

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of August 31, 2022

The following activity, as more fully described in the attached litigation report, has occurred since the report dated August 2, 2022 ("last Report") was circulated. New matters/proceedings since the last Report are preceded by an asterisk '*'. Page numbers precede the matter description.

I. Complaints/Section 206 Proceedings

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| 1 | 206 Proceeding: <i>FTR Collateral Show Cause Order</i> (EL22-63) | Aug 3-18 | NEPOOL, Calpine, MPUC, EPSA, PJM, SPP, Public Citizen intervene
ISO-NE response due Oct 26, 2022
A special B&F meeting has been scheduled for Sep 22, 2022 to review and provide input on ISO-NE's proposed response |
| 3 | NMISA Complaint Against PTO AC (Reciprocal TOUT Discount) (EL22-31) | Aug 24 | NMISA requests rehearing of the FERC's Jul 28 order denying the NMISA Complaint seeking a reciprocal TOUT Discount; FERC action required on or before Sep 23, 2022 |

II. Rate, ICR, FCA, Cost Recovery Filings

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| * 8 | FCA17 De-List Bids Filing (ER22-2651) | Aug 10 | ISO-NE submits filing describing Permanent and Retirement De-List Bids submitted on or prior to the FCA17 Existing Capacity Retirement Deadline |
| | | Aug 19-31 | NEPOOL, National Grid intervene |
| 9 | Essential Power Newington CIP-IROL (Schedule 17) Section 205 Cost Recovery Filing (ER22-2469) | Aug 8-12 | NEPOOL, CSC, Eversource intervene |
| 9 | GenConn Middletown CIP IROL (Schedule 17) Cost Recovery Schedule Filing (ER22-2367) | Aug 19 | FERC accepts GenConn Middletown's CIP-IROL Costs rate schedule, eff. Sep 12, 2022 |
| 10 | Mystic 8/9 COS Agreement First CapEx Info Filing (ER18-1639) | Aug 9 | (-015) First CapEx Info. Filing Settlement Judge Procedures. 2 nd settlement conf scheduled for Nov 17, 2022 |

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

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| 12 | CSF Revisions (ER22-2546) | Aug 11-19 | Calpine, Eversource, National Grid intervene |
| 12 | Information Policy Cyber Security Incident Information Sharing Changes (ER22-2366) | Aug 31 | FERC accepts Changes, eff. Sep 11, 2022 |
| 12 | New England's <i>Order 2222</i> Compliance Filing (ER22-983) | Aug 9 | AEE, AEMA, PowerOptions, and SEIA answer ISO-NE Jul 25 answer |

IV. OATT Amendments / TOAs / Coordination Agreements

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| 13 | <i>Phase I/II HVDC-TF Order 881 Compliance Filing</i> (ER22-2468 and (ER22-2467) | Aug 3 | IRH Management Committee intervenes |
| 14 | Process Modifications - DER Interconnection/Interconnection Study Coordination (ER22-2226) | Aug 4
Aug 26 | ISO-NE answers SEIA's comments
FERC accepts process modifications, eff. Aug 28, 2022 |

V. Financial Assurance/Billing Policy Amendments*No Activity to Report***VI. Schedule 20/21/22/23 Changes & Agreements**

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| * 15 | Schedule 21-NEP: Narragansett/
Pawtucket Power Decomm. CRA
(ER22-2732) | Aug 26 | Narragansett files Decommissioning Cost Reimbursement Agreement with Pawtucket Power Associates LP covering work to support decommissioning of certain interconnection facilities and related equipment for Pawtucket's now-retired 69 MW generating facility |
| 16 | Schedule 20A (Phase I/II HVDC-TF Service Agreement) Reassignm't Agreements: CMP & UI/ BRTM/ HQUS (ER22-2433/32/31) | Aug 15 | FERC accepts 3 Phase I/II HVDC-TF service agreements (1 with CMP; 2 with UI) that transfer Brookfield transmission service rights and obligations to HQUS, eff. Sep 1, 2022 |
| 16 | Schedule 20A (Phase I/II HVDC-TF Service Agreement) Reassignm't Agreement: NEP/BRTM/HQUS (ER22-2398) | Aug 15 | FERC accepts NEP Phase I/II HVDC-TF service agreement that transfers Brookfield transmission service rights and obligations to HQUS; eff. Sep 1, 2022 |
| * 16 | Schedule 21-NEP: NEP/NSTAR Civil Work & Construction Agreement (ER22-2175) | Aug 9 | FERC accepts Agreement, eff. Apr 19, 2022 |

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

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| 17 | Capital Projects Report - 2022 Q2
(ER22-2667) | Aug 11
Aug 24
Aug 31 | ISO-NE files 2022 Q2 Report; comment date Sep 1, 2022
NEPOOL intervenes and files comment supporting the Report
National Grid intervenes |
| * 18 | Interconnection Study Metrics
Processing Time Exceedance
Report Q2 2022 (ER19-1951) | Aug 21 | ISO-NE files required quarterly report |
| * 19 | IMM Quarterly Markets Reports -
2022 Spring (ZZ21-4) | Aug 19 | IMM files Spring 2022 Report, to be reviewed at the Sep 13-14 Markets Committee meeting |
| * 19 | ISO-NE FERC Form 3Q (2022/Q2)
(not docketed) | Aug 25 | ISO-NE submits its 2022 Q2 FERC Form 3Q |

IX. Membership Filings

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| 19 | July 2022 Membership Filing
(ER22-2260) | Aug 19 | FERC accepts (i) the termination of the Participant status of Liberty Power Holdings; and (ii) the name change of Astral (f/k/a/ Able Grid) Infrastructure Holdings, LLC |
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X. Misc. - ERO Rules, Filings; Reliability Standards

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| * 20 | 2023 NERC/NPCC Business Plans
and Budgets (RR22-4) | Aug 23 | NERC submits proposed 2023 Business Plan and Budget for itself and its Regional Entities, including NPCC; comment deadline Sep 13, 2022 |
| 20 | NPCC Bylaws Changes (RR22-2) | Aug 10 | FERC grants NERC/NPCC request for 30-day extension of time, to Oct 6, 2022 , to submit compliance filing in response to the requirements of the Jul 8 order accepting the changes |

21	Rules of Procedure Changes (Reliability Standards Development Revisions) (RR21-8)	Aug 25	FERC approves Revisions, eff. Aug 25, 2022
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XI. Misc. - of Regional Interest



22	203 Application: Waterside Power / KKR (EC22-79)	Aug 19	FERC authorizes sale of 100% of Applicants' equity interests to KKR
22	203 Application: Stonepeak/JERA Americas (EC22-71)	Aug 8	Applicants submit informational filing
22	Versant MPD OATT Order 881 Compliance Filing (ER22-2358)	Aug 2	MPUC protests filing
23	VTransco Shared Structure Participation Agreements (ER22-2189)	Aug 22	FERC accepts two Shared Structure Participation Agreements between VTransco and Green Mountain Power, eff. Jan 1, 2022
23	IAs: NEP / Narragansett (ER22-2039/2038)	Aug 3, 4	FERC accepts IA-NECO-56 (ER22-2039) and IA-NEP-55 (ER22-2038) (the wire-to-wires IA that governs the interconnection of NEP's and Narragansett's transmission systems), each eff. May 25, 2022
23	Orders 864/864-A (Public Util. Trans. ADIT Rate Changes): New England Compliance Filings (various)	Aug 12	ER20-2133 (Versant-BHD Formula Rate). Versant supplements its Apr 12, 2022 compliance filing with further amendments to Attachment P-VP to Schedule 21-VP

XII. Misc. - Administrative & Rulemaking Proceedings



* 24	Interregional HVDC Merchant Transmission (AD22-13)	Aug 26	Comments filed by 12 parties, including CSC , Invenenergy , Phase I/II Asset Owners and IRH , Joint Consumer Advocates , ACORE , ACPA , SEIA , Neptune and Hudson
* 24	Reliability Technical Conference (AD22-10)	Aug 23	FERC issues notice of annual tech conf to be held Nov 10, 2022 at FERC HQ
24	New England Gas-Electric Winter Forum (AD22-9)	Aug 22	FERC posts supplemental notice of Forum, including an agenda, description of proposed panels and panelist identities
25	Joint Federal-State Task Force on Electric Transmission (AD21-15)	Aug 3 Aug 11	Post-Jul 20 JFSTF meeting comments may be filed by Sep 2, 2022 Fourth JFSTF meeting transcript posted in eLibrary
27	NOPR: Duty of Candor (RM22-20)	Aug 12	NOPR published in Fed. Reg., comments due Oct 11, 2022
27	NOPR: Extreme Weather Vulnerability Assessments (RM22-16; AD21-13)	Aug 30	Comments filed by over 13 parties, including, among others, Eversource , NRDC , NERC , MISO , PJM , EPSA
30	NOPR: ISO/RTO Credit Information Sharing (RM22-13)	Aug 8	NOPR published in Fed. Reg.; comments and reply comments due Oct 7, 2022 and Nov 7, 2022 , respectively
30	NOPR: Transmission System Planning Performance Requirements for Extreme Weather (RM22-10)	Aug 11-29	Comments filed by over 37 parties, including, among others, ISO-NE , Eversource , NESCOE , NRDC , UCS , NERC , ERCOT , MISO , NYISO , PJM , ACPA , EPRI , EPSA , NARUC , Trade Associations

