect a 9.19% (rather than a 9.33%) base ROE. The FERC also clarified that Avangrid’s exclusion from the proxy group was based on its controlled status (ownership stakes by a single entity greater than 50%) and not on the particulars of Iberdrola’s ownership or operations.⁵³ The FERC either disagreed with or dismissed as repetitive the remainder of the parties’ arguments on rehearing.

Mystic requested rehearing of the *Mystic ROE Allegheny Order* on December 18, 2021. On January 18, 2022, the FERC issued a “Notice of Denial of Rehearings by Operation of Law and Providing for Further Consideration”.⁵⁴ The Notice confirmed that the 60-day period during which a petition for review of the *Mystic ROE Allegheny Order* can be filed with an appropriate federal court was triggered when the FERC did not act on Mystic’s December 18, 2021 request for rehearing of the *Mystic ROE Allegheny Order*. As noted in Section XVI below, Mystic filed a petition for review of the *Mystic ROE Allegheny Order* with the DC Circuit Court of Appeals on January 18, 2022. The January 18 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.”

Revised ROE (Sixth) Compliance Filing (-014). On December 20, 2021, in response to the requirements of the *Mystic ROE Allegheny Order*, and subject to the outcome of the pending Federal Court appeals (see Section XVI), Mystic filed yet another revised COS Agreement. The sixth compliance filing revised (i) the Cost of Common Equity figures from 9.33% to 9.19%, for both Mystic 8&9 and Everett Marine Terminal (“Everett”), and (ii) the stated Annual Fixed Revenue Requirements for both the 2022/23 and 2023/24 Capacity Commitment Periods. Comments on the sixth compliance filing were due on or before January 10, 2022; none were filed. The Sixth Compliance Filing is pending before the FERC.

First CapEx Info. 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 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 (“First CapEx Projects Info. Filing”). Formal challenges to the September 15 filing were submitted by the Eastern New England Customer-Owned Systems (“ENECOS”) and NESCOE. Comments on the formal challenges were due on or before November 17, 2021, and Mystic responded on November 17 asserting that that the challenges should be rejected without further procedures. ENECOS and

Mystic’s unique circumstances, including the value placed on continued sourcing of fuel from the Distrigas liquefied natural gas (“LNG”) facility.

⁵⁰ An “Allegheny Order” is a merits rehearing order issued on or after the 31st day after receipt of a rehearing request, reflecting the FERC’s authority to “modify or set aside, in whole or in part,” its order until it files the record on appeal with a reviewing federal court. An Allegheny Order will use “modifying the discussion” if the FERC is providing a further explanation, but is not changing the outcome, of the underlying order; or “set aside” if the FERC is changing the outcome of the underlying order. Aggrieved parties have 60 days after a deemed denial to file a review petition, even if FERC has announced its intention to issue a further merits order.

⁵¹ *Constellation Mystic Power, LLC*, 177 FERC ¶ 61,106 (Nov. 18, 2021) (“*Mystic ROE Allegheny Order*”) (re-setting Mystic’s ROE to 9.19%).

⁵² *Id.* at P 15.

⁵³ *Id.* at P 21.

⁵⁴ *Constellation Mystic Power, LLC*, 178 FERC ¶ 62,028 (Jan. 18, 2022) (Notice of Denial of Reh’g by Operation of Law).

NESCOE replied to Mystic's November 17, 2021 reply on December 2 and December 6, respectively. The formal challenges are pending before the FERC.

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

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

- **Waiver Request: Queue Position Modifications (ConnectGen South Wrentham) (ER22-864)**

On January 20, 2022, ConnectGen South Wrentham LLC ("South Wrentham") petitioned the FERC for a one-time, limited waiver of the requirements outlined in Schedule 22 section 4.4 of the Tariff (Queue Position Modifications). Specifically, the waiver request seeks an extension of the FCA resource clearing window under Schedule 22, Section 4.4, to allow South Wrentham to seek qualification for, and bid into, FCA17 with its existing queue position (QP877).⁵⁵ Absent the requested waiver, South Wrentham will be required to file a new Capacity Network Resource ("CNR")-only Interconnection Service application and be assigned a new queue position for purposes of participating in FCA 17. South Wrentham asserts that it has not had a meaningful opportunity to meet the Schedule 22, section 4.4 requirement to clear in an FCA under its current CNR Interconnection Service request given the "extensive, 420+ day delay in the completion of feasibility and system impact studies. Comments on South Wrentham's waiver request are due on or before February 10, 2022. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CSO Termination: Killingly Energy Center (ER22-355)**

As previously reported, the FERC accepted ISO-NE's November 21, 2021 filing⁵⁶ to involuntarily terminate the CSO held by NTE Connecticut LLC ("NTE CT") as Project Sponsor for Resource No. 38633, the Killingly Energy Center on January 3, 2022.⁵⁷ In accepting the filing, the FERC found that the relevant condition for termination set forth in Tariff section III.13.3.4A was met,⁵⁸ and ISO-NE had fulfilled the requirement to consult with NTE CT before termination.⁵⁹ The CSO termination was accepted effective January 4, 2022. As a result of the CSO termination, ISO-NE will draw down the amount of financial assurance provided by NTE CT with respect to the Killingly CSO and Killingly will be ineligible to participate in FCA16.

Since the last Report, NTE CT not only requested rehearing of the *Killingly CSO Termination Order*, but also filed a motion for stay of that *Order*, in each case hoping to preserve Killingly's ability to participate in FCA16 on February 7, 2022. NTE CT's January 11, 2022 motion for stay was opposed by ISO-NE and NEPGA and was denied by the FERC on January 28, 2022.⁶⁰ In denying NTE CT's motion for stay, the FERC found that NTE was unable to demonstrate that it will suffer irreparable harm absent a stay, and found further that issuing the stay would substantially harm other market participants and was not in the public interest.⁶¹ NTE CT's request of the FERC for rehearing is still pending, with FERC action required on or before February 11, 2022, or NTE CT's request will be

⁵⁵ South Wrentham is developing a 170 MW lithium-ion battery storage project to be located in Wrentham, Massachusetts.

⁵⁶ Comments on this filing were due Dec. 3, 2021, following a request by NTE CT for a one-week extension of time to respond to ISO-NE's filing (which the FERC granted on Dec. 3). NTE CT protested ISO-NE's filing on Dec. 3, 2021. ISO-NE answered NTE CT's protest on Dec. 20, 2021 and NTE CT answered ISO-NE's answer on Dec. 28, 2021. Doc-less interventions were filed by Calpine, Connecticut Light & Power ("CL&P"), Emera Energy Services, NEPGA, NESCOE, National Grid, CT AG, CT DEEP, EPSA, Gemma Power Systems, North Atlantic States Regional Council of Carpenters, Public Citizen, Sierra Club, Yankee Gas, CT OCC, and Mitsubishi Power Americas, Inc.

⁵⁷ *ISO New England Inc.*, 178 FERC ¶ 61,001 (Jan. 3, 2022), *reh'g requested* ("Killingly CSO Termination Order").

⁵⁸ *Id.* at P 25.

⁵⁹ *Id.* at P 27.

⁶⁰ *ISO New England Inc.*, 178 FERC ¶ 61,063 (Jan. 28, 2022) ("Order Denying Stay").

⁶¹ *Id.* at PP 12-19.

deemed denied by operation of law. Particularly in light of the *Order Denying Stay*, it appears unlikely that there will be any further FERC order addressing the Killingly CSO termination prior to FCA16.

In addition, when the FERC didn't act on the motion for stay on the expedited basis requested by NTE CT, NTE CT also petitioned the DC Circuit for a stay of the *Killingly CSO Termination Order*. That request is pending before the Court (see Section XVI below).

If you have any questions concerning these matters, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Waiver Request: FCA16 Qualification (Andro Hydro) (ER22-174)**

On January 7, 2022, the FERC denied the request by Andro Hydro LLC ("Andro Hydro") for a one-time waiver of the FCM qualification rules to allow Andro Hydro's Riley-Jay-Otis-Livermore hydroelectric generating resource to participate in the sixteenth Forward Capacity Auction ("FCA16") at a reduced qualification level (8 MW rather than 12.884 MW).⁶² As previously reported, Andro Hydro stated that ISO-NE informed it of its determination just one day ahead of the Tariff deadline to reduce the capacity amount for which FCA16 qualification sought, insufficient time for it to understand and address ISO-NE's determination.⁶³ Andro Hydro sought the necessary waivers to allow it to lower the FCA16 MWs for its resource (avoiding any concerns regarding required upgrades), and participate in FCA16. In denying the request, the FERC found that Andro Hydro did not demonstrate that the waiver addressed a concrete problem, leaving unaddressed ISO-NE's claim that the waiver would not enable Andro Hydro to qualify to participate in FCA16 because the reduction of capacity would not resolve the fact that the Resource would overload the Surowiec South interface and the fact that a different resource with a higher priority queue position is the Conditional Qualified New Resource for FCA16.⁶⁴ Challenges, if any, to the January 7 order are due on or before February 7, 2022. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

IV. OATT Amendments / TOAs / Coordination Agreements

- **Tariff Changes Associated with *Order 1000 Lessons Learned* (ER22-733)**

On December 28, 2021, ISO-NE and NEPOOL filed proposed Tariff revisions, developed after a "lessons learned" process with stakeholders conducted shortly after the conclusion of the Boston RFP, intended to improve New England's competitive transmission planning process ("Transmission Planning Improvements"). An effective date of February 28, 2022 was requested for the Transmission Planning Improvements. The Participants Committee unanimously supported the Transmission Planning Improvements at its November 3, 2021 meeting (Consent Agenda Items # 3 & 4). Comments on this filing were due on or before January 18, 2022 and were filed by Public Systems⁶⁵ (highlighting that, while the revisions are incremental improvements, more needs to be done to ensure that New England is able to meet the region's ambitious policy mandates) and LS Power Grid Northeast, LLC ("LS Power") (requesting that the FERC either confirm that Section 4.3(a) permits a QTPS to include as part of its comprehensive proposal, elements that require the PTO to build new facilities not related to the interconnection of the proposal or, if not, reject the filing as unjust and unreasonable because "ISO New England failed to address its discriminatory policy of eliminating proposals from a nonincumbent [Qualified Transmission Project Sponsor ("QTPS")] that include requiring the PTO to build new facilities not related to the interconnection

⁶² *Andro Hydro, LLC*, 178 FERC ¶ 61,007 (Jan. 7, 2022)

⁶³ ISO-NE determined that Andro Hydro's resource did not qualify to participate in FCA16 because a portion of the administered transmission system owned by CMP would require upgrades (not expected to be upgraded before the 2025-2026 Capacity Commitment Period ("CCP")) to allow the Resource to supply capacity.

⁶⁴ *Id.* at P 19.

⁶⁵ "Public Systems" are the Connecticut Municipal Electric Energy Coop. ("CMEEC"), Mass. Municipal Wholesale Elec. Co. ("MMWEC"), New Hampshire Elec. Coop., Inc. ("NHEC"), and Vermont Public Power Supply Authority ("VPPSA").

of the proposal”). On February 1, Advanced Energy Economy (“AEE”) submitted an answer in support of LS Power’s January 18 request for clarification or protest (stating that “LS Power points out a key remaining barrier resulting from ISO-NE’s interpretation of Section 4.3(a) of Attachment K” and urging the FERC to confirm that “a QTPS can submit a proposal that requires the incumbent Participating Transmission Owner (“PTO”) to build new facilities or that relies on property in which the PTO has an interest”). Champlain VT, Eversource, National Grid, NESCOE, the MA DPU and RENEW Northeast filed doc-less interventions only. 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).

- **Attachment K Planning Changes (ER22-727)**

On December 27, 2021, ISO-NE and NEPOOL filed proposed Tariff revisions Tariff revisions to incorporate a supplementary transmission planning mechanism for ISO-NE to perform state-requested, scenario-based transmission analysis as a permanent feature of the Attachment K Regional System Planning Process (“RSP”) (the “Attachment K Planning Changes”) The Attachment K Planning Changes provide an additional option for the New England states to further their energy policy goals. The Participants Committee unanimously supported the Attachment K Planning Changes at its December 2, 2021 meeting (Agenda Item # 6A). Comments on this filing were also due on or before January 18, 2022. Comments supporting and urging acceptance of the Attachment K Planning Changes were filed by AEE, NESCOE and Public Systems (with AEE and Public Systems both highlighting their view that additional work will need to be undertaken to address the region’s policy mandates). Champlain VT, Eversource, NESCOE, Natural Resources Defense Council and the Sustainable FERC Project (together, “NRDC”), and RENEW Northeast filed doc-less interventions only. 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).

- **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. IECG filed an answer to the NEPGA and IMM answers.

Deficiency Letter I. 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. Comments on ISO-NE’s deficiency letter responses were due on or before October 12, 2021, and NEPGA filed an amended protest and comments on that day. On October 27, 2021, the PTO AC answered NEPGA’s amended protest and comments.

Deficiency Letter II. On November 12, 2021, the FERC issued a second deficiency letter, directing ISO-NE to provide within 30 days further additional information.⁶⁶ The responses to the Deficiency Letter were due and were filed on December 13, 2021. The responses to the second deficiency letter re-set the 60-day deadline for FERC action on this matter to February 11, 2022. Comments on the responses to Deficiency Letter II were due on

⁶⁶ Specifically, ISO-NE must (i) provide additional support or information regarding the current practices of TOs in calculating Monthly RNL and an illustrative example and a narrative explanation of how transmission costs would be reallocated among Network Customers as a result of the proposal; and (ii) an explanation as to how Filing Parties’ proposal is consistent with transmission planning practices with respect to the treatment of BTM generation.

or before January 3, 2022. On January 3, 2022, NEPGA amended its protest to include its comments on the response to Deficiency Letter II. On January 18, 2022, the PTO AC answered NEPGA's protest and comments as amended on January 3.