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| 32 | <i>Transmission NOPR</i> (RM21-17) | Aug 4-18 | Nearly 200 sets of comments were filed, including by NEPOOL , ISO-NE , Acadia/CLF , Anbaric , AEE , Avangrid , BP , Dominion , Enel , Engie , Eversource , Invenergy , LSP Power , MOPA , MMWEC/CMEEC , NHEC/VPPSA , National Grid , NECOES , NESCOE , NextEra , NRG , Onward Energy , Orsted , PPL , Shell , Transource , VELCO , Vistra , ISO/RTO Council , NERC , US DOJ/FTC , MAAG , State Agencies , VT PUC/DPS , Potomac Economics , ACPA , ACRE , APPA , EEL , EPSA , Industrial Customer Organizations , LPPC , NASUCA , NRECA , Public Interest Organizations , SEIA , TAPS , WIRES , Harvard Electricity Law Initiative , New England for Offshore Wind , and the R Street Institute ; reply comments due Sep 19, 2022 |
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XIII. FERC Enforcement Proceedings



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| * 36 | CPower (IN22-7) | Aug 25 | FERC approves Stipulation and Consent Agreement that resolved OE's investigation into CPower's compliance with the ISO-NE Tariff's Energy Market Offer Requirements (§III.13.6.1.5.1) between Jun 2018 and Feb 2019; CPower must disgorge \$2,460,628 and pay a \$2,539,372 civil penalty |
| 39 | Total Gas & Power North America, Inc. et al. (IN12-17) | Aug 30 | Chief Judge Satten extends the hearing commencement date and the initial decision deadline to Jan 23, 2023 and July 10, 2023, respectively |

XIV. Natural Gas Proceedings



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| 41 | Northern Access Project (CP15-115) | Aug 30 | The request for rehearing of the <i>Northern Access Project Add'l Extension Order</i> denied by operation of law |
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XV. State Proceedings & Federal Legislative Proceedings



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| * 43 | Maine - NECEC Transmission LLC et al. v. Bureau of Parks and Lands et al. (BCD-21-416) | Aug 30 | The Maine Supreme Judicial Court concludes that the legislation enacted as a result of the passage of Maine's Nov 2, 2021 ballot question, and that effectively halted construction of the NECEC Project, was unconstitutional to the extent it required the legislation to be applied retroactively to the Project's CPCN if NECEC had acquired vested rights to proceed with Project construction |
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XVI. Federal Courts



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| * 44 | Mystic III (<i>True-Up Orders</i>) (22-1215) | Aug 25 | Court issues order consolidating this case with 21-1198 et al. and requiring docketing statements and statement of issues by Sep 26, 2022 ; dispositive motions, if any, by Oct 11, 2022 |
| 44 | 2nd Revised Narragansett LSA Orders (22-1108, 22-1161) (consol.) | Aug 15 | Green Development files Statement of Issues and Docketing Statement |
| | | Aug 29 | Court grants New England Power's Aug 10, 2022 motion for leave to intervene |
| | | Aug 30 | Court establishes a revised briefing schedule |
| 45 | Mystic II (ROE & True-Up) (21-1198 et al.) (consol.) | Aug 9 | Court, having decided MISO TOs, orders the parties to file motions to govern future proceedings in this case by Sep 8, 2022 |
| | | Aug 25 | Court consolidates Case 22-1215 with these cases |

45	Mystic I (Original Cost Test, Capital Structure, Everett Cost Recovery, Clawback, True-Up Mechanism) (20-1343 et al.) (consol.)	Aug 12 Aug 23	Mystic informs Court of settlement in principle that could resolve the issues of Mystic's proper capital structure and cost of debt Court issues decision holding that Mystic's petition for review be dismissed in part and denied in part; State Petitioners' petitions for review be granted; the clawback portions and the challenged delay provision of the orders under review be vacated; and the cases be remanded for the FERC to address NESCOE's request for clarification about revenue credits and for clarification of the apparent contradictions in the FERC's Dec 2020 Rehearing Order
46	<i>Opinion 531-A</i> Compliance Filing Undo (20-1329)	Aug 11	FERC files status report indicating that the proceedings before the Commission remain ongoing and that this appeal should continue to remain in abeyance
47	ISO-NE's Inventoried Energy Program Proposal (19-1224 et al.) (consol.)	Aug 9	Court issues mandate to FERC; ball's in FERC's court
48	<i>Opinion 569/569-A</i> : FERC's Base ROE Methodology (16-1325 et al.) (consol.)	Aug 9	Court issues its decision granting customers' petitions for review, dismissing transmission owners' petitions for review, vacating the underlying FERC orders, and remanding the cases to the FERC to re-open its proceedings
49	Algonquin Atlantic Bridge Project Cases (21-1115 et al. (consol.); and 22-1146 et al. (consol.))	Aug 16	Court deconsolidates 22-1146 and 22-1147 from 21-1115 et al., consolidates Cases 22-1146 and 22-1147 together, and issues a briefing schedule for the separately consolidated cases

M E M O R A N D U M

TO: NEPOOL Participants Committee Members and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: August 31, 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 August 31, 2022. If you have questions, please contact us.

I. Complaints/Section 206 Proceedings

- **206 Proceeding: FTR Collateral Show Cause Order (EL22-63)**

On July 28, 2022, the FERC instituted a Section 206 proceeding finding that the existing tariffs of certain ISO/RTOs, including the ISO-NE Tariff, appear to be unjust and unreasonable.² The FERC found that ISO-NE's Tariff appears to be unjust and unreasonable in the absence of volumetric minimum collateral requirements for FTR Market Participants ("volumetric FTR collateral requirements"). Accordingly, ISO-NE was directed, on or before **October 26, 2022**, to either: (1) show cause as to why the Tariff remains just and reasonable and not unduly discriminatory or preferential; or (2) explain what changes to the Tariff it believes would remedy the identified concerns if the FERC were to determine that the Tariff has in fact become unjust and unreasonable or unduly discriminatory or preferential.³ Alternatively, if it is so inclined, ISO-NE may propose Tariff revisions on the subject of the *FTR Collateral Show Cause Order* under FPA Section 205 and request that these proceedings be held in abeyance pending disposition of that proceeding.⁴ A special Budget & Finance Subcommittee meeting has been scheduled for September 22, 2022 to review and provide input on ISO-NE's proposed response.

The *FTR Collateral Show Cause Order* follows PJM's *Green Hat* experience,⁵ a 2019 request by the Energy Trading Institute requesting a FERC-convened technical conference to consider a potential rulemaking to improve ISO/RTO credit practices,⁶ and a two-day technical conference in February 2021 that discussed principles and best

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 *CAISO, ISO-NE, NYISO, and SPP*, 180 FERC ¶ 61,049 (July 28, 2022) ("*FTR Collateral Show Cause Order*").

³ *Id.* at P 31.

⁴ *Id.* at P 32.

⁵ See *GreenHat Energy, LLC*, 175 FERC ¶ 61,138 (2021) (order to show cause) (*GreenHat Show Cause Order*); *GreenHat Energy, LLC*, 177 FERC ¶ 61,073 (2021) (order assessing civil penalties). In June 2018, GreenHat Energy LLC ("GreenHat") defaulted on its obligations to PJM after amassing one of the largest FTR portfolios in the PJM region. At the time of its default, GreenHat had only \$559,447 on deposit as collateral with PJM and no other material assets. However, over the subsequent three-year period ending in May 2021, this FTR portfolio incurred approximately \$179 million in losses, which were borne by non-defaulting market participants in PJM.

⁶ Energy Trading Institute Request for Technical Conference and Petition for Rulemaking to Update Credit and Risk Management Rules and Procedures in the Organized Markets, *Credit Reforms in Organized Wholesale Electric Markets*, Docket No. AD20-6-000 (Dec. 16, 2019).

practices for credit risk management in organized wholesale electric markets.⁷ In the *FTR Collateral Show Cause Order*, the FERC stated that, although the record developed through the technical conference highlighted numerous different approaches to managing credit risk, “we believe that two specific practices may be particularly critical to effectively managing credit risk for FTRs: the use of a mark-to-auction mechanism and a volumetric minimum collateral requirement for FTRs.”⁸ ISO-NE currently employs a mark-to-auction mechanism but not volumetric FTR collateral requirements.

The FERC issued on July 28, 2022, a notice of this proceeding and of the refund effective date, which will be August 3, 2022.⁹ Those interested in participating in this proceeding were required to intervene on or before August 18, 2022. Doc-less interventions were been filed by NEPOOL, Calpine, DC Energy, NRG, the Maine Public Utilities Commission (“MPUC”), Electric Power Supply Association (“EPSA”), PJM, SPP, and Public Citizen. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **RENEW/ACPA Resource Capacity Accreditation & Operating Reserve Designation Complaint (EL22-42)**

As previously reported, RENEW Northeast, Inc. (“RENEW”) and the American Clean Power Association (“ACPA”) filed a Complaint on March 15, 2022 under Section 206 of the Federal Power Act (“FPA”) against ISO-NE seeking a FERC order directing ISO-NE to make changes to its rules for capacity accreditation and operating reserve designations, effective no later than FCA18 with respect to capacity accreditation and promptly with respect to operating reserve designations. RENEW/ACPA asserted that the changes are needed to address undue preferences granted under ISO-NE’s rules and procedures to gas-fired generation resources that have neither dual-fuel capability nor dedicated, firm natural gas supply arrangements (“Gas-Only Resources”). Complainants asserted that the undue preferences arise in the context of capacity accreditation through an assumption of 100% fuel availability for Gas-Only Resources, and in the context of operating reserves, through the absence of any pre-dispatch requirements to confirm fuel availability. ISO-NE’s response and comments, following a request for extension granted by the FERC, were due on or before April 14, 2022.

On April 14, 2022, [ISO-NE](#) responded to the Complaint. Protests and comments on the Complaint were filed by: [NEPOOL](#), [AEE](#), [Calpine](#), [EDF](#), [FirstLight](#), [LS Power](#), [NEPGA](#), [NESCOE](#), [Public Interest Orgs](#),¹⁰ [Vistra/LSP Power](#), [State Parties](#),¹¹ [EPSA](#), [National Hydropower Assoc.](#), and the Solar Energy Industries Association (“SEIA”). On April 29, RENEW/ACPA answered the ISO-NE and NEPOOL motions to dismiss and answered the protests and comments filed in opposition to the Complaint. On May 17, ISO-NE answered the April 29 RENEW/ACPA answer. Interventions only were filed by AEP, Avangrid, Avangrid Renewables, Borrego, Brookfield, Constellation, CPV Towantic, Dominion, ENE, Excelebrate, National Grid, NextEra, NH OCA, North East Offshore, NRG, Public Systems,¹²

⁷ See Supp. Notice of Tech. Conf., *RTO/ISO Credit Principles and Practices*, Docket No. AD21-6, et al. (Feb. 10, 2021).

⁸ The FERC explained that (i) the mark-to-auction mechanism mitigates the risk of default by updating collateral requirements to reflect the most recent valuation of the FTR position and (ii) volumetric FTR collateral requirements ensure that a market participant is required to post a minimum amount of collateral to cover potential defaults, even when the market participant has offsetting positions. With respect to volumetric FTR collateral requirements, the FERC expressed a concern that netting of FTRs with negative collateral requirements against FTRs with positive collateral requirements can lead to insufficient collateral for a portfolio’s risk should future congestion be significantly different than historical congestion. Without explicit \$/MWh volumetric FTR collateral requirements, the FERC is “concerned that market participants may be able to minimize their collateral requirements without a corresponding reduction in risk”. The ISO-NE Financial Assurance Policy (“FAP”) allows for some limited offsetting. See FAP § VI (allowing for netting of FTRs with the same or opposite path, same contract month and type). *FTR Collateral Show Cause Order* at PP 28-29.

⁹ The *Notice* was published in the *Fed. Reg.* on Aug 3, 2022 (Vol. 87, No. 148) p. 47,409.

¹⁰ “Public Interest Orgs” are the Sustainable FERC Project, Acadia Center, Conservation Law Foundation (“CLF”), Sierra Club, and Natural Resources Defense Council (“NRDC”).

¹¹ “State Parties” are the Connecticut Department of Energy and Environmental Protection (“CT DEEP”), the Massachusetts Attorney General (“MA AG”), and the Connecticut Attorney General (“CT AG”).

¹² “Public Systems” are Connecticut Municipal Electric Energy Cooperative (“CMEEC”), Massachusetts Municipal Wholesale Electric Company (“MMWEC”), New Hampshire Electric Cooperative, Inc. (“NHEC”), and Vermont Public Power Supply Authority (“VPPSA”).

CT PURA, MA DPU, MPUC, Repsol, APPA, EPSA, the Institute for Policy Integrity at New York University School of Law, and Public Citizen. On July 20, 2022, ISO-NE submitted a letter requested expeditious action on the Complaint (a request NEPOOL supported). RENEW/ACPA supported the request for expedited action on August 1, 2022 (adding that the FERC “should grant the Complaint and direct ISO-NE to submit a compliance filing that timely implements the proposed remedies”, and could address the wish for “constructive *ex parte* communications with [FERC] Staff ... with an appropriately crafted waiver of the *ex parte* limitations”). No action has yet been taken and this Complaint remains pending before the FERC. If you have any questions concerning this Complaint, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **NMISA Complaint Against PTO AC (Reciprocal TOUT Discount) (EL22-31)**

On August 24, 2022, the Northern Maine Independent System Administrator (“NMISA”) requested rehearing of the FERC’s order denying NMISA’s complaint against ISO-NE and the Participating Transmission Owners (“PTOs”) Administrative Committee (“PTO AC”), holders of the exclusive Section 205 rights in this matter, for failure to consider and implement a reciprocal discount to the Through and Out (“TOUT”) charges applied to transactions between the New England and Northern Maine regions (“TOUT Discount”).¹³ As previously reported, the FERC found that “NMISA has not demonstrated that the failure of the PTO AC and ISO-NE to offer NMISA reciprocal treatment is unduly discriminatory or preferential”.¹⁴ Specifically, the FERC cited its longstanding policy permitting such charges, found for a number of reasons NYISO and NMISA not similarly situated, and noted that NMISA’s showing that the proposed approach might be superior for NMISA insufficient to meet its FPA Section 206 statutory burden. In requesting rehearing, NMISA asserted that the FERC erred by (i) failing to provide a reasoned explanation for its determination that NMISA and NYISO are not similarly situated; and (ii) failed to justify its decision not to enforce the requirement that ISO-NE engage in extensive efforts to reduce seams with neighboring control areas. The NMISA request for rehearing is pending, with FERC action required on or before **September 23, 2022**, or the request will be deemed denied by operation of law. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

Still pending before the FERC is the FERC-instituted FPA Section 206 proceeding under which the FERC is considering whether Schedule 25 and Tariff § I.3.10 may be unjust and unreasonable.¹⁵ As previously reported, 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.¹⁶

The FERC directed ISO-NE to: (1) show cause as to why Schedule 25 and Tariff § I.3.10 remain just and reasonable or (2) explain what changes to Schedule 25 and/or Tariff § 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

¹³ *Northern Maine Indep. Sys. Administrator, Inc. v. ISO New England Participating Transmission Owners Administrative Comm.*, 180 FERC ¶ 61,044 (July 28, 2022) (order denying reciprocal TOUT discount complaint).

¹⁴ *Id.* at PP 14-15.

¹⁵ *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”).

¹⁶ *Id.* at P 20.

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 is 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, 2021¹⁷ and included 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), ACPA, EPSA, RENEW, and Public Citizen.

ISO-NE Answer. On November 8, 2021, ISO-NE submitted its answer explaining why Schedule 25 and Tariff § 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, 2022 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.

As noted, 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).

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

Still pending before the FERC is the October 13, 2020 complaint by NECEC and Avangrid Inc. (together, “Avangrid”) 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 relief¹⁸ 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 (the “Complaint”). NextEra submitted an answer to the Complaint (requesting the FERC dismiss or deny the Complaint) and National Grid filed comments. Doc-less interventions only were filed by Dominion, Eversource, Calpine, Exelon, HQ US, MA AG, MMWEC, NESCOE, NRG, and Public Citizen. Avangrid answered NextEra’s answer and NextEra answered Avangrid’s answer (“supplemental answer”), repeating its request that the FERC dismiss or deny the Complaint. Avangrid subsequently answered the supplemental answer.

Amended Complaint. On March 26, 2021, Avangrid amended the Complaint to reflect that aspects of the relief originally requested in the Complaint were no longer feasible within the timeline previously sought. Avangrid continued 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.

¹⁷ The Notice was published in the *Fed. Reg.* on Sep. 14, 2021 (Vol. 86, No. 175) p. 51,140.

¹⁸ 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 inter connection of the NECEC Project.

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).¹⁹ Initial briefs²⁰ were due on or before October 7, 2021, and were filed by [ISO-NE](#), [Avangrid](#), [NextEra](#), [MAAG](#), [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 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). 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 pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

In a related matter, and also still pending before the FERC, is a Petition for a Declaratory Order filed by NextEra Energy Seabrook, LLC ("Seabrook") a week earlier than the Avangrid Complaint that seeks clarity on the scope of Seabrook's "FERC-jurisdictional regulatory obligations with respect to the project ("NECEC Elective Upgrade"), and to resolve its dispute with NECEC" (the "Seabrook Petition"). 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 the Seabrook Petition were filed by Eversource, MMWEC and NEPGA. Avangrid and NECEC Transmission (together, "Avangrid") protested the Seabrook Petition. Doc-less interventions only were filed by 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 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

¹⁹ *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).