This matter is pending before the FERC, with FERC action required on or before February 11, 2022. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

On July 27, 2021, the PTO AC, ISO-NE, Schedule 20A Service Providers, GMP, and VTransco filed revisions to ISO-NE Tariff Schedule 21-Common and Schedule 20A-Common in accordance with *Order 676-I*. The revisions include certain updated business practice standards (Version 003.2) adopted by the Wholesale Electric Quadrant ("WEQ") of the North American Energy Standards Board ("NAESB") and incorporated by reference in the FERC's regulations through *Order 676-I*. Comments on this filing were due on or before August 19, 2021; none were filed. National Grid filed a doc-less intervention on August 13, 2021.

Amended Revisions (ER21-2529-001). On October 22, 2021, the PTO AC submitted amendments to the July 27 compliance filing to include in Schedules 20A-Common and 21-Common revised and new WEQ standards identified in the FERC's March 3, 2020 errata notice to *Order 676-I* ("*Order 676-I Errata Notice*") but not included in the July 27, 2021 filing. Any comments on the errata filing were due on or before November 12, 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).

- **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.

Amended Revisions (ER21-2509-001). On October 27, 2021, ISO-NE and CSC submitted amendments to the July 26 compliance filing to include in Schedule 18 revised and new WEQ standards identified in the FERC's *Order 676-I Errata Notice* but not included in the July 26, 2021 filing. Any comments on the errata filing were due on or before November 17, 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).

- **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.

Amended Revisions (ER21-941-001). On October 22, 2021, ISO-NE and NEPOOL submitted amendments to the January 26 compliance filing to include in Schedule 24 revised and new WEQ standards identified in the *Order 676-I Errata Notice* but not included in the July 26, 2021 filing. Any comments on the errata filing were due on or before November 12, 2021; none were filed.

This matter remains pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

V. Financial Assurance/Billing Policy Amendments

- **Non-Commercial Capacity Trading FA Changes (ER22-863)**

On January 21, 2022, ISO-NE and NEPOOL jointly filed changes to the ISO-NE Financial Assurance Policy ("FAP") to make certain adjustments to the Non-Commercial Capacity ("NCC") Trading Financial Assurance ("FA") calculation ("NCC Trading FA Changes"). Specifically, the NCC Trading FA Changes (i) include the cash flow from any Annual Reconfiguration Transactions ("ARTs") associated with NCC in the NCC Trading FA calculation; and (ii) (2) further refine the Capacity Supply Obligation ("CSO") Bilateral price overwrite provisions in FA calculations. The NCC Trading FA Changes were unanimously approved at the May 6, 2021 Participants Committee meeting. ISO-NE requested a March 22, 2022 effective date for the NCC Trading FA Changes. Comments on the NCC Trading FA Changes are due on or before February 11, 2022. Thus far, doc-less interventions have been filed by Calpine and NRG. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

VI. Schedule 20/21/22/23 Changes

- **Schedule 21-NEP: 3rd Revised RI LSAs (ER22-927)**

On January 31, 2022, ISO-NE and National Grid filed third revised Local Service Agreement ("LSAs"), one among New England Power, ISO-NE, and The Narragansett Electric Company ("Narragansett"), the other among New England Power, ISO-NE, and Block Island Utility District d/b/a Block Island Power Company ("BIPCO"). The filing revises a surcharge in the LSAs for the recovery of costs for the Block Island transmission system from a carrying charge approach to a formula that uses actual costs in the year the surcharge is calculated, with a true-up mechanism. The revisions are expected to result in lower rates to Rhode Island (RI) customers. A January 1, 2022 effective was requested. Comments on this filing are due on or before February 22, 2022. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Schedule 23: NSTAR/Berkshire Wind/ISO-NE SGIA (ER22-720)**

On December 23, 2021, ISO-NE and NSTAR filed a non-conforming Small Generation Interconnection Agreement ("SGIA") with Berkshire Wind Power Cooperative Corporation ("Berkshire Wind") to cover the continued interconnection of Berkshire Wind's 19.6 MW Small Generating Facility at Brodie Mountain in Lanesborough and Hancock, MA. The SGIA, which replaces a 2014 SGIA, was filed as a result of a requested increase in Capacity Network Resource Interconnection Service ("CNRIS"), as well to update facility descriptions and certain milestones in Appendix B associated with two wind turbine additions, the merger into NSTAR of WMECO and update contact information, and incorporate other ministerial clean-up changes. The CNRIS increase required the filing of a new three-party SGIA, and the 2021 SGIA carries forward certain non-conforming provisions from the 2014 SGIA related to indemnification provisions. A notice of cancellation of the 2014 SGIA was also submitted. A November 23, 2021 effective date for the 2021 SGIA and cancellation of the 2014 SGIA was requested. Comments on this filing were due on or before January 13, 2022; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Schedule 21-NEP: 2nd Revised Narragansett LSA (ER22-707)**

On December 22, 2021, ISO-NE and National Grid filed a Local Service Agreement ("LSA") among New England Power, The Narragansett Electric Company ("Narragansett") and ISO-NE to reflect the construction of the new Iron Mine Hill Road Substation and related transmission modifications, and the assessment to Narragansett of a Direct Assignment Facilities Charge ("DAF Charge") associated with the facilities. The Iron

Mine Hill Road Substation, a new 115 kV/34.5 kV substation (including modifications necessary to loop Narragansett's existing 115 kV H17 transmission line through the new substation) will connect to a new 34.5 kV distribution feeder, which will serve as the point of interconnection for several distributed generation projects being developed by Green Development, LLC ("Green Development"), located in North Smithfield, Rhode Island. A January 1, 2022 effective was requested. Following a request by Green Development for an extra week to respond to this filing, subsequently granted by the FERC on January 3, 2022, comments on this filing were due on or before January 19, 2022 and on that day Green Development filed a protest. Doc-less interventions only were received from Lodestar Energy, the Coalition for Community Solar Access and the Solar Energy Industries Association ("SEIA"). This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Schedule 21-VP: 2020 Annual Update Settlement Agreement (ER15-1434-005)**

On November 19, 2021, Versant Power submitted a joint offer of settlement between itself and the MPUC to resolve all issues raised by the MPUC in response to Versant's 2020 annual charges update filed, as previously reported, on June 15, 2020 (the "Versant 2020 Annual Update Settlement Agreement"). Under Part V of Attachment P-EM to Schedule 21-VP, "Interested Parties shall have the opportunity to conduct discovery seeking any information relevant to implementation of the [Attachment P-EM] Rate Formula. . . ." and follow a dispute resolution procedure set forth there. In accordance with those provisions, the MPUC identified certain disputes with the 2020 Annual Update, all of which are resolved by the Versant 2020 Annual Update Settlement Agreement. Comments on the Versant 2020 Annual Update Settlement Agreement were due on or before December 9, 2021; reply comments, December 19, 2021; none were filed. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **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*,⁶⁷ and certified by Settlement Judge Dring⁶⁸ to the Commission.⁶⁹ As previously reported, under this 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).

⁶⁷ *Emera Maine and BHE Holdings*, 155 FERC ¶ 61,230 (June 2, 2016) ("MPS Merger-Related Costs Order"). In the *MPS Merger-Related Costs Order*, the FERC accepted, but established hearing and settlement judge procedures for, filings by Emera Maine seeking authorization to recover certain merger-related costs viewed by the FERC's Office of Enforcement's Division of Audits and Accounting ("DAA") to be subject to the conditions of the orders authorizing Emera Maine's acquisition of, and ultimate merger with, Maine Public Service ("Merger Conditions"). The Merger Conditions imposed a hold harmless requirement, and required a compliance filing demonstrating fulfillment of that requirement, should Emera Maine seek to recover transaction-related costs through any transmission rate. Following an audit of Emera Maine, DAA found that Emera Maine "inappropriately included the costs of four merger-related capital initiatives in its formula rate recovery mechanisms" and "did not properly record certain merger-related expenses incurred to consummate the merger transaction to appropriate non-operating expense accounts as required by [FERC] regulations [and] inappropriately included costs of merger-related activities through its formula rate recovery mechanisms" without first making a compliance filing as required by the merger orders. The *MPS Merger-Related Costs Order* set resolution of the issues of material fact for hearing and settlement judge procedures, consolidating the separate compliance filing dockets.

⁶⁸ ALJ John Dring was the settlement judge for these proceedings. There were five settlement conferences -- three in 2016 and two in 2017. With the Settlement pending before the FERC, settlement judge procedures, for now, have not been terminated.

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

VII. NEPOOL Agreement/Participants Agreement Amendments*No Activity to Report***VIII. Regional Reports**

- **Opinion 531-A Local Refund Report: FG&E (EL11-66)**

Fitchburg Gas & Electric's ("FG&E") June 29, 2015 refund report for its customers taking local service during *Opinion 531-A*'s refund period remains pending. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

The TOs' November 2, 2015 refund report documenting resettlements of regional transmission charges by ISO-NE in compliance with *Opinions No. 531-A*⁷⁰ and *531-B*⁷¹ also remains pending. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

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

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

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

- **Transmission Projects Annual Informational Filing (ER13-193)**

On January 31, 2022, ISO-NE filed, as required under Section 4.1(j)(iii) of the OATT, its annual informational filing of projects on the Regional System Plan ("RSP") project list that had a year of need three years or less from the completion of the Needs Assessment. The list of prior year designations is maintained on the ISO-NE website at <https://www.iso-ne.com/static-assets/documents/2022/01/2021-prior-year-projects-section-4-j-iii.pdf>. This filing will not be noticed for public comment by the FERC.

- **LFTR Implementation: 53rd Quarterly Status Report (ER07-476; RM06-08)**

ISO-NE filed the 53rd of its quarterly status reports regarding LFTR implementation on January 14, 2022. ISO-NE reported that it implemented monthly reconfiguration auctions (accepted in ER12-2122) beginning with the month of October 2019. ISO-NE further reported that, while it will continue to evaluate its as-filed LFTR design and financial assurance issues, including an ongoing evaluation of the FTR market and risk associated with FTRs and LFTRs, it is currently focused on higher priority market-design initiatives. ISO-NE concluded its report by describing the 18-month implementation that would be required once the LFTR financial assurance issues are resolved. These status reports are not noticed for public comment.

- **Order 2222 Stakeholder Process Status Update; Tech Conf Request (RM18-9)**

Pursuant to the FERC's order granting an extension of time for the filing of the region's *Order 2222* compliance filing,⁷² ISO-NE filed on December 20, 2021 an update on the status of the stakeholder process and

⁷⁰ *Martha Coakley, Mass. Att'y Gen.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) ("*Opinion 531-A*").

⁷¹ *Martha Coakley, Mass. Att'y Gen.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) ("*Opinion 531-B*").

⁷² *Participation of Distributed Energy Resource Aggregations in Mkts. Operated by RTOs and ISOs*, 175 FERC ¶ 61,156 at P 5 (May 24, 2021) ("*May 24 Order*").

its schedule for making the required compliance filing (due February 2, 2022). The Participants Committee will consider the proposed compliance filing changes at its January 6, 2022 meeting (Agenda Item #5). This filing is for informational purposes only and will not be noticed for public comment or subject to a FERC order.

Voltus Petition for a FERC Technical Conference on Order 2222. On December 22, 2022, Voltus, Inc. (“Voltus”) requested that the FERC convene a technical conference regarding *Order 2222*-related issues sometime in the months of February or March, 2022. Specifically, Voltus requested the technical conference to allow for a collective discussion of key issues arising from the ISO/RTO *Order 2222* compliance proposals, including certain regional variability, roles of industry participants, narrowing perceived knowledge gaps, and subsequent FERC guidance, all of which Voltus asserts supports the request for a technical conference. On January 7, 2022, the FERC issued a notice of Voltus’ request, inviting comments on Voltus’ request on or before February 7, 2022. Thus far, one set of comments supporting Voltus’ request (from Fermata LLC) has been received.

- **IMM Quarterly Markets Reports – Fall 2021 (ZZ22-4)**

On November 15, 2021, the IMM filed with the FERC its Fall 2021 report of “market data regularly collected by [the IMM] in the course of carrying out its functions under ... Appendix A and analysis of such market data,” as required pursuant to Section 12.2.2 of Appendix A to Market Rule 1. These filings are not noticed for public comment by the FERC. The Fall 2021 Report will be discussed with the Markets Committee at the February 8, 2022 Markets Committee meeting.

IX. Membership Filings

- **February 2022 Membership Filing (ER22-945)**

On January 31, 2022, NEPOOL requested that the FERC accept (i) the following Applicant’s membership in NEPOOL: Sam Mintz (End User Sector); (ii) the termination of the Participant status of the following 16 Participants: Aminpour, Farhad (End User Sector); Brooks, Richard (End User Sector); King Forest Industries, Inc. (End User Sector); Kuser, Michael (End User Sector); PNE Energy Supply LLC (Supplier Sector); Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, and Montville Power LLC [each Related Persons to Great River Hydro/Generation Bridge Companies (AR Sector; RG Sub-Sector)]; and Ambit Northeast LLC, Connecticut Gas & Electric, Inc., Energy Rewards, LLC, Everyday Energy, LLC, Massachusetts Gas and Electric, Inc., Public Power, LLC, and Viridian Energy, LLC [each Related Persons to Dynegy Marketing and Trade (Supplier Sector)]; and (iii) the name change of Constellation Energy Generation, LLC (f/k/a Exelon Generation Company, LLC) (Supplier Sector). Comments on this filing are due on or before February 21, 2022.