²⁰ 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.

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,²¹ set the TOs' Base ROE at 10.57% (reduced from 11.14%), capped the TOs' total ROE (Base ROE *plus* transmission incentive adders) at 11.74%, and required implementation effective as of October 16, 2014 (the date of *Opinion 531-A*).²² However, the FERC's orders were challenged, and in *Emera Maine*,²³ the U.S. Court of Appeals for the D.C. Circuit ("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)²⁴ and third (EL14-86)²⁵ 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.²⁶ 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 proceeding²⁷ also went to hearing before an Administrative Law Judge ("ALJ"), Judge Glazer, who issued his initial decision on March

²¹ 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*").

²² *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*").

²³ *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).

²⁴ 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%.

²⁵ 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.

²⁶ *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*").

²⁷ 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,

27, 2017.²⁸ 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.²⁹ Parties in this proceeding filed briefs on exception to the FERC, which has not yet issued an opinion on the *Base ROE IV Initial Decision*.

October 16, 2018 Order Proposing Methodology for Addressing ROE Issues Remanded in Emera Maine and Directing Briefs. On October 16, 2018, the FERC, addressing the issues that were remanded in *Emera Maine*, proposed a new methodology for determining whether an existing ROE remains just and reasonable.³⁰ 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*³¹ (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.³²

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

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.

²⁸ *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 162 FERC ¶ 63,026 (Mar. 27, 2018) (“*Base ROE Complaint IV Initial Decision*”).

²⁹ *Id.* at P 2.; Finding of Fact (B).

³⁰ *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (Oct. 18, 2018) (“*Order Directing Briefs*” or “*Coakley*”).

³¹ *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*.

³² *Id.* at P 19.

unreasonable. The FERC suggested that it would adopt a 10.41% Base ROE and cap any preexisting incentive-based total ROE at 13.08%.³³ The new ROE would be effective as of the date of *Opinion 531-A*, or October 16, 2014. Accordingly, the issue to be addressed in the Base ROE Complaint II proceeding is whether the ROE established on remand in the first complaint proceeding remained just and reasonable based on financial data for the six-month period September 2013 through February 2014 addressed by the evidence presented by the participants in the second proceeding. Similarly, briefing in the third and fourth complaints will have to address whether whatever ROE is in effect as a result of the immediately preceding complaint proceeding continues to be just and reasonable.

The FERC directed participants in the four proceedings to submit briefs regarding the proposed approaches to the FPA section 206 inquiry and how to apply them to the complaints (separate briefs for each proceeding). Additional financial data or evidence concerning economic conditions in any proceeding must relate to periods before the conclusion of the hearings in the relevant complaint proceeding. Following a FERC notice granting a request by the TOs and Customers³⁴ 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, Edison Electric Institute (“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*³⁵ 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

• FCA17 De-List Bids Filing (ER22-2651)

Pursuant to Market Rule 1 § 13.8.1(a), ISO-NE submitted on August 10, 2022 a filing describing the Permanent De-List Bids and Retirement De-List Bids that were submitted on or prior to the May 6, 2022 FCA17 Existing Capacity Retirement Deadline. ISO-NE reported that it received 3 Permanent De-List Bids and 2 Retirement De-List Bids. The bids were for resources located in the VT, South Eastern Massachusetts, and Western Central MA Load Zones, with 20.362 MWs of aggregate capacity. All of the Bids were for resources under 20 MW or that did not meet the affiliation requirements that would have required Internal Market Monitor (“IMM”) review. The IMM’s determination regarding those bids is described in the version of the filing that was filed confidentially as required under §13.8.1(a) of Market Rule 1. Comments on this filing were due on or before August 31; none were filed. Doc-less interventions were filed by NEPOOL and National Grid. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

³³ *Id.* at P 59.

³⁴ For purposes of the motion seeking clarification, “Customers” are CT PURA, MA AG and EMCOS.

³⁵ *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).

- **Essential Power Newington CIP-IROL (Schedule 17) Section 205 Cost Recovery Filing (ER22-2469)**

On July 22, 2022, Essential Power Newington ("EP Newington") requested FERC acceptance of its recovery, pursuant to its Schedule 17 Rate Schedule,³⁶ of **\$360,261** in Interconnection Reliability Operating Limits Critical Infrastructure Protection costs ("CIP-IROL Costs") under Schedule 17 of the ISO-NE Tariff for the February 18, 2021 through June 30, 2022 period ("Cost Recovery Period"). Essential Power Newington reported that it completed Schedule 17's pre-filing requirements ("Pre-Filing Review Process"), which included the active participation of NESCOE and one other interested party. A September 21, 2022 effective date for EP Newington's CIP-IROL Cost Recovery was requested. Comments on this filing were due on or before August 12, 2022; none were filed. Doc-less interventions only were filed by NEPOOL, Cross-Sound Cable ("CSC"), Eversource, and NESCOE. 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).

- **GenConn Middletown CIP IROL (Schedule 17) Cost Recovery Schedule Filing (ER22-2367)**

On August 19, 2022, the FERC accepted GenConn Middletown's rate schedule that will allow it to begin the recovery period for certain CIP-IROL Costs under ISO-NE Tariff Schedule 17.³⁷ As GenConn explained, the rate schedule provides interested parties notice of GenConn Middletown's intent to recover CIP-IROL Costs for each affiliated facility designated as an IROL-Critical Facility, and an order accepting the rate schedule will provide an effective date after which associated costs incurred can be recovered following completion of the process contemplated by Schedule 17 and a subsequent Section 205 filing identifying the specific costs to be recovered. GenConn's rate schedule was accepted effective as of September 12, 2022, as requested. Unless the August 19, 2022 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Mystic COS Agreement Updates to Reflect Constellation Spin Transaction³⁸ (ER22-1192)**

On May 2, the FERC accepted and suspended in part Constellation Mystic Power, LLC's ("Mystic's") changes to its Amended and Restated Cost-of-Service Agreement ("COS Agreement") to reflect Mystic's current upstream ownership.³⁹ The changes were accepted effective as of Jun 1, 2022, but subject to refund. Specifically, the FERC accepted (i) Mystic's changes throughout the COS Agreement to replace the term "Exelon Generation Company, LLC" with "Constellation Energy Generation, LLC"; and (ii) the addition of language to the true-up methodology that provides that the values included in the true-up methodology exclude costs associated with the Spin Transaction. However, noting that Mystic's contested proposal on the issue of capital structure and cost of debt raises issues of material fact that cannot be resolved based on the record, the FERC accepted and suspended this portion of the COS Agreement for a nominal period, to become effective June 1, 2022, subject to refund and to the outcome of paper hearing procedures. The FERC also directed the appointment of a settlement judge and will hold the paper hearing in abeyance so as to provide the participants an opportunity for settlement discussions.⁴⁰

Settlement Judge Procedures. On May 10, Chief Judge Cintron designated Judge Steven Glazer as the Settlement Judge in this proceeding. Judge Glazer convened three settlement conferences -- on June 2, June 28, and July 14, 2022. In each of his two status reports (June 23 and July 26, 2022), Judge Glazer recommended that, "as the participants continue to engage in good faith efforts to reach settlement, that settlement procedures

³⁶ See *Essential Power Newington, LLC*, Docket No. ER21-1171 (Mar. 31, 2021) (delegated letter order) (accepting Newington's CIP-IROL Rate Schedule effective Feb. 18, 2021, starting the eligible Cost Recovery Period).

³⁷ *GenConn Middletown LLC*, Docket No. ER22-2367-000 (Aug. 19, 2022) (unpublished letter order).

³⁸ In the Spin Transaction, Constellation's and Mystic's corporate parent changed from Exelon Corporation to a newly-created holding company, Constellation Energy Corporation ("Constellation Corporation"). Mystic continues to be an indirect wholly-owned subsidiary of Constellation Energy Generation, LLC, which in turn is a direct, wholly-owned subsidiary of Constellation Corporation.

³⁹ *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,081 (May 2, 2022) ("May 2, 2022 Order").

⁴⁰ *Id.* at P 24.

continue.” In addition, in his July 26 report, Judge Glazer reported that, “the participants reached an agreement to settle their issues. The participants have moved to documenting the agreement in principle.” On July 19, Deputy Chief ALJ Andrew Satten substituted ALJ Patricia M. French for Judge Glazer (who has now retired). Judge French will conduct the ongoing settlement judge procedures going forward.

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).

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

As previously reported, each of the *July 17 Orders*⁴¹ and the *Mystic ROE Orders*,⁴² which addressed in part or in whole the COS Agreement⁴³ among Mystic, Constellation Energy Generation, LLC⁴⁴ (“Constellation”) and ISO-NE, have been appealed to, and consolidated before, the DC Circuit (see Section XVI below).

(-014) Revised ROE (Sixth) Compliance Filing. Still pending is Mystic’s December 20, 2021 filing in response to the requirements of the *Mystic ROE Allegheny Order*. 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 remains pending before the FERC.

(-000) 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. Mystic responded to the formal challenges on November 17, 2021 asserting that the challenges should be rejected without further procedures. ENECOS and NESCOE replied to Mystic’s November 17 reply on December 2 and December 6, 2021, respectively.

On April 28, 2022, the FERC issued an order granting in part, and denying in part, ENECOS’ and NESCOE’s formal challenges, subject to refund, and established hearing and settlement judge procedures.⁴⁵ The FERC summarily denied NESCOE’s challenge regarding the update to the AFRR and ENECOS’ challenge with regard to the

⁴¹ 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).

⁴² *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%); *Constellation Mystic Power, LLC*, 177 FERC ¶ 61,106 (Nov. 18, 2021) (“*Mystic ROE First Allegheny Order*”) (re-setting Mystic’s ROE to 9.19%); *Constellation Mystic Power, LLC*, 177 FERC ¶ 61,106 (Nov. 18, 2021) (“*Mystic ROE Second Allegheny Order*”), and together with the *Mystic ROE Order* and the *Mystic ROE Allegheny Order*, the “*Mystic ROE Orders*”) (modifying the discussion in, but sustaining the results of, the *Mystic ROE First Allegheny Order*).

⁴³ The COS Agreement, submitted on May 16, 2018, is between Mystic, Exelon Generation Company, LLC (“ExGen”) and ISO-NE. The COS Agreement is to provide cost-of-service compensation to Mystic for continued operation of Mystic 8 & 9, which ISO-NE has requested be retained to ensure fuel security for the New England region, for the period of June 1, 2022 to May 31, 2024. The COS Agreement provides for recovery of Mystic’s fixed and variable costs of operating Mystic 8 & 9 over the 2-year term of the Agreement, which is based on the pro forma cost-of-service agreement contained in Appendix I to Market Rule 1, modified and updated to address Mystic’s unique circumstances, including the value placed on continued sourcing of fuel from the Distrigas liquefied natural gas (“LNG”) facility.

⁴⁴ On Feb. 1, 2022, Exelon Generation Company, LLC was renamed and is now known as Constellation Energy Generation, LLC.

⁴⁵ *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,011 (Apr. 28, 2022) (“*Mystic First CapEx Info. Filing Order*”).

improper booking of items. Those items, and challenges to other underlying projected costs, may be challenged in connection with Mystic's Second Informational Filing (where the informal challenge process begins on April 1, 2022 and the formal challenge process begins on September 15, 2022).⁴⁶ The FERC reiterated that all items except return on equity and depreciation are subject to the true-up process described in Schedule 3A of the COS Agreement, not just projected capital expenditures. However, with respect to NESCOE's and ENECOS' allegations that Mystic failed to support all of its projected capital expenditures, the FERC found that the First CapEx Projects Info. Filing raised issues of material fact that could not be resolved based on the record and would be more appropriately addressed under hearing and settlement judge procedures.⁴⁷ Accordingly, the FERC set these matters for a trial-type evidentiary hearing. The FERC encouraged the parties to make every effort to settle their disputes before hearing procedures are commenced, and to that end, will hold the hearing in abeyance pending the appointment of a settlement judge and completion of settlement judge procedures.⁴⁸

(-015) First CapEx Info. Filing Settlement Judge Procedures. On May 4, Chief Judge Cintron designated Judge Andrea McBarnette as the Settlement Judge. A first settlement conference was convened on Wednesday June 15, 2022. A second settlement conference is scheduled for **November 17, 2022**.

(-017) Request for Clarification or Rehearing of Mystic First CapEx Info. Filing Order Denied by Operation of Law. On May 27, 2022, Mystic requested that the FERC clarify that it did not determine that Mystic's already-litigated historical (pre-2018) rate base is subject to re-litigation as part of any "true-up" process under the Mystic Agreement. ENECOS answered that request on June 10, 2022. On June 27, 2022, the FERC issued a notice that Mystic's request can be deemed to have been denied by operation of law.⁴⁹ Mystic appealed the *Mystic First CapEx Info. Filing Order* and the June 27, 2022 notice (together the "*True-Up Orders*") to the DC Circuit, which has since consolidated the *True-Up Orders* appeal with the ROE appeals (see Section XVI, Case No. 21-1198 below).

If you have questions on any aspect of this proceeding, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Margaret Czepiel (202-218-3906; mczepiel@daypitney.com).

- **Transmission Rate Annual (2022-23) Update/Informational Filing (ER09-1532; RT04-2)**

On July 29, 2022, the PTO AC submitted its annual filing identifying adjustments to Regional Transmission Service charges, Local Service charges, and Schedule 12C Costs under Section II of the Tariff for 2023. The filing reflected the charges to be assessed under annual transmission and settlement formula rates, reflecting actual 2021 cost data, plus forecasted revenue requirements associated with projected PTF, Local Service and Schedule 12C capital additions for 2022 and 2023, as well as the Annual True-up including associated interest. As prescribed in the Interim Protocols,⁵⁰ the formula rates that will be in effect for 2023 include a billing true up of seven months of 2021 (June-December). The PTO AC states that the annual updates results in a Pool "postage stamp" RNS Rate of \$140.94 /kW-year effective January 1, 2023, a decrease of \$1.84 /kW-year from the charges that went into effect on January 1, 2022. In addition, the filing includes updates to the revenue requirements for Scheduling, System Control and Dispatch Services (the Schedule 1 formula rate), which result in a Schedule 1 charge of \$1.75 kW-year (effective June 1, 2022 through May 31,

⁴⁶ *Id.* at PP 23-24.

⁴⁷ *Id.* at P 26.

⁴⁸ *Id.* at P 27.

⁴⁹ *Constellation Mystic Power, LLC*, 179 FEC ¶ 62,179 (June 27, 2022) (notice that Mystic's request for clarification or rehearing of the *Mystic First CapEx Info. Filing Order* can be deemed denied by operation of law).

⁵⁰ The Interim Formula Rate Protocols ("Interim Protocols") became effective June 15, 2021, and will be replaced by permanent Formula Rate Protocols that will become effective June 15, 2023. See Settlement Agreement resolving all issues in Docket No. EL16-19 ("Settlement") approved by the FERC on Dec. 28, 2020, in *ISO New England et al.*, 173 FEC ¶ 61,270 (2020) ("Settlement Order").

2023), a \$0.12/kW-year decrease from the Schedule 1 charge that last went into effect on June 1, 2022. This filing will not be noticed for public comment.

The July 29 filing was reviewed with the Transmission Committee at its August 16, 2022 summer meeting and at an August 22, 2022 technical session for Interested Parties. The July 29 filing triggered the commencement of the Information Exchange Period and a Review Period under the Interim Protocols. Interested Parties have until September 15, 2022 to submit information and document requests, and the PTOs are required to make a good faith effort to respond to all requests within 15 days, but by no later than October 15, 2022. During the Review Period, Interested Parties have until November 15, 2022 to submit Informal Challenges to the PTOs, and the PTOs are required to make a good faith effort to respond to any Informal Challenges no later than December 15, 2022. Interested Parties have until January 31, 2023 to file a Formal Challenge with the FERC. If there are questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

- **CSF Revisions (ER22-2546)**

On July 29, 2022, ISO-NE and NEPOOL jointly filed changes to Market Rule 1 to allow storage facilities incapable of consuming electricity from the grid to participate in the New England Markets as Continuous Storage Facilities ("CSF"). An October 1, 2022 effective date was requested. The CSF Revisions were supported by the Participants Committee at its June 21-23 Summer Meeting (Agenda Item No. 2A). Comments on the CSF Revisions were due on or before August 19, 2022; none were filed. Doc-less interventions only were filed by Calpine, Eversource and National Grid. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **Information Policy Cyber Security Incident Information Sharing Changes (ER22-2366)**

On August 31, 2022, the FERC accepted changes jointly filed by ISO-NE and NEPOOL to the Information Policy to allow ISO-NE to share confidential information with NERC and federal agencies with cyber security responsibilities, without prior notice to Market Participants and other furnishing entities, if a cyber-security event occurs ("Changes").⁵¹ The Changes were accepted effective as of September 11, 2022, as requested. Unless the August 31, 2022 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **New England's Order 2222 Compliance Filing (ER22-983)**

On February 2, 2022, ISO-NE, NEPOOL and the PTO AC ("Filing Parties") submitted Tariff revisions ("Order 2222 Changes") in response to the requirements of Order 2222. The Filing Parties stated that the Order 2222 Changes create a pathway for Distributed Energy Resource Aggregations ("DERAs") to participate in the New England Markets by: creating new, and modifying existing, market participation models for DERA use; establishing eligibility requirements for DERA participation (including size, location, information and data requirements); setting bidding parameters for DERAs; requiring metering and telemetry arrangements for DERAs and individual Distributed Energy Resources ("DERs"); and providing for coordination with distribution utilities and relevant electric retail regulatory authorities ("RERRAs") for DERA/DER registration, operations, and dispute resolution purposes.