- **January 2022 Membership Filing (ER22-747)**

On December 30, 2021, NEPOOL requested that the FERC accept (i) the memberships of EnPowered USA Inc. (Supplier Sector); and Sheldon Energy LLC [Related Person to Invenergy Energy Management (Supplier Sector)]; and (ii) the termination of the Participant status of ENGIE Power & Gas [Related Person to ENGIE Energy Marketing NA (AR Sector, RG Sub-Sector)]. Comments on this filing were due on or before January 20, 2022; none were filed. This matter is pending before the FERC.

- **December 2021 Membership Filing (ER22-502)**

On January 26, 2021, the FERC accepted: (i) the memberships of BP Retail Energy LLC [Related Person to BP Energy Co. (Supplier Sector)]; and PSEG Power Connecticut LLC [Related Person to PSEG Energy Resources & Trade and PSEG New Haven (Supplier Sector)]; (ii) the termination of the Participant status of CHI Power Marketing, Inc. (Supplier Sector); J. F. Gray & Associates, LLC (End User Sector); Liberty Power Delaware LLC (Supplier Sector); South Jersey Energy Company and South Jersey Energy ISO3 (together “South Jersey”) (Supplier

Sector); and (iii) the name change of AES Renewable Holdings, LLC (f/k/a AES Distributed Energy, Inc.).⁷³ Unless the January 26 order is challenged, this proceeding will be concluded.

- **Suspension Notice (not docketed)**

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

<i>Date of Suspension/ FERC Notice</i>	<i>Participant Name</i>	<i>Default Type</i>	<i>Date Reinstated</i>
Jan 11/14	NTE Connecticut, LLC	Financial Assurance	not yet
Jan 21/25	Sunwave USA Holdings Inc.	Payment Default	N/A

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

X. Misc. - ERO Rules, Filings; Reliability Standards⁷⁴

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).

- **NERC Annual Report on FFT & Compliance Exception Programs (RC11-6-014)**

On November 17, 2021, NERC filed its annual report on Find, Fix, and Track ("FFT") and Compliance Exception programs, in accordance with prior FERC Orders.⁷⁵ In the report, NERC stated that the ERO Enterprise appropriately handles noncompliance posing a minimal or moderate risk through these programs and that the results of the annual report show consistent improvement in program implementation. The report also demonstrates, NERC suggests, significant alignment across the ERO Enterprise, particularly in the processing and understanding of the risk associated with individual noncompliance. Comments on the annual report are due on or before January 20, 2022.

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

As previously reported, NERC is required to file on an informational basis quarterly status updates regarding the development of new or modified Reliability Standards pertaining to virtualization and cloud computing services. On December 15, 2021, NERC submitted an informational filing regarding one active CIP standard development project (Project 2016-02 – Modifications to CIP Standards ("Project 2016-02")).⁷⁶ Project 2016-02 focuses on modifications to the CIP Reliability Standards to incorporate applicable protections for virtualized environments. A revised schedule for Project 2016-02 calls for final balloting of revised standards in March 2022, NERC Board of Trustees Adoption in May 2022 and filing of the revised standards with the FERC in June 2022.

⁷³ *New England Power Pool Participants Comm.*, Docket No. ER22-502 (Jan. 26, 2022).

⁷⁴ Reporting on the following proceedings has been suspended since the last Report and will be continued if and when there is new activity to report: NOI: Enhancements to CIP Standards (RM20-12).

⁷⁵ See *N. Am. Elec. Rel. Corp.*, 138 FERC 61,193 (2012) ("March 2012 Order"); *N. Am. Elec. Rel. Corp.*, 143 FERC 61,253 (2013) ("June 2013 Order"); *N. Am. Elec. Rel. Corp.*, 148 FERC 61,214 (2014) ("September 2014 Order"); and *N. Am. Elec. Rel. Corp.*, Docket No. RC11-6-004 (Nov. 13, 2015) (unpublished letter order) ("November 2015 Order").

⁷⁶ The other project which had been addressed in prior updates, Project 2019-02, has concluded, and the FERC approved in RD21-6 the Reliability Standards revised as part of that project (CIP-004-7 and CIP-011-3) on Dec. 7, 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”):

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

On February 20, 2020, the FERC issued a NOI seeking comments on (i) the potential benefits and risks associated with the use of virtualization and cloud computing services in association with bulk electric system (“BES”) operations; and (ii) whether the CIP Reliability Standards impede the voluntary adoption of virtualization or cloud computing services.⁷⁷ On March 25, 2020, Joint Associations⁷⁸ requested an extension of time to submit comments and reply comments. On April 2, the FERC granted Joint Associations’ request and extended the deadline for initial comments on the NOI to July 1, 2020; the deadline for reply comments, July 31, 2020. Comments were filed by NERC, the IRC, Accenture, Amazon Web Services (“Amazon”), Bonneville, the Bureau of Reclamation, Barry Jones, Georgia System Operations, GridBright, Idaho Power, Microsoft, MISO, MISO Transmission Owners, Siemens Energy Management, Tri-State Generation and Transmission Association, VMware, Inc., AEE, American Association for Laboratory Accreditation (“A2LA”), APPA, Canadian Electricity Assoc., EEI, NRECA, and Waterfall Security Solutions. Reply comments were due on or before July 31, 2020, and were filed by AEE, Amazon and Microsoft.

Dec 2021 Informational Filing. In part in response to the comments filed, the FERC, in a December 17, 2020 order,⁷⁹ directed NERC to begin a formal process to assess, and to make an informational filing in a little over one year (January 1, 2022) that addresses, the feasibility of voluntarily conducting BES operations in the cloud in a secure manner, as well as the status and schedule for any plans to modify the standards. NERC submitted that informational filing on December 17, 2021. In that filing, NERC addressed the status of NERC’s formal process to assess the feasibility of voluntarily conducting BES operations in the cloud in a secure manner, evaluated potential modifications to the CIP Standards to facilitate expanded use of the cloud, and considered topic areas raised in comments to the NOI. NERC requested that the FERC accept the informational filing as consistent with the *Order Directing Info. Filing*. NERC committed to continue to consider ways to support industry in securely adopting evolving technologies as necessary, including conducting BES reliability operating services in the cloud. NERC

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

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

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

reported that there is no Standard Authorization Request (“SAR”) to initiate standards development or a field test, nor had it identified a reliability gap that would necessitate standards development to facilitate BES reliability operating services in the cloud.

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

On September 17, 2020, the FERC approved the retirement of the 18 Reliability Standard requirements through the retirement of four Reliability Standards and the modification of five Reliability Standards,⁸⁰ concluding that the 18 requirements “(1) provide little or no reliability benefit; (2) are administrative in nature or relate expressly to commercial or business practices; or (3) are redundant with other Reliability Standards.”⁸¹ The FERC also approved the associated violation risk factors, violation severity levels, implementation plan, and effective dates proposed by NERC. Because it was not persuaded by NERC’s justification for the retirement of FAC-008-4 requirement R8, the FERC remanded the retirement of requirements R7 and R8 to NERC for further consideration.⁸²

The FERC left for another day its final action on the remaining 56 requirements for which the FERC proposed to approve retirement in the *Retirements NOPR*⁸³ (the “MOD A Reliability Standards”). The FERC intends to coordinate the effective dates for the retirement of the MOD A Reliability Standards with successor North American Energy Standards Board (“NAESB”) business practice standards (v. 003.3) that include Modeling business practices, which were accepted in *Order 676-J*.⁸⁴

- **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 were due on or before October 20, 2021. Comments were filed by Public Utility District No. 1 of Chelan County and jointly by APPA/LPPC/TAPS. This matter remains pending before the FERC.

⁸⁰ *Elec. Rel. Org. Proposal to Retire Reqs. in Rel. Standards Under the NERC Standards Efficiency Review*, Order No. 873, 172 FERC ¶ 61,225 (Sep. 17, 2020) (“*Order 873*”). The four Reliability Standards being eliminated in their entirety are FAC-013-2 (Assessment of Transfer Capability for the Near-term Transmission Planning Horizon), INT-004-3.1 (Dynamic Transfers), INT-010-2.1 (Interchange Initiation and Modification for Reliability), MOD-020-0 (Providing Interruptible Demands and Direct Control Load Management Data to System Operations and Reliability Coordinators). The five modified Reliability Standards are INT-006-5 (Evaluation of Interchange Transactions), INT-009-3 (Implementation of Interchange) and PRC-004-6 (Protection System Misoperation Identification and Correction), IRO-002-7 (Reliability Coordination—Monitoring and Analysis), TOP-001-5 (Transmission Operations).

⁸¹ *Order 873* at P 2.

⁸² *Order 873* at P 5. Pursuant to FPA section 215(d)(4), if the FERC disapproves a modification to a Reliability Standard in whole or in part, it must remand the entire Reliability Standard to NERC for further consideration. Accordingly, although it was satisfied here with the justification for the retirement of R7, the FERC was required to remand both R7 and R8 so that its concerns with the retirement of Requirement R8 could be addressed.

⁸³ *Electric Reliability Organization Proposal to Retire Requirements in Rel. Standards Under the NERC Standards Efficiency Review*, 170 FERC ¶ 61,032 (Jan. 23, 2020) (“*Retirements NOPR*”) (proposing to approve the retirement of 74 of 77 Reliability Standard requirements requested to be retired by NERC in these two dockets in connection with the first phase of work under NERC’s Standards Efficiency Review, an initiative begun in 2017 that reviewed the body of NERC Reliability Standards to identify those Reliability Standards and requirements that were administrative in nature, duplicative to other standards, or provided no benefit to reliability). As previously reported, NERC withdrew its proposed changes to VAR-001-6 on May 14, 2020, reducing to 76 the number of requirements proposed to be retired.

⁸⁴ *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-J, 175 FERC ¶ 61,139 (May 20, 2021) (“*Order 676-J*”).

- **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 remains 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. On December 2, 2021, the FERC accepted the filing,⁸⁵ provided guidance to NERC on its future handling of certain financial decisions,⁸⁶ and directed NERC to make an informational filing.⁸⁷ NERC submitted that informational filing on December 23, 2021, and was not noticed for public comment. The December 2 order was not challenged and is final and unappealable.

- **FERC/NERC Joint Report on Review of Protection System Commissioning Programs (not docketed)**

On November 4, 2021, FERC staff, together with staff from NERC and its regional entities issued a report summarizing their review of, and outlining recommendations for, Protection System Commissioning (“PSC”) Programs. The review was initiated in 2019 after Misoperation Information Data Analysis System (“MIDAS”) data indicated that between 18 and 36 percent of misoperations in MIDAS could be attributed to issues that should have been detected through PSC. The goal of the review was to reduce misoperations attributable to PSC by identifying opportunities for improvement and developing recommendations and best practices for registered transmission and generator owners’ PSC programs. View the Report [here](#).

- **FERC/NERC Joint Report on the February 2021 Cold Weather Outages in Texas and the South Central United States (not docketed)**

On November 16, 2021, FERC staff, together with staff from NERC and its regional entities issued a report describing the severe cold weather event occurring between February 8 and 20, 2021 and how it impacted the reliability of the bulk electric system in Texas and the South Central United States. To prevent recurrence of just such an event, the report identifies 28 key recommendations, together with proposed timeframes for implementation, focused on revisions to the Reliability Standards, actions to prevent electric generating unit and natural gas infrastructure freezing issues, grid operations and gas-electric coordination measures for cold weather preparedness. View the Report [here](#).

⁸⁵ *N. Amer. Elec. Rel. Corp.*, 177 FERC ¶ 61,163 (Dec. 2, 2021).

⁸⁶ *Id.* at P 14. The FERC directed NERC to submit for FERC approval a “paragraph 7(b)(ii) filing” when there is to be any redirections of previously budgeted funds and/or expenditure of operating reserves as required by its Working Capital and Operating Reserve Policy and the 2013 Settlement Agreement that requires NERC to file for FERC review and approval proposals to expend \$500,000 or more from its operating reserves for unforeseen contingencies. See *N. Amer. Elec. Rel. Corp.*, 142 FERC ¶ 61,042, at P 7 (2013) (“2013 Settlement Agreement”).

⁸⁷ *Id.* at P 13. NERC was directed to explain expenditures and amounts from the Cyber Risk Information Sharing Program (CRISP) Special Projects Reserve to fund the Operational Technology (OT) pilot program, and to explain if and how NERC plans on using \$243,549 remaining in the reserve at the end of 2021 in 2022.