Comments, following an extension of time granted by the FERC in response to a request by Advanced Energy Management Alliance ("AEMA"), were due on or before April 1, 2022. NEPOOL filed supplemental comments on March 28. Protests and comments were filed by: [AEE/PowerOptions/SEIA](#); [Environmental](#)

⁵¹ ISO New England Inc. and New England Power Pool, Docket No. ER22-2366-000 (Aug. 31, 2022) (unpublished letter order).

Organizations;⁵² MA AG; Voltus; AEMA and 4 New England US Senators.⁵³ Doc-less interventions were filed by: Avangrid (CMP/UI), Calpine, Centrica Business Solutions Optimize (out-of-time), Constellation, ENE, Enerwise, Eversource, FirstLight, MA AG, National Grid, NESCOE, NRG, MA DPU, MPUC (out-of-time), APPA, and EEI. ISO-NE (April 20) and National Grid/Avangrid/Eversource (April 19) filed answers to the protests and adverse comments. Since the last Report, AEE/PowerOptions/SEIA and AEMA answered the ISO-NE and National Grid/Avangrid/Eversource answers.

(-001) Deficiency Letter. On May 18, 2022, the FERC issued a 25-page deficiency letter directing ISO-NE to provide, on or before June 17, 2022, additional information and clarifications. ISO-NE filed its 39-page response to the deficiency letter on June 17, 2022. Comments in response to ISO-NE's deficiency letter response were due on or before July 8, 2022 and a joint protest was filed by AEE, AEMA, PowerOptions, and SEIA ("Joint Protest"). The Joint Protest, while supportive of certain responses (those regarding the exemption of DERAs from the Small Generator Interconnection Procedures ("SGIP") prior to 2026, locational requirements for DER aggregation, and the role of host utilities in identifying potential conflicts with retail program participation), protested the adequacy of ISO-NE responses regarding proposed metering and telemetering requirements for behind-the-meter ("BTM") DERs. On July 25, 2022, ISO-NE answered the July 8 Joint Protest. On August 9, 2022, AEE, AEMA, PowerOptions, and SEIA answered ISO-NE's July 25 answer.

This matter is again pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com); Eric Runge (617-345-4735; ekrunge@daypitney.com); or Rosendo Garza (860-275-0660; rgarza@daypitney.com).

IV. OATT Amendments / TOAs / Coordination Agreements

- **Phase I/II HVDC-TF Order 881 Compliance Filing: HVDC TOA (ER22-2467) and Sched. 20-A Common Attachment M (ER22-2468)**

On July 22, 2022, following a requested 10-day extension of time granted by the FERC, a Phase I/II HVDC-TF Order 881 compliance filing was submitted in two parts ((i) changes to the HVDC TOA and (ii) changes to Schedule 20-Common Attachment M) by: ISO-NE, the Asset Owners,⁵⁴ and the Schedule 20A Service Providers.⁵⁵ Specifically, the Filing proposed changes to the **HVDC TOA** (ER22-2467) to address the Order 881 requirements related to transmission ratings and rating procedures and to **Schedule 20A-Common** (ER22-2468) to ensure compliance with Order 881 with respect to transmission rating transparency and transmission service (together, the "Phase I/II HVDC-TF Order 881 Compliance Filing"). Comments on the Phase I/II HVDC-TF Order 881 Compliance Filing were due on or before August 12, 2022; none were filed. The IRH Management Committee submitted a doc-less intervention. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

⁵² Environmental Organizations are Acadia Center, Conservation Law Foundation ("CLF"), Environmental Defense Fund ("EDF"), Massachusetts Climate Action Network, NRDC, Sierra Club, and the Sustainable FERC Project.

⁵³ Senators Markey (MA), Sanders (VT), Warren (MA), and Whitehouse (RI).

⁵⁴ The "Asset Owners" are, collectively, New England Hydro-Transmission Electric Company, New England Hydro-Transmission Corporation, New England Electric Transmission Corporation, and Vermont Electric Transmission Company ("VETCO").

⁵⁵ The "Schedule 20A Service Providers" are: Central Maine Power Co. ("CMP"); The Conn. Light and Power Co. and Public Service Co. of NH ("Eversource"); Green Mountain Power Cor. ("GMP"); New England Power Co. ("NEP"); NSTAR Electric Co.; The United Illuminating Co. ("UI"); Vermont Electric Cooperative, Inc. ("VEC"); and Versant Power.

- **Order 881 Compliance Filing: New England (ER22-2357)**

As previously reported, ISO-NE, NEPOOL, the PTO AC, and CSC (the “Filing Parties”) filed, on July 12, 2022, proposed revisions to the OATT in response to the requirements of *Order 881*⁵⁶ (“*Order 881 Compliance Changes*”). Specifically, the Filing Parties proposed the addition of a new Attachment Q to the OATT, and to revise OATT Schedules 18 (MTF; MTF Service) and 21 (Local Service - Common). The *Order 881 Compliance Changes* (the Attachment Q and Schedule 18 changes) were supported by the Participants Committee at its June 21-23 Summer Meeting (Consent Agenda Item No. 2). An effective date of September 10, 2022 was requested, with changes to Attachment Q and Schedule 21 to become applicable by their own terms in July 2025. Comments on the *Order 881 Compliance Changes* are due on or before August 2, 2022; none were filed. Eversource, Narragansett Electric Company (“Narragansett”) and National Grid filed doc-less interventions. 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).

- **Process Modifications - DER Interconnection/Interconnection Study Coordination (ER22-2226)**

On August 28, 2022, the FERC accepted⁵⁷ changes to the Tariff to modify the process for interconnection of new distributed energy resources (“DERs”) and to improve the coordination of interconnection studies (“DER Interconnection Revisions”)⁵⁸ jointly filed by ISO-NE, NEPOOL and the PTO AC. The DER Interconnection Revisions were accepted effective August 28, 2022, as requested. In accepting the DER Interconnection Revisions, the FERC found that ISO-NE’s proposal to exclude DERs from its interconnection procedures was (i) was “just and reasonable because it would promote certainty in ISO-NE’s interconnection process and reduce a significant burden on ISO-NE”⁵⁹; and (ii) accomplishes the purposes of *Orders 2003* and *2006*.⁶⁰ The FERC also clarified that “the [FERC]’s jurisdiction over wholesale sales from DERs and their participation in the wholesale markets, and any potential use of “a [FERC]-jurisdictional wholesale distribution charge for the DERs’ use of the distribution system for wholesale transactions” [was] not impacted by the Tariff revisions” and noted that “disputes related to state interconnection procedures that do not implicate these wholesale market issues will be more appropriately resolved through a state process.”⁶¹ Unless the *DER Interconnection Revisions Order* is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

⁵⁶ *Managing Transmission Line Ratings*, Order No. 881, 177 FERC ¶ 61,179 (Dec. 16, 2021); *Managing Transmission Line Ratings*, Order No. 881-A, 179 FERC ¶ 61,125 (May 19, 2022) (together, “*Order 881*”).

⁵⁷ *ISO New England Inc., New England Power Pool Participants Comm. and Participating Transmission Owners Admin. Comm.*, 180 FERC ¶ 61,129 (Aug. 26, 2022) (“*DER Interconnection Revisions Order*”).

⁵⁸ Specifically, the DER Interconnection Revisions (i) provide that all DERs will interconnect through the applicable state interconnection process; and (ii) with respect to the coordination of interconnection studies, establish the order in which interconnection requests are included in the Capacity Network Resource (“CNR”) Group Study, and include generation projects that are not participating in ISO-NE’s interconnection process, if they meet certain conditions, in the Base Case Data.

⁵⁹ *Id.* at P 19.

⁶⁰ *Id.* at P 20. “Here, as in Order No. 2222, an increase in distribution-level interconnections could create uncertainty as to whether certain interconnections are subject to Commission jurisdiction or state/local jurisdiction, and whether they would require the use of the Commission’s standard interconnection procedures and agreement. Additionally, the increase in interconnection requests from DERs could burden ISO-NE with an overwhelming volume of interconnection requests. We also find that permitting DERs in ISO-NE to interconnect through the state interconnection process advances the objectives of Order Nos. 2003 and 2006 by increasing energy supply and lowering wholesale prices for customers by increasing the number and variety of new generation that will compete in the wholesale electricity market, while ensuring processes are in place to preserve reliability.”

⁶¹ *Id.* at P 21.

- **Order 676-J Compliance Filing Part I (CSC-Schedule 18-Attachment Z) (ER22-1168)**

On March 2, 2022, in response to the requirements of *Order 676-J*,⁶² ISO-NE and CSC filed revisions to ISO-NE Tariff Schedule 18 Attachment Z to incorporate the new cybersecurity and PFV standards contained in the North American Energy Standards Board (“NAESB”) Wholesale Electric Quadrant (“WEQ”) Version 003.3 Standards (“Schedule 18 Order 676-J Part I Changes”).⁶³ An effective date as of the date of the FERC order accepting these changes was requested. Comments on this filing were due on or before March 23, 2022; none were filed. Doc-less interventions were filed by CSC and NEPOOL. There was no activity since the last Report and this matter remains pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Order 676-J Compliance Filing Part I (TOs-Schedule 20/21-Common) (ER22-1161)**

Also on March 2, 2022, in response to the requirements of *Order 676-J*, the PTO AC, ISO-NE, and the Schedule 20A Service Providers (“S20SPs”) (collectively, the “TOs”) filed revisions to ISO-NE Tariff Schedules 20A-Common and 21-Common to incorporate the new cybersecurity and PFV standards contained in NAESB WEQ Version 003.3 Standards (“Schedule 20/21-Common Order 676-J Part I Changes”).⁶³ An effective date as of the date the FERC may determine was requested. Comments on this filing were due on or before March 23, 2022; none were filed. Doc-less interventions were filed by NEPOOL and Eversource. There was no activity since the last Report and this matter remains pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Order 676-J Compliance Filing Part I (ISO-NE-Schedule 24) (ER22-1150)**

Again on March 2, 2022, in response to the requirements of *Order 676-J*, ISO-NE filed revisions to ISO-NE Tariff Schedule 24 (Incorporation by Reference of NAESB Standards) to incorporate the new cybersecurity and PFV standards contained in NAESB WEQ Version 003.3 Standards (“Schedule 24 Order 676-J Part I Changes”).⁶³ An effective date no earlier than June 2, 2022 was requested. The Transmission Committee recommended that the Participants Committee support the Schedule 24 Order 676-J Part I Changes at its March 23 meeting, and the Participants Committee supported the changes at the April 7 meeting (Consent Agenda Item # 1). Comments on this filing were due on or before March 23, 2022; none were filed. NEPOOL, Eversource, MA DPU, and National Grid submitted doc-less interventions. There was no activity since the last Report and this matter remains pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes & Agreements

- **Schedule 21-NEP: Narragansett/Pawtucket Power Decommissioning CRA (ER22-2732)**

On August 26, 2022, Narragansett filed a Decommissioning Cost Reimbursement Agreement (“CRA”) with Pawtucket Power Associates LP (Pawtucket”) to facilitate the performance of certain work that Pawtucket has

⁶² *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-J, 175 FERC ¶ 61,139 (May 20, 2021) (“*Order 676-J*”). *Order 676-J* revised 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 NAESB’s Wholesale Electric Quadrant. 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.

⁶³ Compliance filings for the rest of the WEQ Version 003.3 Standards (Schedule 24 Order 676-J Part II Changes) were due 12 months after implementation of the WEQ Version 003.2 Standards, or no earlier than Oct. 27, 2022.

requested Narragansett undertake to support the decommissioning of certain interconnection facilities and related equipment for Pawtucket's 69 MW Rhode Island generating facility that was completely retired on June 1, 2022. Comments on this filing are due on or before **September 16, 2022**. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Schedule 20A (Phase I/II HVDC-TF Service Agreement) Reassignment Agreements: CMP & UI/Brookfield/HQUS (ER22-2433/32/31)**

On August 15, 2022, the FERC accepted three Phase I/II HVDC-TF service agreements ("Schedule 20A TSAs") that transfer the transmission service rights and obligations that Brookfield Renewable Trading and Marketing LP ("BRTM" or the "Reseller") held under existing Schedule 20A TSAs (one with CMP; two with UI) to H.Q. Energy Services (U.S.) Inc. ("HQUS" or the "Assignee").⁶⁴ The Agreements were accepted September 1, 2022. Unless any of the orders are challenged, these proceedings will be concluded. If there are questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Schedule 20A (Phase I/II HVDC-TF Service Agreement) Reassignment Agreement: NEP/Brookfield/HQUS (ER22-2398)**

Also on August 15, 2022, the FERC accepted a New England Power ("NEP") Phase I/II HVDC-TF service agreements ("NEP Schedule 20A TSA") that transfers the transmission service rights and obligations that BRTM held under an existing Schedule 20A TSA (TSA-NEP-96) to HQUS.⁶⁵ The NEP Schedule 20A TSA was similarly accepted effective as of September 1, 2022. Unless the NEP Schedule 20A TSA order is challenged, this proceeding will be concluded. If there are questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Schedule 21-NEP: NEP/NSTAR Civil Work & Construction Agreement (ER22-2175)**

On August 9, 2022, the FERC accepted an Agreement for Limited Civil Work and Construction ("Agreement") between New England Power ("NEP") and NSTAR Electric Company ("NSTAR") (designated as E&P-NEP-02 under Schedule 21-NEP).⁶⁶ The Agreement relates to a project proposed by NSTAR to replace certain structures along its 1113 and 1134 Lines. That project requires the replacement of flying taps, conductor loops, and hardware, relocation of the NEP static line at the Five Corners Substation, removal of certain NEP static lines, and the installation by NSTAR of install certain temporary facilities on NEP property near the Five Corners Substation. The Agreement was accepted, effective April 19, 2022, as requested. Unless the August 9 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Schedule 21-VP: 2021 Annual Update Settlement Agreement (ER20-2119-001)**

On March 25, 2022, 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 2021 annual charges update filed, as previously reported, on June 15, 2021, and as amended on June 20, 2021 and July 8, 2021 (the "Versant 2021 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 2021 Annual Update, all of which are resolved by the Versant 2021 Annual Update Settlement Agreement. Comments on the Versant 2021 Annual Update Settlement Agreement were due on or before April 14, 2022; none were filed. This

⁶⁴ *Central Maine Power Co.*, Docket No. ER22-2433-000 (Aug. 15, 2022) (unpublished letter order) (CMP-BRTM 85 MW TSA); *The United Illuminating Co.*, Docket No. ER22-2432-000 (Aug. 15, 2022) (unpublished letter order) (UI-BRTM 32 MW TSA); and *The United Illuminating Co.*, Docket No. ER22-2431-000 (Aug. 15, 2022) (unpublished letter order) (UI-BRTM 1 MW TSA).

⁶⁵ *New England Power Co.*, Docket No. ER22-2398-000 (Aug. 15, 2022) (unpublished letter order).

⁶⁶ *New England Power Co.*, Docket No. ER22-2175-00 (Aug. 9, 2022) (unpublished letter order).

matter remains 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: 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 10, 2021; reply comments, December 19, 2021; none were filed. There was no activity since the last Report and this matter remains pending before the FERC. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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*⁶⁷ and *531-B*⁶⁸ also remains pending. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

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

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

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

- **Capital Projects Report - 2022 Q2 (ER22-2667)**

On August 11, 2022, ISO-NE filed its Capital Projects Report and Unamortized Cost Schedule covering the second quarter ("Q2") of calendar year 2022 (the "Report"). ISO-NE filed the Report under section 205 of the FPA pursuant to Section IV.B.6.2 of the Tariff. Report highlights included the following new projects: (i) New Cyber Security Operations Center (\$934,800); (ii) 2022 Issue Resolution Project (\$820,000); and (iii) Privileged Account Management Security Enhancements (\$706,300). Significant changes for Chartered Projects (2022 budget impact

⁶⁷ *Martha Coakley, Mass. Att'y Gen.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) ("*Opinion 531-A*").

⁶⁸ *Martha Coakley, Mass. Att'y Gen.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) ("*Opinion 531-B*").

in parentheses) were: (i) Physical Security Improvement Project (\$369,000 decrease); (ii) FCTS Infrastructure Conversion Part III (\$285,000 decrease); (iii) nGEM Software Development Part II (\$637,000 decrease); (iv) nGEM Hardware Phase II (\$192,000 decrease); and (v) PI Historian for Short-Term Phasor Measurement Units Data Repository (\$130,000 increase). Comments on the Q2 Report are due on or before September 1, 2022. On August 24, 2022, NEPOOL intervened and filed comments supporting the Report. New England Power submitted a doc-less intervention on August 31, 2022. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **Interconnection Study Metrics Processing Time Exceedance Report Q2 2022 (ER19-1951)**

On August 12, 2022, ISO-NE filed, as required,⁶⁹ public and confidential⁷⁰ versions of its Interconnection Study Metrics Processing Time Exceedance Report (the “Exceedance Report”) for the Second Quarter of 2022 (“2022 Q2”). ISO-NE reported that all three of the 2022 Q2 *Interconnection Feasibility Study (“IFS”) reports* delivered to Interconnection Customers were delivered later than the best efforts completion timeline.⁷¹ In addition, five IFS Reports that are not yet completed have exceeded the 90-day completion expectation. The average mean time from ISO-NE’s receipt of the executed IFS Agreement to delivery of the completed IFS report to the Interconnection Customer was 158.7 days (20 days sooner than Q1 2022). Five of the seven *System Impact Study (“SIS”) reports* delivered to Interconnection Customers were delivered later than the best efforts completion timeline of 270 days. 12 SIS reports that are not yet completed have also exceeded the 270-day completion expectation. The average mean time from ISO-NE’s receipt of the executed SIS Agreement to delivery of the completed SIS report to the Interconnection Customer was 525.6 days (up 65 days from 2022 Q1). One Facility Study was delivered to an Interconnection Customer, and was delivered later than the best efforts completion timeline of 180 days. Facility Studies in progress have not exceeded the 90-day/180-day completion expectation. Section 4 of the Report identified steps ISO-NE has identified to remedy issues and prevent future delays, including mitigating the impact of backlogs and initiating clustering, moving to earlier in the process certain Interconnection Customer data reviews, and enhanced information sharing and coordination efforts with Interconnecting TOs. This report was not noticed for public comment.