XI. Misc. - of Regional Interest

- **203 Application: Howard Wind / Greenbacker Wind (EC22-13)**

On January 11, 2022, the FERC authorized Greenbacker Wind, LLC's acquisition of 100% of the equity interests in Howard Wind LLC from Everpower Wind Holdings, Inc. ("Everpower").⁸⁸ Pursuant to the December 6 order, Greenback Wind must file a notice within 10 days of consummation of the transaction, which as of the date of this Report has not yet occurred. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **203 Application: Castleton Commodities/Atlas Power (GSP companies) (EC22-7)**

On December 6, 2021, the FERC authorized the acquisition by ACR II Granite Shore Power Holdings LLC, an Atlas Capital Resources affiliate (together, "Atlas"), and 50% of owner of Granite Shore Power Holdings LLC ("GSP Holdings"), of the remaining 50% of GSP Holdings from CCI PAH II, an indirect subsidiary of Castleton Commodities International LLC ("CCI").⁸⁹ On January 7, 2022, Atlas and GSP Holdings filed a notice that the transaction was consummated. Accordingly, Atlas now wholly owns GSP Holdings, the indirect owner of NEPOOL members GSP Lost Nation LLC, GSP Merrimack LLC, GSP Newington LLC, GSP Schiller LLC, and GSP White Lake LLC, and those Participants will collectively participate as a voting members in the Generation Sector. This concludes reporting on this matter. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **203 Application: Hull Street/CMEEC (EC22-3)**

On January 6, 2022, Hull Street Energy provided notice that its affiliate, MPH AL Pierce, LLC ("MPH"), acquired, as previously authorized,⁹⁰ 100 % of the interests in CMEEC's 84 MW Wallingford electric generating facility. The transaction was consummated on December 31, 2021. This concludes reporting on this matter. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

On September 2, 2021, PSEG Project Companies⁹¹ 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 were due on or before November 2, 2021; none were filed.

Deficiency Letter. On December 6, 2021, the FERC issued a deficiency letter directing the applicants to provide within 30 days additional information and clarifications. Responses to the Deficiency Letter were due and were filed on December 17, 2021. Comments on the deficiency letter responses were due on or before January 7, 2022; none were filed. On January 31, 2022, Applicants renewed their request for expedited consideration and requested that the FERC act on the pending applications as soon as possible. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

⁸⁸ *Howard Wind LLC*, 178 FERC ¶ 62,024 (Jan. 11, 2022)

⁸⁹ *ACR II Granite Shore Power Holdings LLC*, 177 FERC ¶ 62,129 (Dec. 6, 2021).

⁹⁰ *MPH AL Pierce, LLC*, 177 FERC ¶ 62,115 (Dec. 2, 2021).

⁹¹ 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").

- **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”).⁹² This transaction is now expected to close in the first quarter of 2022. Pursuant to the September 23 order, notice must be filed within 10 days of consummation of the transaction, which as of the date of this Report has not yet occurred. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

On February 1, 2022, as previously authorized,⁹³ the ownership of the public utility subsidiaries (“ExGen Utility Subsidiaries”) of Exelon Generation Company, LLC (“ExGen”) intermediate holding company owner, HoldCo, were distributed to the shareholders of Applicants’ current ultimate upstream owner, Exelon Corporation (the “Transaction”). Accordingly, Exelon Corporation and its remaining subsidiaries retain no interest in, or affiliation with, Constellation Energy Generation or the Related Persons of Constellation that are NEPOOL Participants. As noted above (see ER22-945, Section IX above), Exelon Generation Company also changed its name to Constellation Energy Generation on February 1, 2022. This concludes reporting on this matter. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **D&E Agreement Cancellation: CL&P/UCONN (ER22-912)**

On January 28, 2022, CL&P filed a notice of cancellation of an Engineering, Design, and Procurement Agreement (“D&E Agreement”) with the University of Connecticut (“UCONN”). The D&E Agreement set forth the terms and conditions under which CL&P would undertake certain preliminary engineering and design activities for a proposed increase in capacity of its transmission interconnection service. The term of the Agreement ended on September 21, 2021. CL&P determined that the upgrades contemplated by the Agreement should be considered a capital project as a result of organic system load growth for customers Eversource is obligated to serve. CL&P fully refunded UConn for all charges under the Agreement. A January 28, 2022 effective date was requested. Comments on this filing are due on or before February 18, 2022. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **D&E Agreement Cancellation: NSTAR/Ocean State (ER22-911)**

Also on January 28, 2022, NSTAR filed a notice of cancellation of a D&E Agreement with Ocean State Power, LLC (“Ocean State”). The D&E Agreement set forth the terms and conditions under which NSTAR would undertake certain preliminary engineering and design activities consistent with Ocean State’s April 26, 2018 interconnection request (queue position #758) (for a proposed increase in capacity of its Large Generating Facility). The term of the Agreement ended on October 23, 2021. NSTAR completed all refunds and billing under the Agreement on January 4, 2022, and no further work will be done under the Agreement. A January 28, 2022 effective date was requested. Comments on this filing are due on or before February 18, 2022. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Cost Reimbursement Agreement: Narragansett/BIPCO (ER22-817)**

On January 13, 2022, Narragansett filed a Cost Reimbursement Agreement with Block Island Utility District d/b/a Block Island Power Company (“BIPCO”). Under the agreement, Narragansett will perform certain work to modify its substation equipment in order to facilitate voltage modifications that Block Island plans to make to its distribution system. A November 29, 2021 effective date was requested. Comments on this filing are due on or before February 3, 2022. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

⁹² PPL Corp. and The Narragansett Elec. Co., 176 FERC ¶ 61,175 (Sep. 23, 2021).

⁹³ Exelon Generation Co., LLC, 176 FERC ¶ 61,121 (Aug. 24, 2021).

- **Related Facilities Agreement: CL&P / Revolution Wind (ER22-697)**

As previously reported, on December 21, 2021, The Connecticut Light & Power Company (“CL&P”) filed a Related Facilities Agreement (“RFA”) between CL&P and Revolution Wind LLC. The RFA provides the terms and conditions governing CL&P’s activities, and Revolution Wind’s cost responsibility for, completing the Related Facilities required to interconnect Revolution Wind’s facility to National Grid’s 115 kV Davisville Substation in Washington County, Rhode Island. A December 21, 2021 effective date was requested. Comments on this filing were due on or before January 11, 2022; none were filed. New England Power and Narragansett and Revolution Wind submitted doc-less interventions. This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Cost Reimbursement Agreement Cancellation: Narragansett / CV South Street Landing (ER22-612)**

On December 10, 2021, Narragansett filed a notice of cancellation of its Cost Reimbursement Agreement with CV South Street Landing, LLC (“South Street”). Performance under the Agreement, which related to work by National Grid to underground a 115 kV transmission line,⁹⁴ has been completed and all amounts due and owing have been paid in full. A February 9, 2022 effective date was requested. Comments on this filing were due on or before January 3, 2022; none were filed. This matter remains pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **D&E Agreement Cancellation: CL&P/ NRG Middletown (ER22-599)**

On December 9, 2021, NSTAR filed a notice of cancellation of the Preliminary Engineering & Design Agreement (“D&E Agreement”) with NRG Middletown Repowering LLC (“NRG Middletown”). The D&E Agreement set forth the terms and conditions under which CL&P was to undertake certain preliminary design and engineering activities on the Interconnection Facilities for NRG Middletown’s proposed Large Generation Facility prior to the execution of an LGIA. On December 1, 2021, NRG Middletown provided written notice to CL&P that it was terminating the Agreement effective December 31, 2021. CL&P has finalized all billing and invoices and no further work is being done under the Agreement. A December 31, 2021 effective date was requested. Comments on this filing were due on or before December 30, 2021; none were filed. This matter remains pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

As previously reported, the FERC rejected the notice of termination filed by CL&P of a 2002 Interconnection Agreement (“IA”) governing interconnection service to what CL&P characterized as a since-decommissioned 26 MW waste-tire fueled generator located in Sterling, Connecticut (the “Facility”).⁹⁵ In rejecting the notice, the FERC found that CL&P had “not provided adequate justification demonstrating that the Facility has been decommissioned in order to terminate the Interconnection Agreement.”⁹⁶ However, the FERC noted that its determination did not indicate that Sterling retains any interconnection rights under the IA, stating that there had been no interconnection rights associated with the facility since ISO-NE deemed the Facility retired in 2017.

Requests for Rehearing and/or Clarification. On January 10, 2022, the FERC issued a “Notice of Denial of Rehearings by Operation of Law and Providing for Further Consideration”.⁹⁷ The Notice confirmed that the 60-day period during which a petition for review of the *Sterling IA Order* can be filed with an appropriate federal court was triggered when the FERC did not act on CL&P’s and Brookfield’s requests for

⁹⁴ See Filing of Cost Reimbursement Agreement with CV South Street Landing LLC, *The Narragansett Elec. Co.*, Docket No. ER16-986 (filed Feb. 22, 2016); accepted in *The Narragansett Elec. Co.*, Docket No. ER16-986 (Mar. 21, 2016).

⁹⁵ *The Connecticut Light and Power Co.*, 177 FERC ¶ 61,083 (Nov. 8, 2021) (“*Sterling IA Order*”).

⁹⁶ *Id.* at P 23.

⁹⁷ *The Conn. Light & Power Co.*, 178 FERC ¶ 62,015 (Jan. 10, 2022).

rehearing of the *Sterling IA Order*.⁹⁸ 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.” If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

On July 23, 2021, Versant Power filed proposed revisions to Section 4 of the Versant Power Open Access Transmission Tariff for Maine Public District (the “MPD OATT”) to incorporate by reference certain of the revisions required by *Order 676-I* and requested waiver of certain of those standards that are not applicable to MPD and/or the MPD OATT. Comments on this filing were due on or before August 13, 2021; none were filed. Subsequently, on November 1, 2021, Versant submitted amendments to its July 23 compliance filing to include revised and new WEQ standards identified in the *Order 676-I* Errata Notice but not included in the July 23, 2021 filing. Comments on the amendment filing were due on or before December 1, 2021; none were filed. This matter is again pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

In accordance with *Order 864*⁹⁹ and *Order 864-A*,¹⁰⁰ and extensions of time granted, New England’s transmission-owning public utilities submitted their *Order 864* compliance filings, with specific dockets and filing dates identified in the following table. The FERC has addressed a number of the compliance filings, with some yet to be acted on, as noted below:

⁹⁸ CL&P and Brookfield each requested rehearing and/or clarification of the *Sterling IA Order* on Dec. 8, 2021.

⁹⁹ *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 Accumulated Deferred Income Taxes (“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 (“ADIT Worksheet”). The **ADIT Worksheet** must contain the following five specific categories of information: (i) how any ADIT accounts were re-measured and the excess or deficient ADIT contained therein (“**Category 1 Information**”); (ii) is the accounting for any excess or deficient amounts in Accounts 254 (Other Regulatory Liabilities) and 182.3 (Other Regulatory Assets) (“**Category 2 Information**”); (iii) whether the excess or deficient ADIT is protected (and thus subject to the Tax Cuts and Jobs Act’s normalization requirements) or unprotected (“**Category 3 Information**”); (iv) the accounts to which the excess or deficient ADIT are amortized (“**Category 4 Information**”); and (v) the amortization period of the excess or deficient ADIT being returned or recovered through the rates (“**Category 5 Information**”). In addition, the FERC stated that it expects public utilities to identify each specific source of the excess and deficient ADIT, classify the excess or deficient ADIT as protected or unprotected, and list the proposed amortization period associated with each classification or source.

¹⁰⁰ *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*”).

Docket(s)	Transmission Provider	Date Filed	Date Accepted
ER20-2572 ER21-1130	New England TOs (RNS)	Jul 30, 2020	Conditionally, Dec 22, 2021
ER20-2429	Central Maine Power ("CMP") (LNS)	Jul 15, 2020 Jul 6, 2021 Nov 8, 2021	Conditionally, Dec 22, 2021
ER21-1702	CMP (Schedule 1 Appendix A Implem. Rule)	Dec 20, 2021 Apr 16, 2021	Conditionally, Dec 30, 2021
ER21-1654	CL&P (LNS)	Dec 8, 2021 Apr 9, 2021	Dec 30, 2021
ER20-2610	CL&P (Phase II BECO AC Support Agreement; Millstone TSA)	Aug 26, 2021 Aug 5, 2020	Jan 26, 2021
ER21-1295	Eversource (CL&P, PSNH, NSTAR) (LNS; Schedule 21-ES)	Dec 1, 2021 Mar 8, 2021	Dec 30, 2021
ER21-1154	FG&E (LNS)	Dec 7, 2021 Feb 16, 2021	Dec 30, 2021
ER21-1694	Green Mountain Power	Dec 3, 2021 Apr 16, 2021	Dec 30, 2021
ER21-311	Green Mountain Power	Oct 30, 2020	Dec 30, 2021
ER20-1089	New England Elec. Trans. Corp.	Dec 11, 2020 Feb 26, 2020	pending
ER20-1087	New England Hydro Trans. Corp.	Dec 11, 2020 Feb 26, 2020	pending
ER20-1088	New England Hydro Trans. Elec. Co.	Dec 11, 2020 Feb 26, 2020	pending
ER21-1241	NEP (LNS)	Dec 7, 2021 Mar 1, 2021	Dec 30, 2021
ER20-2551	NEP (Schedule 21-NEP and TSA-NEP-22 Compliance Revisions)	Jul 30, 2020	pending
ER20-2219	NEP (Tariff No. 1)	Jun 29, 2020	pending
ER20-2614	NEP (AC Support Agreement)	Aug 5, 2020	Jan 26, 2022
ER20-2607	NEP/PSNH (Seabrook Transmission Support Agreement)	Aug 4, 2020	Jan 26, 2022
ER20-2553	NEP (MECO/Nantucket LSA)	Jul 30, 2020	pending
ER21-1325	NHT (LNS)	Mar 11, 2021	Dec 30, 2021
ER20-2609	NSTAR (Phase II BECO AC Support Agreement)	Aug 4, 2020	Jan 26, 2022
ER21-1650	NSTAR (Schedule 1 Appendix A Implem. Rule)	Dec 8, 2021 Apr 9, 2021	Dec 30, 2021
ER21-1293	NSTAR (LNS)	Nov 24, 2021 Mar 8, 2021	Dec 30, 2021
ER20-2608	PSNH (Seabrook TSA)	Aug 5, 2020	Jan 26, 2022
ER21-1709	VTransco (LNS)	Dec 3, 2021 Jul 31, 2020	Dec 30, 2021
ER20-2594	VTransco (1991 VTA)	Dec 3, 2021 Jul 31, 2020	Dec 30, 2021
ER20-1839	VETCO	Jan 22, 2021 Jan 7, 2021 May 18, 2020	Jan 26, 2022
ER20-2133 -001, -002	Versant Power	Nov 22, 2021 Mar 12, 2021 Jun 23, 2020	Pending

Compliance Filings Accepted. The FERC has accepted the following RNS and LNS-related *Order 864* compliance filings (with those accepted conditionally, subject to 60-day compliance filings, followed by an asterisk):

♦ **ER20-2572; ER21-1130 (New England Transmission Owners (“TOs”) - RNS).*** The FERC conditionally accepted the *Order 864*-related changes to Tariff Attachment F and the Settlement Agreement attached thereto as Appendix A, subject to a further, 60-day compliance filing.¹⁰¹ Areas the TOs must address in their compliance filing include: (i) changes to the Rate Base Adjustment and Income Tax Allowance Adjustment Mechanisms (TOs must adjust the Settled Formula Rate with respect to each mechanism to meet *Order 864* transparency requirements by specifying the source of the data used in those mechanisms); (ii) ADIT Worksheet Category 3 Information (TOs must clearly identify if excess and deficient ADIT is protected or unprotected); Category 4 Information (TOs must revise the Revised ADIT Worksheet to show amortized excess ADIT amounts included in Account 411.1 and amortized deficient ADIT amounts included in Account 410.1); Category 5 Information (TOs must correct discrepancies in the Revised ADIT Worksheet and the amortization periods; Versant Power must clarify which amortization method it will use; and UI, MEPCO, CMP, and VTransco must provide further justification for their proposed unprotected non-plant amortization periods). Also, the TOs were directed to file the Revised ADIT Worksheet in eTariff format. The Interim Period Formula Rate was accepted effective as of January 27, 2020; the Settled Formula Rate, January 1, 2022. The TOs filing in response to the requirements of the *TOs First Order 864 Compliance Filings Order* is due on or before February 22, 2022. Since the last Report, on January 20, 2022, New England Power (“NEP”) requested clarification and/or rehearing of the *TOs First Order 864 Compliance Filings Order*, seeking clarification (or rehearing if not) that the Order was intended to approve NEP’s proposed 10-year amortization period for unprotected non-plant related ADIT balances. The NEP request is pending, with FERC action required on or before February 22, 2022, or the request will be deemed denied by operation of law.

♦ **Various Dockets (TOs LNS Compliance Filings).** On December 30, 2021, the FERC accepted, with the exception of CMP’s filing in ER21-1702, which it conditionally accepted, subject to a further 60-day compliance filing, the TOs’ revisions to each of their currently effective local transmission formula rate templates under Schedule 21 of the ISO-NE Tariff.¹⁰² The FERC also accepted revisions to certain TOs’ currently effective formula rate templates for scheduling, system control, and dispatch service for various transmission services under the respective Schedule 1 of the ISO-NE Tariff, and VTransco’s revisions to its formula rate under its grandfathered 1991 Vermont Transmission Agreement (“VTA”).

♦ **ER20-2429 (CMP - LNS).*** The FERC conditionally accepted CMP’s proposed Tariff revisions, effective January 27, 2020,¹⁰³ subject to a further, 60-day compliance filing.¹⁰⁴ CMP must address in that compliance filing, due on or before February 22, 2022, the following aspects of its ADIT Worksheet: (i) Category 1 (provide sufficiently detailed information in the re-measurement portion of the ADIT Worksheets to permit interested parties to tie the amounts provided to the rest of the ADIT Worksheets); (ii) Category 4 (revise the ADIT Worksheets to show amortized excess ADIT amounts recorded to Account 411.1, and deficient ADIT amounts recorded to Account 410.1); and (iii) Category 5 (revise its proposal such that the amortization period for unprotected non-plant, deficient ADIT balances is the same amortization period as unprotected non-plant, excess ADIT balances or demonstrate how its deviation from this requirement is consistent with or superior to this

¹⁰¹ *ISO New England Inc. et al.*, 177 FERC ¶ 61,219 (Dec. 22, 2021) (“*TOs First Order 864 Compliance Filings Order*”).

¹⁰² *ISO New England Inc. et al.*, 177 FERC ¶ 61,239 (Dec. 30, 2021) (“*TOs Order 864 LNS Compliance Order*”). *Order 864* LNS compliance filings accepted were those by: FG&E (ER21-1154-001); NEP (ER21-1241-001); NSTAR (ER21-1293-001 and ER21-1650-001); Eversource (ER21-1295-001); NHT (ER21-1325-001); CL&P (ER21-1654-001); GMP (ER21-311-000; ER21-1694-001); CMP (ER21-1702-001); and VTransco (ER21-1709-001; ER20-2594-001).

¹⁰³ The FERC denied CMP’s request for a Jan. 1, 2018 effective date, which was earlier than the FERC is authorized under section 206 of the FPA to prescribe a rate ‘to be thereafter observed’. Rather, the FERC accepted this filing on the earliest possible date, or Jan. 20, 2020, the date the FERC in *Order 864* required parties to make changes to their tariffs.

¹⁰⁴ *ISO New England Inc. and Central Maine Power Co.*, 177 FERC ¶ 61,218 (Dec. 22, 2021) (“*CMP First Order 864 Compliance Filings Order*”).

requirement of *Order 864*; and revise note (g) of its ADIT Worksheet to make clear that it will amortize unprotected excess ADIT over a five-year period and unprotected deficient ADIT over a 10-year period).

Other Order 864-related activity since the last Report included:

♦ **ER20-2614 (NEP - AC Support Agreement).** Also on January 26, 2022, the FERC accepted NEP's proposed *Order 864* changes to its AC Support Agreement related to the Phase II arrangements, effective January 27, 2020, as requested.¹⁰⁵ Unless this January 26 order is challenged, this proceeding will be concluded.

♦ **ER20-2610 (CL&P - Phase II BECO AC Support Agreement; Millstone TSA).** On January 26, 2022, the FERC accepted CL&P's proposed *Order 864* changes to the Phase II BECO AC Support Agreement, effective January 27, 2020, as requested.¹⁰⁶ Unless this January 26 order is challenged, this proceeding will be concluded.

♦ **ER20-2609 (NSTAR-Phase II BECO AC Support Agreement).** Also on January 26, 2022, the FERC accepted the proposed *Order 864* changes to NSTAR's Phase II BECO AC Support Agreement, effective January 27, 2020, as requested.¹⁰⁷ Unless this January 26 order is challenged, this proceeding will be concluded.

♦ **ER20-2608 (PSNH-Seabrook TSA).** Also on January 26, 2022, the FERC accepted the proposed *Order 864* changes to PSNH's Seabrook TSA, effective January 27, 2020, as requested.¹⁰⁸ Unless this January 26 order is challenged, this proceeding will be concluded.

♦ **ER20-2607 (NEP/PSNH - Seabrook Transmission Support Agreement).** Also on January 26, 2022, the FERC accepted the proposed *Order 864* changes to the Seabrook Transmission Support Agreement, effective January 27, 2020, as requested.¹⁰⁹ Unless this January 26 order is challenged, this proceeding will be concluded.

♦ **ER20-1839 (VETCO).** Also on January 26, 2022, the FERC accepted the proposed *Order 864* changes to VETCO's Agreements Tariff, effective January 27, 2020, as requested.¹¹⁰ Unless this January 26 order is challenged, this proceeding will be concluded.

XII. Misc. - Administrative & Rulemaking Proceedings¹¹¹

• 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").¹¹² The Transmission Task Force is 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 the meetings 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

¹⁰⁵ *New England Power Co.*, Docket No. ER20-2614-001 (Jan. 26, 2022) (unpublished letter order).

¹⁰⁶ *The Conn. Power and Light Co.* [sic], Docket No. ER20-2610-001 (Jan. 26, 2022) (unpublished letter order).

¹⁰⁷ *NSTAR Electric Co.*, Docket No. ER20-2609-001 (Jan. 26, 2022) (unpublished letter order).

¹⁰⁸ *Public Service Co. of New Hampshire*, Docket No. ER20-2608-001 (Jan. 26, 2022) (unpublished letter order).

¹⁰⁹ *New England Power Co.*, Docket No. ER20-2607-001 (Jan. 26, 2022) (unpublished letter order).

¹¹⁰ *VT Elec. Transmission Co., Inc.*, Docket No. ER20-1839-002 (Jan. 26, 2022) (unpublished letter order).

¹¹¹ Reporting on the following proceedings has been suspended since the last Report and will be continued if and when there is new activity to report: Electrification and the Grid of the Future (AD21-12); ISO/RTO Credit Principles and Practices (AD21-6); Offshore Wind Integration in RTOs/ISOs (AD20-18); Waiver of Tariff Requirements (PL20-7); FERC's ROE Policy for Natural Gas and Oil Pipelines (PL19-4); and NOI: Certification of New Interstate Natural Gas Facilities (PL18-1).

¹¹² *Joint Federal-State Task Force on Electric Transmission*, 175 FERC ¶ 61,224 (June 18, 2021).

interconnection, that provides benefits from a federal and state perspective.”¹¹³ On July 19, 2021, NARUC nominated the 10 state commissioners to the Transmission Task Force, including New England Commissioners Riley Allen (VT PUC) and Matt Nelson (Chair, MA DPU). Since the last Report, Chair Thad LeVar of the Utah Public Service Commission was nominated to represent the Western Conference region (to replace Commissioner Kate Raper, who resigned her position with the Idaho PUC on January 21, 2022).

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 (November 10, 2021) 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 on or before September 10, 2021 comments in this docket on agenda topics for the first public meeting).¹¹⁴ 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](#), and [Wires](#).

Public Meetings.

- ♦ The first Joint Federal-State Task Force meeting, which focused on incorporating state perspectives into regional transmission planning, was convened on November 10, 2021. Comments on those issues were on or before December 22, 2021, and were filed by: [AEP](#), [LA PSC](#), [MI PSC](#), [PJM](#), and [Public Citizen](#).
- ♦ A second meeting is scheduled for February 16, 2022 in Washington, DC (Renaissance Downtown Hotel). Task Force members will consider suggested agenda topics, which were due on or before January 4, 2022, in developing the agenda for the second meeting. The one set of comments suggesting topics for the second meeting was filed by the Institute for Policy Integrity at the New York University School of Law (“Institute for Policy Integrity”), which encouraged the FERC and Task Force to explore how a *national perspective* could inform and improve the transmission development process, including by establishing a baseline set of nationally uniform informational inputs and parameters for scenario planning and modeling, as well as specifications of benefits and costs to inform project selection in all transmission planning regions. The public may attend the second meeting in person or via Webcast.

- **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](#),

¹¹³ Topics that the Task Force may consider include: (i) identifying barriers that inhibit planning and development of optimal transmission necessary to achieve federal and state policy goals, as well as potential solutions to those barriers; (ii) exploring potential bases for one or more states to use FERC-jurisdictional transmission planning processes to advance their policy goals, including multi-state goals; (iii) exploring opportunities for states to voluntarily coordinate in order to identify, plan, and develop regional transmission solutions; (iv) reviewing FERC rules and regulations regarding planning and cost allocation of transmission projects and potentially identifying recommendations for reforms; (v) examining barriers to the efficient and expeditious interconnection of new resources through the FERC-jurisdictional interconnection processes, as well as potential solutions to those barriers; and (vi) discussing mechanisms to ensure that transmission investment is cost effective, including approaches to enhance transparency and improve oversight of transmission investment including, potentially, through enhanced federal-state coordination.

¹¹⁴ *Joint Federal-State Task Force on Electric Transmission*, 176 FERC ¶ 61,131 (Aug. 30, 2021).

[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](#); [EPSCA](#); [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](#). On October 14, [Entergy](#) answered the comments submitted by City of New Orleans. This matter is 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. A transcript of the September 30 technical conference was posted in eLibrary on November 16, 2021. On January 7, 2022, the FERC issued a notice inviting post-technical conference comments, either to address the questions raised in the January 7 notice or any other issues raised during the technical conference. Comments are due on or before February 22, 2022.

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

March 23 Tech Conf (PJM). The FERC convened a Commissioner-led technical conference 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](#), [EPSCA](#), 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](#), [EPSCA](#), [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](#), [EPSCA](#), [RENEW](#).

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

Tech Conferences. As previously reported, the FERC held in the Fall of 2021 two staff-led technical conferences addressing ISO/RTO energy and ancillary services markets (including 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).¹¹⁵ The first technical conference was held September 14, 2021; the second, October 12, 2021. Transcripts of both technical conferences are posted in eLibrary.

Post-Technical Conference Comments. On December 6, 2021, the FERC invited all interested persons to file initial and reply comments on the topics discussed during each of the two technical conferences. Initial comments must be submitted on or before **February 4, 2022**; reply comments, **March 7, 2022**. Thus far, one set of comments from the PJM Power Providers Group has been submitted.

- **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 (which it has done – see below), 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.

The FERC held, on October 7, 2021 a virtual workshop 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 was also posted on the Calendar of Events on the FERC’s website, www.ferc.gov.

On October 12, 2021, FERC Chairman Glick announced that Elin Katz, the former head of the Connecticut Office of Consumer Counsel (“CT OCC”) and president of the National Association of State Utility Consumer Advocates (“NASUCA”), will lead OPP. Ms. Katz assumed her role as the Director of OPP in late November.

Since the last Report, three sets of comments were filed.

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

As previously reported, the FERC convened a July 23, 2020 technical conference to discuss technical and market issues prompted by growing interest in projects that are comprised of more than one resource type at the same plant location (“hybrid resources”). The focus was on generation resources and electric storage resources paired together as hybrid resources. Speaker materials and a transcript of the technical conference have been posted to the FERC’s eLibrary. Post-technical conference comments were filed by ISO-NE, CAISO, MISO, NYISO, PJM, Enel, American Council on Renewable Energy, AWEA, EEI, EPRI, R Street Institute, Savion, and SEIA.

On January 19, 2021, the FERC issued an order directing each ISO/RTO to submit, within 6 months (or before July 19, 2021), a report that provides: (a) a description of its current practices related to each of the following four hybrid resource issues: (1) terminology; (2) interconnection; (3) market participation; and (4) capacity valuation (collectively, the “Issues”); (b) an update on the status of any ongoing efforts to develop

¹¹⁵ In advance of the technical conferences, in an effort to frame discussions at those technical conferences, FERC staff issued on Sept. 7, 2021, a White Paper entitled “[Energy and Ancillary Services Market Reforms to Address Changing System Needs](#)” summarizing recent energy and ancillary services markets reforms as well as reforms then under consideration.

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 were filed in September 20, 2021.¹¹⁶

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. On October 20, 2021, NYISO submitted comments in response to issues raised by those comments. These matters remain pending before the FERC.

- **Order 882: 2022 Civil Monetary Penalty Inflation Adjustments (RM22-6)**

On January 14, 2022, the FERC issued *Order 882*¹¹⁷ to amend its regulations governing the maximum civil monetary penalties assessable for violations of statutes, rules, and orders within FERC's jurisdiction. The FERC is required to update each such civil monetary penalty on an annual basis every January 15.¹¹⁸ Of particular interest is the increase in potential civil penalties for market manipulation, which were increased from \$1,307,164 to \$1,388,496 per violation, per day. *Order 882* became effective January 13, 2022.¹¹⁹

- **NOI: Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses (RM22-5)**

On December 16, 2021, the FERC issued a notice of inquiry ("NOI")¹²⁰ seeking comments on (i) the rate recovery, reporting, and accounting treatment of industry association dues and certain civic, political, and related expenses; (ii) the ratemaking implications of potential accounting and reporting changes; (iii) whether additional transparency or guidance is needed with respect to defining donations for charitable, social, or community welfare purposes; and (iv) a framework for guidance should the FERC determine action is necessary to further define the recoverability of industry association dues charged to utilities and/or utilities' expenses from civic, political, and related activities. Initial comments are due February 22, 2022; reply comments, March 23, 2022. Thus far, one set of comments from M. Mabee have been submitted.

¹¹⁶ Public comments were initially due Aug. 18, 2021. However, in response to a request by the Energy Storage Association ("ESA"), the American Clean Power Association ("ACP"), and SEIA, the FERC granted a 30-day extension of time, to Sep. 20, 2021, to file comments in response to the ISO/RTO reports.

¹¹⁷ *Civil Monetary Penalty Inflation Adjustments*, Order No. 882, 178 FERC ¶ 61,008 (Jan. 7, 2022) ("*Order 882*").

¹¹⁸ See Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701, Pub. L. 114-74, 129 Stat. 584, 599. The FERC made its first adjustment under the Act in July 2016. See *Civil Monetary Penalty Inflation Adjustments*, Order No. 826, 81 FR 43937 (July 6, 2016), FERC Stats. & Regs. ¶ 31,386 (2016). The second adjustment was made January 9, 2017. *Civil Monetary Penalty Inflation Adjustments*, Order No. 834, 158 FERC ¶ 61, 170 (Jan. 9, 2017). The third adjustment as made January 8, 2018. *Civil Monetary Penalty Inflation Adjustments*, Order No. 839, 162 FERC ¶ 61,010 (Jan. 8, 2018). The fourth adjustment was made January 9, 2019. *Civil Monetary Penalty Inflation Adjustments*, Order No. 853, 166 FERC ¶ 61,041 (Jan. 8, 2019). The fifth adjustment was made January 14, 2020. *Civil Monetary Penalty Inflation Adjustments*, Order No. 865, 170 FERC ¶ 61,001 (Jan. 2, 2020). The sixth adjustment was made January 8, 2021. *Civil Monetary Penalty Inflation Adjustments*, Order No. 875, 174 FERC ¶ 61,015 (Jan. 8, 2021).

¹¹⁹ *Order 882* was published in the *Fed. Reg.* on Jan. 13, 2022 (Vol. 87, No. 9) pp. 2,036-2,037.

¹²⁰ *Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses*, 177 FERC ¶ 61,180 (Dec. 16, 2021) ("*Dues & Expenses NOI*").

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

On July 15, 2021, the FERC issued an advanced notice of proposed rulemaking (“ANOPR”)¹²¹ 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.

Pre-technical conference comments were submitted by over 175 parties, including by: [NEPOOL](#), [ISO-NE](#), [AEE](#), [Anbaric](#), [Avangrid](#), [BP](#), [CPV](#), [Dominion](#), [EDF](#), [EDP](#), [Enel](#), [EPSA](#), [Eversource](#), [Exelon](#), [LS Power](#), [MA AG](#), [MMWEC](#), [National Grid](#), [NECOS](#), [NESCOE](#), [NextEra](#), [NRDC](#), [Orsted](#), [Shell](#), [UCS](#), [VELCO](#), [Vistra](#), [Potomac Economics](#), [ACORE](#), [ACPA/ESA](#), [APPA](#), [EEI](#), [ELCON](#), [Industrial Customer Orgs](#), [LPPC](#), [MA DOER](#), [NARUC](#), [NASUCA](#), [NASEO](#), [NERC](#), [NRECA](#), [SEIA](#), [State Agencies](#), [TAPS](#), [WIRES](#), [Harvard Electric Law Initiative](#); [NYU Institute for Policy Integrity](#), [New England for Offshore Wind Coalition](#), and the [R Street Institute](#).

November 15, 2021 Tech Conf. On November 15, 2021, the FERC convened a technical conference 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 examined 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. Speaker materials were posted to eLibrary on November 16, 2021.

Reply and Post-Tech Conf Comments. ANOPR Reply Comments and Post-November 15 technical conference comments were due on or before **November 30, 2021** and were filed by over 100 parties, including by: [CT AG](#), [Acadia Center/CLF](#), [CT AG](#), [Dominion](#), [Enel](#), [Eversource](#), [LS Power](#), [MA AG](#), [MMWEC](#), [NESCOE](#), [NextEra](#), [Shell](#), [UCS](#), [Vistra](#), [ACPA/ESA](#), [AEE](#), [APPA](#), [EEI](#), [ELCON](#), [Environmental and Renewable Energy Advocates](#), [EPSA](#), [Harvard ELI](#), [NRECA](#), [Potomac Economics](#), and [SEIA](#). Since the last Report, supplemental reply comments were filed by [WIRES](#) and a group of [former military leaders and former Department of Defense officials](#) filed a statement. This matter is pending before the FERC.

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

On March 18, 2021, the FERC issued a NOI¹²² 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](#), [Votus](#), [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](#), [Votus](#), State Commissions from [LA/MS](#), [MI](#), [MO](#), [NC](#), [APPA/NRECA](#), Assoc. of Bus. Advocating Tariff Equity (“[ABATE](#)”), and [PIOs](#). This matter is pending before the FERC.

¹²¹ *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”).

¹²² *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”).

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

On December 17, 2020, the FERC issued a NOPR¹²³ 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.](#),¹²⁴ [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, 2021¹²⁵ 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.

- **Order 881: Managing Transmission Line Ratings (RM20-16)**

On December 16, 2021, the FERC issued its final rule, *Order 881*, on Managing Transmission Line Ratings.¹²⁶ In *Order 881*, the FERC reforms both the *pro forma* OATT and its regulations to improve the accuracy and transparency of transmission line ratings. Specifically, *Order 881* requires:

- (i) transmission providers to implement ambient-adjusted ratings on the transmission lines over which they provide transmission service;
- (ii) ISO/RTOSs to establish and implement the systems and procedures necessary to allow transmission owners to electronically update transmission line ratings at least hourly;
- (iii) 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); and
- (iv) transmission providers to maintain a database of transmission owners’ transmission line ratings and transmission line rating methodologies on the transmission provider’s Open Access Same-Time Information System (“OASIS”) site or other password-protected website.

Order 881 will become effective March 14, 2022.¹²⁷ Since the last Report, requests for rehearing and/or clarification of *Order 881* were filed by ATC, EEI, ITC Holdings, MISO IMM, and the MISO TOs on January 18, 2022. The requests for rehearing and/or clarification are pending, with FERC action required on or before February 17, 2022, or the requests will be deemed denied by operation of law.

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

Supplemental NOPR. In light of comments already received in this proceeding,¹²⁸ the FERC issued on April 15, 2021 a *Supplemental NOPR*¹²⁹ to propose and seek comment on a revised incentive for transmitting and

¹²³ *Cybersecurity Incentives*, 173 FERC ¶ 61,240 (Dec. 17, 2020) (“*Cybersecurity Incentives NOPR*”).

¹²⁴ These joint comments were filed by aDolus Inc., Fortress Information Security, GMO GlobalSign Inc., Ion Channel, ReFirm Labs and Reliable Energy Analytics LLC.

¹²⁵ The *Cybersecurity Incentives NOPR* was published in the *Fed. Reg.* on Feb. 5, 2021 (Vol. 86, No. 23) pp. 8,309-8,325.

¹²⁶ *Managing Transmission Line Ratings*, Order No. 881, 177 FERC ¶ 61,179 (Dec. 16, 2021) (“*Order 881*”).

¹²⁷ *Order 881* was published in the *Fed. Reg.* on Jan. 13, 2022 (Vol. 87, No. 9) pp. 2,244-2,307.

¹²⁸ 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.

¹²⁹ *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, 175 FERC ¶ 61,035 (Apr. 15, 2021) (“*Supplemental NOPR*”).

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*.¹³⁰ 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](#).¹³¹ Since the last Report, reply comments were posted from New England State Parties,¹³² 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, 2021¹³³ 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

¹³⁰ 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.

¹³¹ “Public Interest Groups” are NRDC, Sierra Club, Sustainable FERC Project, and Western Grid Group.

¹³² “New England State Parties” are CT PURA, CT DEEP and the MA AG.

¹³³ 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).

included the final workshop program and expected speakers, on August 23, 2021. The FERC supplemented that notice on September 9, 2021. On October 13, 2021, the FERC posted a transcript of the workshop in eLibrary.

Notice Inviting Post-Workshop Comments. On October 18, 2021, the FERC issued a notice inviting those interested to file post-workshop comments to address the issues raised during the workshop concerning incentives and shared savings. Comments were due on or before January 14, 2022 and were filed by APPA, CAISO, Clean Energy Parties,¹³⁴ EDF Renewables, EEI, the Industrial Energy Consumers of America (“IECA”), National Grid, PJM IMM, TAPS.

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

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

As previously reported, *Order 860*,¹³⁵ issued three years after the FERC’s *Data Collection NOPR*,¹³⁶ (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,¹³⁷ 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,¹³⁸ 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.”

¹³⁴ The “Clean Energy Parties” are: Working for Advanced Transmission Technologies (“WATT Coalition”), the American Clean Power Association (“ACP”), AEE, American Council on Renewable Energy (“ACORE”), Natural Resources Defense Council (“NRDC”), and the Sustainable FERC Project.

¹³⁵ *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).

¹³⁶ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 156 FERC ¶ 61,045 (July 21, 2016) (“*Data Collection NOPR*”).

¹³⁷ 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.

¹³⁸ *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*”).

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](#).

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.¹³⁹ 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, 2021,¹⁴⁰ and were filed by [EEI](#), [the Global LEI Foundation](#), [TAPS](#), and [XBRL US](#). In light of the proposed changes, the FERC deferred by three months the effective date of *Order 860* and its associated deadlines.

Effective Date: July 1, 2021; Baseline Submissions March 3, 2022; First change in Status Filings, April 29, 2022. On October 22, 2021, the FERC issued a second notice extending the effective and associated implementation dates of *Order 860* by an additional *three* months. The deadline for baseline submissions will be February 1, 2022. First change in status filings under these new timelines will be due March 3, 2022; second change in status filings, April 29, 2022.

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.¹⁴¹ 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,¹⁴² 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, 2021.¹⁴³ Public utilities must make a compliance filing to comply with the requirements of this final rule through eTariff 12

¹³⁹ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 174 FERC ¶ 61,214 (Mar. 18, 2021).

¹⁴⁰ The Notice was published in the *Fed. Reg.* on Apr. 6, 2021 (Vol. 86, No. 64) pp. 17,823-17,828.

¹⁴¹ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 176 FERC ¶ 61,109 (Aug. 19, 2021).

¹⁴² *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-J, 175 FERC ¶ 61,139 (May 20, 2021) ("*Order 676-J*").

¹⁴³ *Order 676-J* was published *Fed. Reg.* on June 2, 2021 (Vol. 86, No. 104) pp. 29,491-29,503.

months after implementation of the WEQ Version 003.2 Standards. Compliance filings for cybersecurity and Parallel Flow Visualization standards are due March 2, 2022.

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,¹⁴⁴ the FERC directed PacifiCorp to show cause why it should not be found to have violated FPA section 215(b)(1) and section 39.2 of the FERC's regulations by failing to comply with Reliability Standard FAC 009-1 (Establish and Communicate Facility Ratings), Requirement R1, and the successor Reliability Standard FAC-008-3 (Facility Ratings), Requirement R6 (collectively, "FAC-009-1 R1"), which requires a transmission owner to establish and have facility ratings that are consistent with its Facility Ratings Methodology ("FRM"). An Enforcement investigation found that clearance measurements on a majority of PacifiCorp's transmission lines were incorrect under the National Electric Safety Code, which were used to calculate PacifiCorp's facility ratings, thus making PacifiCorp's facility ratings inconsistent with its FRM. Enforcement alleges that PacifiCorp was aware of incorrect clearances on its system since at least 2007 when FAC-009-1 R1 became mandatory, but failed to identify and remedy them in a timely manner, and PacifiCorp's violations began on August 31, 2009, when it implemented its FRM policy, and at least some of the violations continued until August 2017 when PacifiCorp completed remediation of all of its incorrect clearances to make them consistent with its FRM. Enforcement also pointed to the role of the violations in the Wood Hollow, Utah wildfire that lasted from June 23 to July 1, 2012. In light of these alleged violations, the FERC directed PacifiCorp to show cause why it should not be assessed civil penalties in the amount of **\$42 million**.

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).

- **GreenHat (IN18-9)**

On November 5, 2021, the FERC issued its order assessing civil penalties against GreenHat Energy, LLC ("GreenHat"), John Bartholomew, Kevin Ziegenhorn, and [Luan Troxel as the Executor for] the Estate of Andrew Kittell ("Kittell Estate") (collectively, "Respondents").¹⁴⁵ The FERC found that Respondents violated FPA section 222, along with section 1c.2 of the FERC's regulations, PJM Tariff Attachment Q, Section B and section 15.1.3 of PJM's Operating Agreement, by engaging in a manipulative scheme in PJM's Financial Transmission Rights ("FTR") market which generated more than \$13 million in unjust profits for Respondents and imposed approximately \$179 million in losses on PJM Members. The FERC assessed civil penalties of **\$179 million, \$25 million, and \$25 million** against GreenHat, Bartholomew, and Ziegenhorn, respectively. The FERC ordered Respondents, including the Kittell Estate, to disgorge unjust profits of just **over \$13 million**, plus interest. Each of Respondents is jointly and severally liable for payment of that disgorgement amount.¹⁴⁶ Since the last Report, the FERC issued an order denying¹⁴⁷ the Kittell Estate's October 5, 2021 motion on which it had deferred action pending the outcome of a referral to the Department of Energy's Office of the Inspector

¹⁴⁴ *PacifiCorp*, 175 FERC ¶ 61,039 (Apr. 15, 2021) ("*PacifiCorp Show Cause Order*").

¹⁴⁵ *GreenHat Energy, LLC et al.*, 177 FERC ¶ 61,073 (Nov. 5, 2021) ("*GreenHat Penalties Order*").

¹⁴⁶ *Id.* at P1.

¹⁴⁷ *GreenHat Energy, LLC et al.*, 178 FERC ¶ 61,002 (Jan. 5, 2022) ("*Kittell Estate Order*").

General (“OIG”).¹⁴⁸ As previously reported, Respondents have already exercised their right to adjudicate these allegations in federal district court,¹⁴⁹ and the *GreenHat Penalties Order* will not be subject to rehearing. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

Natural Gas-Related Enforcement Actions

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

On January 20, 2022, the FERC issued an order establishing a hearing to determine whether Rover Pipeline, LLC (“Rover”) and its parent company Energy Transfer Partners, L.P. (“ETP” and collectively with Rover, “Respondents”) violated section 157.5 of the FERC’s regulations and to ascertain certain facts relevant for any application of the FERC’s Penalty Guidelines.¹⁵⁰

As previously reported, on March 18, 2021, the FERC issued a show cause order¹⁵¹ in which it directed Rover Pipeline, LLC (“Rover”) and Energy Transfer Partners, L.P. (“ETP” and together with Rover, “Respondents”) to show cause why they should not be found to have violated Section 157.5 of the FERC’s regulations by misleading the FERC in its Application for Certificate of Public Convenience and Necessity (“CPCN”) under NGA section 7(c).¹⁵² 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 CPCN 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.

Hearings. On January 25, 2022, Chief ALJ Cintron designated Deputy Chief ALJ Andrew Satten as the Presiding Judge for the purpose of conducting a hearing and issuing an initial decision in this case. Track II procedural time standards were established for this hearing, calling for the hearing to be convened by September 6, 2022 and an initial decision to be issued on or before December 20, 2022. On February 1, 2022, Respondents requested a stay of the ALJ proceedings, which would remain in place until the completion of the Declaratory

¹⁴⁸ The Kittell Estate’s October Motion requested that the FERC “drop all enforcement action against the estate of Andrew Kittell, ban Messrs. Tabackman and Olson from any future involvement, and order other offices within the Commission to investigate what happened” following an October 1 notice disclosing that an OE litigation attorney, Thomas Olson, had reported to OE management that he had an email exchange with a member of the FERC’s decisional staff, which Olson realized may constitute a violation of the FERC’s Separation of Functions regulation. In the *Kittell Estate Order*, without deciding whether or not there was a violation of FERC regulations, the FERC concluded that the conduct at issue in this proceeding would not warrant the extraordinary remedy of dismissal.

¹⁴⁹ If the penalty is unpaid within 60 days, the FERC will institute a proceeding in the appropriate district court seeking an order affirming the assessment of a civil penalty. The district court will have the authority to review *de novo* the law and facts involved and the jurisdiction to enforce, modify, or set aside, in whole or in part, the penalty assessment, subject to review by the appropriate U.S. Court of Appeals.

¹⁵⁰ Rover Pipeline, LLC, and Energy Transfer Partners, L.P., 178 FERC ¶ 61,028 (Jan. 20, 2022) (“*Rover/ETP Hearings Order*”).

¹⁵¹ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 174 FERC ¶ 61,208 (Mar. 18, 2021) (“*Rover/ETP CPCN Show Cause Order*”).

¹⁵² 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.

Judgment Act action that Respondents filed also on February 1, 2022 in the U.S. District Court for the Northern District of Texas challenging the legality of the pending ALJ proceedings.

- **Rover and ETP (Tuscarawas River HDD Show Cause Order) (IN17-4)**

On December 16, 2021, the FERC issued a show cause order¹⁵³ in which it directed Rover and ETP (together, “Respondents”) to show cause why they should not be found to have violated NGA section 7(e), FERC Regulations (18 C.F.R. § 157.20); and the FERC’s Certificate Order,¹⁵⁴ by: (i) intentionally including diesel fuel and other toxic substances and unapproved additives in the drilling mud during its horizontal directional drilling (“HDD”) operations under the Tuscarawas River in Stark County, Ohio, in connection with the Rover Pipeline Project;¹⁵⁵ (ii) failing to adequately monitor the right-of-way at the site of the Tuscarawas River HDD operation; and (iii) improperly disposing of inadvertently released drilling mud that was contaminated with diesel fuel and hydraulic oil. The FERC directed Respondents to show why they should not be assessed civil penalties in the amount of **\$40 million**. Following a request from Respondents, the answer period was extended to and including March 21, 2022.

- **BP (IN13-15)**

On December 17, 2020, the FERC issued *Opinion 549-A*,¹⁵⁶ a 159-page decision addressing arguments raised on rehearing requested of *Opinion 549*.¹⁵⁷ *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.¹⁵⁸ *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.¹⁵⁹

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*.

¹⁵³ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 177 FERC ¶ 61,182 (Dec. 16, 2021) (“*Rover/ETP Tuscarawas River HDD Show Cause Order*”).

¹⁵⁴ *Rover Pipeline LLC*, 158 FERC ¶ 61,109 (2017), *order on clarification & reh’g*, 161 FERC ¶ 61,244 (2017), *Petition for Rev., Rover Pipeline LLC v. FERC*, No. 18-1032 (D.C. Cir. Jan. 29, 2018) (“*Certificate or Certificate Order*”).

¹⁵⁵ The Rover Pipeline Project is an approximately 711 mile long interstate natural gas pipeline designed to transport gas from the Marcellus and Utica shale supply areas through West Virginia, Pennsylvania, Ohio, and Michigan to outlets in the Midwest and elsewhere.

¹⁵⁶ *BP America Inc. et al.*, Opinion No. 549-A, 173 FERC ¶ 61,239 (Dec. 17, 2020) (“*BP Penalties Allegheny Order*”).

¹⁵⁷ *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*”))).

¹⁵⁸ *BP Penalties Allegheny Order* at P 1.

¹⁵⁹ *Id.* at P 319.

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

On April 28, 2016, the FERC issued a show cause order¹⁶⁰ in which it directed Total Gas & Power North America, Inc. (“TGPNA”) and its West Desk traders and supervisors, Therese Tran f/k/a Nguyen (“Tran”) and Aaron Hall (collectively, “Respondents”) to show cause why Respondents should not be found to have violated NGA Section 4A and the FERC’s Anti-Manipulation Rule through a scheme to manipulate the price of natural gas at four locations in the southwest United States between June 2009 and June 2012.¹⁶¹

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.

Hearing Procedures. 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.¹⁶² On July 27, Chief Judge Cintron designated Judge Suzanne Krolikowski as the Presiding ALJ and established an extended Track III Schedule¹⁶³ for the proceeding. Judge Krolikowski scheduled and convened on August 26, 2021 a prehearing conference. 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. In light of the settlement judge procedures undertaken, Chief Judge Cintron extended the hearing commencement and initial decision deadlines to September 26, 2022, and February 20, 2023, respectively. Since the last Report, the Presiding ALJ granted Respondents’ request to extend the deadline to file a consolidated motion to compel production of documents and other materials to January 25, 2022, and the corresponding answering deadline to February 8, 2022. That motion was filed on January 25, 2022 and OE replied to that brief on February 1, 2022. The motion related to discovery matters is pending before the Presiding ALJ.

¹⁶⁰ *Total Gas & Power North America, Inc.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) (“TGPNA Show Cause Order”).

¹⁶¹ 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.

¹⁶² *Total Gas & Power North America, Inc. et al.*, 176 FERC ¶ 61,026 (July 15, 2021).

¹⁶³ 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).

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.
 - On October 15, 2021, Iroquois submitted a supplemental Life Cycle Greenhouse Gas Analysis Report.
 - On November 12, 2021, FERC staff issued the final EIS for the Project, which responds to comments that were received on the September 30, 2020 Environmental Assessment and June 11, 2021 draft EIS and discloses downstream GHG emissions for the Project. "With the exception of climate change impacts, FERC staff concluded that approval of the proposed Project, with the mitigation measures recommended in this EIS, would not result in significant environmental impacts."
 - Since the last Report, Iroquois, ConEd and National Grid answered/replied to the December 20, 2021 comments on the final EIS by the U.S. Environmental Protection Agency ("EPA").
- **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.¹⁶⁴ Rehearing of the *Authorization Order* was timely requested, but denied by operation of law.

¹⁶⁴ *Algonquin Gas Transmission, LLC*, Docket No. CP16-9 at 1 (Sep. 24, 2020) (delegated order) ("*Authorization Order*").

- ▶ *Briefing Order*. In a fairly unprecedented order issued February 18, 2021,¹⁶⁵ the FERC, expressing concerns regarding operation of the project, established briefing on the following matters:
 - In light of the concerns expressed regarding public safety, is it consistent with the FERC's responsibilities under the NGA to allow the Weymouth Compressor Station to enter and remain in service?
 - Should the Commission reconsider the current operation of the Weymouth Compressor Station in light of any changed circumstances since the project was authorized? For example, are there changes in the Weymouth Compressor Station's projected air emissions impacts or public safety impacts the Commission should consider? We encourage parties to address how any such changes affect the surrounding communities, including environmental justice communities.
 - Are there any additional mitigation measures the Commission should impose in response to air emissions or public safety concerns?
 - What would the consequences be if the Commission were to stay or reverse the *Authorization Order*?
- ▶ Requests for rehearing of the *Briefing Order* were filed by Algonquin, NGSA and Center for Liquefied Natural Gas, and by America and Energy Infrastructure Council. Cheniere Energy submitted comments in support of the requests for rehearing. On April 19, 2021, the FERC issued a "Notice of Denial of Rehearings by Operation of Law and Providing for Further Consideration".¹⁶⁶ 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,¹⁶⁷ 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*.¹⁶⁸
- ▶ On January 20, 2022, the FERC addressed the arguments raised on rehearing and in the briefs and sustained¹⁶⁹ the *Authorization Order*.
- ▶ This matter is before the DC Circuit (see Section XVI below).

¹⁶⁵ *Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, LLC*, 174 FERC ¶ 61,126 (Feb. 18, 2021) ("*Briefing Order*").

¹⁶⁶ *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*").

¹⁶⁷ *Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, LLC*, 175 FERC ¶ 61,150 (May 19, 2021) ("*May 19 Order*").

¹⁶⁸ *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*").

¹⁶⁹ *Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, LLC*, 178 FERC ¶ 61,029 (Jan. 20, 2022) ("*Order Sustaining*").

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.¹⁷⁰ Those orders have been challenged on appeal to the US Court of Appeals for the Second Circuit (19-1610).
- ▶ As previously reported, the August 6, 2018 *Northern Access Certificate Rehearing Order* dismissed or denied the requests for rehearing of the *Northern Access Certificate Order*.¹⁷¹ 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,¹⁷² 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, 2017.¹⁷³ 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.¹⁷⁴ 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.

¹⁷⁰ *Nat’l Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 167 FERC ¶ 61,007 (Apr. 2, 2019).

¹⁷¹ *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).

¹⁷² 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).

¹⁷³ *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*”).

¹⁷⁴ *Nat’l Fuel Gas Supply Corp. v. NYSDEC et al.* (2d Cir., Case No. 17-1164).

- ▶ On August 8, 2019, the NY DEC again denied Applicants request for a Water Quality Certification, and as directed by the Second Circuit,¹⁷⁵ 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.¹⁷⁶
- ▶ 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,¹⁷⁷ 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.¹⁷⁸
- ▶ On January 28, 2022, Applicants again requested an additional extension of time, this time until December 31, 2024, to complete construction of the Project and enter service. Comments on that request are due on or before February 16, 2022.

XV. State Proceedings & Federal Legislative Proceedings

- **New England States’ Vision Statement**

In October 2020, the six New England states released their “[Vision Statement](#)”, outlining their vision for “a clean, affordable, and reliable 21st century regional electric grid” and committing to engage in a collaborative and open process, supported by NESCOE, intended to advance the principles discussed in the Vision Statement. As part of that effort, the following series of online technical forums to discuss the issues presented in the Vision Statement were held:

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

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

¹⁷⁵ 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).

¹⁷⁶ 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).

¹⁷⁷ *National Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 173 FERC ¶ 61,197 (Dec. 1, 2020).

¹⁷⁸ *Id.* at P 10.

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, 2021 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 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).

- **NTE CT Petition for Writ of Mandamus for Stay of FERC Order Accepting the Killingly Energy Center CSO Termination (21-1011)**
Underlying FERC Proceeding: ER22-355¹⁷⁹
Petitioner: NTE CT
Status: Awaiting Decision

On January 20, 2022, NTE CT petitioned the DC Circuit Court of Appeals for a Writ of Mandamus to stay the *Killingly CSO Termination Order*. On January 21, the Court ordered the FERC to respond by noon on January 31, 2022. ISO-NE moved to intervene on January 24, which the Court granted on January 28, and ISO-NE supplemented the record on January 27. As directed, the FERC responded to the Petition on January 31. NTE CT responded to the FERC’s response on February 1. This matter is pending before the Court.

- **CSC Request for Regulatory Asset Recovery of Previously-Incurred CIP IROL Costs (21-1275)**
Underlying FERC Proceeding: ER21-2334¹⁸⁰
Petitioner: CSC
Status: Filing of Initial Submissions Underway

On December 30, 2021, CSC petitioned the DC Circuit Court of Appeals for review of the FERC’s orders denying it authorization to establish a regulatory asset that would include all CIP-IROL Costs prudently incurred between January 1, 2016 and May 31, 2021 and to recover those costs under Schedule 17 over a five-year period. Appearances are due February 2, 2022. CSC must file a Docketing Statement, Statement of Issues, any Procedural Motions, and the underlying decision from which the appeal arises by February 2, 2022. Dispositive motions, if any, and a Certified Index to the Record must be filed by February 17, 2022.

Since the last Report, NESCOE intervened on January 28, 2022. On February 2, 2022, CSC filed a docketing statement and statement of issues. Also on February 2, the FERC asked that the Court hold the petition for review in abeyance, including suspending the initial filing schedule, until the Commission issues an order addressing Petitioner’s request for rehearing. That request is pending before the Court.

¹⁷⁹ *ISO New England Inc.*, 178 FERC ¶ 61,001 (Jan. 3, 2022), *reh’g pending*.

¹⁸⁰ *Cross-Sound Cable Co., LLC*, 176 FERC ¶ 61,073 (Aug. 31, 2021) (“August 31 Order”); *Cross-Sound Cable Co., LLC*, 177 FERC ¶ 62,064 (Nov. 1, 2021) (Notice of Denial By Operation of Law of Rehearings of *August 31 Order*).

- **Mystic ROE (21-1198; 21-1222, 21-1223, 21-1224, 22-1001, 22-1008) (consolidated)**
Underlying FERC Proceeding: EL18-1639-010, -011¹⁸¹
Petitioners: Mystic, CT Parties,¹⁸² MA AG, ENECOS
Status: Filing of Initial Submissions Underway

As previously reported, on October 8, 2021, Mystic petitioned the DC Circuit Court of Appeals for review of the FERC's orders setting the base ROE for the Mystic COS Agreement at 9.33%. On October 14, 2021, the Court ordered Mystic to file, and Mystic filed on October 29, a Docketing Statement Form, a Statement of Intent to Utilize Deferred Joint Appendix, a Statement of Issues to be Raised, and the Underlying Decision from which the appeal arises. The Court granted the MA AG's motion to intervene and the FERC's motion to extend the deadline for filing certified index to the record to January 28, 2022 (allowing for inclusion of all activity following the *Mystic ROE Allegheny Order*). Statements of Issues and Docketing Statements were filed by CT Parties, ENECOS and the MA AG in mid-December.

Since the last Report, CT Parties' (22-1001) and Mystic's (22-1008) appeals of the *Mystic ROE Allegheny Order* were consolidated under 21-1198. CT Parties were directed to file a Docketing Statement Form and Statement of Issues to be Raised by February 11, 2022; Mystic, by February 22, 2022. On January 13, 2022, the Clerk ordered that the petitions for review in 21-1223 and 21-1224 could be amended, without prejudice to a determination by the merits panel whether a new petition for review, rather than an amended petition, was required. ENECOS and MA AG filed their amended petitions on February 17, 2022. On January 26, the FERC asked for a further 60-day extension of time, to March 29, 2022, to file the Certified Index to the Record. Mystic opposed that request the next day and on January 28, the FERC answered Mystic's January 27 opposition. The FERC's motion is pending before the Court.

- **ISO-NE Implementation of Order 1000 Exemptions for Immediate Need Reliability Projects (20-1422)**
Underlying FERC Proceeding: EL19-90¹⁸³
Petitioner: LS Power
Status: Briefing Complete; Oral Argument Held Jan 27, 2022; Awaiting Decision

As previously reported, 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. Following completion of briefing, oral argument before Judges Rogers, Pillard and Randolph was held on January 27, 2022. This matter is pending before the Court.

¹⁸¹ *Constellation Mystic Power, LLC*, 176 FERC ¶ 61,019 (July 15, 2021) ("*Mystic ROE Order*"); *Constellation Mystic Power, LLC*, 176 FERC ¶ 62,127 (Sep. 13, 2021) ("*September 13 Notice*") (*Notice of Denial By Operation of Law of Rehearings of Mystic ROE Order*).

¹⁸² In this appeal, "CT Parties" are the Connecticut Public Utilities Regulatory Authority ("CT PURA"), Connecticut Department of Energy and Environmental Protection ("CT DEEP"), and the Connecticut Office of Consumer Counsel ("CT OCC").

¹⁸³ *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).

- **CIP IROL Cost Recovery Rules (20-1389)**
Underlying FERC Proceeding: ER20-739¹⁸⁴
Petitioner: Cogentrix, Vistra

Status: Petition for Review DENIED on January 28, 2022.

On January 28, 2022, the Court (Judges Srinivasan, Katsas and Randolph) denied the petition by Cogentrix and Vistra 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. In denying the petition, the Court agreed with the FERC that Schedule 17 does not expressly permit recovery of previously paid costs to comply with mandatory reliability standards prior to an individual facility's Section 205 filing. The Court found that the FERC's application of the filed rate doctrine and rule against retroactive rulemaking was consistent with FPA Section 219. And the Court explained why it concluded that the FERC's application of those was not arbitrary or capricious. Reporting on this matter is now concluded.

- **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: EL18-1639¹⁸⁵
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.¹⁸⁶ The cases have been consolidated into Case No. 20-1343. On February 17 and 24, 2021, the Court consolidated with 20-1343 the most recent appeals in cases 21-1067 (NESCOE) and 21-1070 (CT Parties), respectively. On March 25, 2021, the Court issued an order returning this case to its active docket. On March 26, the Court granted the interventions by MMWEC/NHEC, NESCOE, and ENECOS. On April 16, 2021, the Court ordered the parties to file, and the parties did file, by May 17, 2021, proposed formats for the briefing of these cases.

On June 23, 2021, the Court established a briefing schedule. 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). Since the last Report, Respondent's (FERC's) Brief was filed on December 6, 2021; and Intervenor for Respondents' (ISO-NE and ENECOS) Briefs were filed December 20, 2021). Next up are 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: ER18-619¹⁸⁷
Petitioners: Sierra Club, NRDC, RENEW Northeast, and CLF
Status: Being Held in Abeyance (until June 1, 2022)

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

¹⁸⁴ *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").

¹⁸⁵ *July 2018 Order; July 2018 Rehearing Order; Dec 2018 Order; Dec 2018 Rehearing Order; Jul 17 Compliance Order.*

¹⁸⁶ 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.

¹⁸⁷ *ISO New England Inc.*, 162 FERC ¶ 61,205 (Mar. 9, 2018) ("CASPR Order").

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, 2021, CT Parties and MMWEC and NHEC filed statements of issues and notices that they intend to participate in support of Petitioners. On January 27, 2021, 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. On October 22, 2021, Petitioners Sierra Club, NRDC, Renew Northeast, Inc., and CLF moved the Court to hold this matter in abeyance until June 1, 2022. On October 25, 2021, the Court granted Petitioners' second motion to hold this matter in abeyance. The parties were directed to file motions to govern future proceedings in these cases on or before June 1, 2022.

- **Opinion 531-A Compliance Filing Undo (20-1329)**
Underlying FERC Proceeding: ER15-414¹⁸⁸
Petitioners: TOs' (CMP et al.)
Status: Being Held in Abeyance

On August 28, 2020, the TOs¹⁸⁹ petitioned the DC Circuit Court of Appeals for review of the FERC's October 6, 2017 order rejecting the TOs' filing that sought to reinstate their transmission rates to those in place prior to the FERC's orders later vacated by the DC Circuit's *Emera Maine*¹⁹⁰ 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 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

¹⁸⁸ *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) ("Order Rejecting Filing").

¹⁸⁹ 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.

¹⁹⁰ *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*").

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 December 15, 2021, 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.

- **ISO-NE's Inventoried Energy Program (Chapter 2B) Proposal (19-1224***; 19-1247; 19-1252; 19-1253)(consolidated); Underlying FERC Proceeding: ER19-1428¹⁹¹**
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 Held Oct 21, 2021; Awaiting Decision

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. Following completion of briefing, oral argument was held October 21, 2021 before Judges Wilkins, Katsas and Jackson. This matter is pending before the Court

Other Federal Court Activity of Interest

- **Order 872 (20-72788,* 21-70113; 20-73375, 21-70113) (consol.) (9th Cir.)**
Underlying FERC Proceeding: RM19-15¹⁹²
Petitioners: SEIA et al.

Status: Briefing Complete; Oral Argument Scheduled for March 8, 2022

On September 17, 2020, SEIA petitioned the 9th Circuit Court of Appeals for review of *Order 872*.¹⁹³ Briefing is now complete and oral argument has been scheduled for March 8, 2022, though the Court stated that panel to be assigned could decide to submit the case on the briefs instead. The composition of the argument panel will be identified roughly 30 days prior to oral argument.

- **PennEast Project (18-1128)**
Underlying FERC Proceeding: CP15-558¹⁹⁴
Petitioners: NJ DEP, DE and Raritan Canal Commission, NJ Div. of Rate Counsel
Status: Being Held in Abeyance

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. However, on October 29, the FERC and Petitioners NJ DEP, DE and Raritan Canal Commission, NJ Conservation Foundation and The Watershed Institute, NJ Division of Rate Counsel, Township of Hopewell, NJ and ConEd (collectively, "Movants") requested that the Court suspend the

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

¹⁹² *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).

¹⁹³ *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.

¹⁹⁴ *PennEast Pipeline Co., LLC*, 162 FERC ¶ 61,053 (Jan. 19, 2018), *reh'g denied*, 163 FERC ¶ 61,159 (May 30, 2018).

supplemental briefing schedule entered on September 13, 2021 and hold this consolidated case in abeyance. The Court granted that motion on November 12, 2021 and directed the parties to file motions to govern future proceedings by February 18, 2022.

- **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; EL15-45¹⁹⁵

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

Status: Oral Argument Held Nov 18, 2021; Awaiting Decision

The MISO TOs, Transource and "Dec 23 Petitioners",¹⁹⁶ 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. Following completion of briefing, oral argument was held on November 18, 2021 before Judges Srinivasan, Katsas and Walker. This matter is pending before the Court.

- **Algonquin Atlantic Bridge Project Briefing Order (21-1115*, 21-1138, 21-1153, 21-1155) (consol.);**

Underlying FERC Proceeding: CP16-9-012¹⁹⁷

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." The Court granted the first abeyance motion. On November 15, 2021, the Court granted a third abeyance motion by the FERC, directing the parties to file motions to govern future proceedings by January 31, 2022.

¹⁹⁵ *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).

¹⁹⁶ "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.

¹⁹⁷ *Briefing Order; April 19 Notice of Denial of Rehearings by Operation of Law*.

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