- **Voltus Petition for a FERC Technical Conference on Order 2222 (RM18-9)**

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. Comments supporting Voltus’ request were filed by: [AEE](#), [AEMA](#), [APPA/NRECA](#), [EEI](#), [ISO-RTO Council](#), [MISO](#), [SPP](#), [Sunrun](#), [Ameren](#), [Camus Energy](#), [Energy Web Foundation](#), [Entegrity Energy Partners](#), [Environmental Law and Policy Center](#), [Fermata LLC](#), [Google](#), [Leapfrog Power](#), [Nuvve Holding](#), [Tesla](#), [U Delaware EV Research and Development Group](#), and [Utilidata](#). Voltus’ request remains pending before the FERC.

⁶⁹ Under section 3.5.4 of ISO-NE’s Large Generator Interconnection Procedures (“LGIP”), ISO-NE must submit an informational report to the FERC describing each study that exceeds its Interconnection Study deadline, the basis for the delay, and any steps taken to remedy the issue and prevent such delays in the future. The Exceedance Report must be filed within 45 days of the end of the calendar quarter, and ISO-NE must continue to report the information until it reports four consecutive quarters where the delayed amounts do not exceed 25 percent of all the studies conducted for any study type in two consecutive quarters.

⁷⁰ ISO-NE requested that the information contained in Section 3 of the un-redacted version of the Exceedance Report, which contains detailed information regarding ongoing Interconnection Studies and if released could harm or prejudice the competitive position of the Interconnection Customer, be treated as confidential under FERC regulations.

⁷¹ 90 days from the Interconnection Customer’s execution of the study agreement.

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

On August 19, 2022, the IMM filed with the FERC its Spring 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 Spring 2022 Report will be discussed at the September 13-14, 2022 Markets Committee meeting.

- **ISO-NE FERC Form 3Q (2022/Q2) (not docketed)**

On August 25, 2022, ISO-NE submitted its 2022/Q2 FERC Form 3Q (quarterly financial report of electric utilities, licensees, and natural gas companies). FERC Form 3-Q is a quarterly regulatory requirement which supplements the annual FERC Form 1 financial reporting requirement. These filings are not noticed for comment.

IX. Membership Filings

- **August 2022 Membership Filing (ER22-2568)**

On July 29, 2022, NEPOOL requested that the FERC accept (i) the following Applicant’s membership in NEPOOL: Concurrent, LLC (Provisional Member); Leapfrog Power (Provisional Member); Old Middleboro Road Solar [Related Person to Agilitas Companies (AR Sector, DG Sub-Sector)]; and Accelerate Renewables [Related Person to ECP Companies (Supplier Sector)]; and (ii) the termination of the Participant status of Chris Anthony; Indeck Energy-Alexandria; Standard Normal; and Borrego Solar Systems. Comments on this filing were due on or before August 22, 2022; none were filed. This filing is pending before the FERC.

- **July 2022 Membership Filing (ER22-2260)**

On August 19, 2022, the FERC accepted (i) the termination of the Participant status of Liberty Power Holdings; and (ii) the name change of Astral (f/k/a/ Able Grid) Infrastructure Holdings, LLC.⁷² Unless the August 19 order is challenged, this proceeding will be concluded.

- **June 2022 Membership Filing (ER22-1991)**

On May 31, 2022, as corrected on July 5, 2022, NEPOOL requested that the FERC accept (i) the following Applicant’s membership in NEPOOL: Ebsen LLC and Umber LLC (both in the Supplier Sector); (ii) the termination of the Participant status of Dantzig Energy; Pilot Power Group; and Twin Eagle Resource Management; and (iii) the name change of LS Power Grid Northeast, LLC (f/k/a New England Energy Connection, LLC). No comments on the filing or on the correction were filed. This matter is pending before the FERC.

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

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

- **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. NERC submitted its most recent informational filing regarding one active CIP standard development project (Project 2016-02 – Modifications to CIP Standards (“Project 2016-02”)) on June 15, 2022.⁷³

⁷² *New England Power Pool Participants Comm.*, Docket No. ER22-2260-000 (Aug. 19, 2022) (unpublished letter order).

⁷³ 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.

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 October 2022, NERC Board of Trustees Adoption in November 2022 and filing of the revised standards with the FERC in December 2022.

- **2023 NERC/NPCC Business Plans and Budgets (RR22-4)**

On August 23, 2022, NERC submitted its proposed Business Plan and Budget, as well as the Business Plans and Budgets for the Regional Entities, including NPCC, for 2023. FERC regulations⁷⁴ require NERC to file its proposed annual budget for statutory and non-statutory activities 130 days before the beginning of its fiscal year (January 1), as well as the annual budget of each Regional Entity for their statutory and non-statutory activities, including complete business plans, organization charts, and explanations of the proposed collection of all dues, fees and charges and the proposed expenditure of funds collected. NERC reports that its proposed 2023 funding requirement represents an overall increase of approximately 13.7% over NERC's 2022 funding requirement. The NPCC U.S. allocation of NERC's net funding requirement is \$10.97 million. NPCC has requested \$18.14 million in statutory funding (a U.S. assessment per kWh (2021 NEL) of \$0.0000600) and \$1.07 million for non-statutory functions. Comments on this filing are due on or before **September 13, 2022**.

- **NPCC Bylaws Changes (RR22-2)**

On July 8, 2022, the FERC conditionally approved changes to the NPCC Bylaws (the "Bylaws") filed by NERC and NPCC designed to, among other things: (1) to improve corporate governance; (2) to ensure consistency with the Not-for-Profit Corporation Law of the State of New York ("N-PCL"), pursuant to which NPCC is organized; and (3) to remove extraneous provisions from the Bylaws, create efficiencies, and reflect changes at NPCC since 2012 (when the last changes to the Bylaws were filed).⁷⁵ In accepting the Bylaws Changes, the FERC directed NERC/NPCC to submit in a compliance filing, due on or before September 6, 2022, changes that (i) provide members being terminated for failure to comply with bylaw provisions related to qualifications, obligations, and conditions of membership (a) notice within a reasonable time period of the NPCC Board's membership termination decision and the reason(s) for the action and (b) the option to appeal the membership termination in accordance with the due process requirement in FPA Section 215; and (ii) specifically describe the method of providing public notice of member meetings. The FERC found Public Citizen's protest⁷⁶ beyond the scope of the proceeding. The Bylaws changes were accepted effective as of the date of the order, or July 8, 2022, as requested. On July 29, 2022, NERC/NPCC requested a 30-day extension of time to submit the required compliance filing in order to accommodate procedural steps they are required complete before the compliance filing is due. On August 10, 2022, the FERC granted NERC/NPCC's request, with the deadline for the required compliance filing extended to and including **October 6, 2022**.

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

As previously reported, on May 19, 2022, the FERC approved in part, and denied in part, NERC's proposed revisions to its Rules of Procedure ("ROP") proposed in NERC's September 29, 2021 filing.⁷⁷ Specifically, the FERC approved the proposed revisions to the NERC ROP for the Personnel Certification and Credential Maintenance

⁷⁴ 18 CFR § 39.4(b) (2014).

⁷⁵ *N. Am. Elec. Rel. Corp.*, 180 FERC ¶ 61,016 (July 8, 2022).

⁷⁶ In its protest, Public Citizen argued that the FERC should require a change to the composition of NPCC's Board of Directors, suggesting that NPCC be compelled to ensure that, of NPCC's eight board sectors and 15 voting members, "household consumer advocates" have two voting seats in Sector 7 (Sub-Regional Reliability Councils, Customers, Other Regional Entities and Interested Entities), and that regulators, reliability coordinators, and end-users compose at least half of the voting seats of the board.

⁷⁷ *N. Am. Elec. Rel. Corp.*, 179 FERC ¶ 61,129 (May 19, 2022). In its Sep. 29, 2021 filing, NERC proposed changes to sections 400 (Compliance Monitoring and Enforcement) and 1500 (Confidential Information), Appendix 2 (Definitions) and Appendix 4C (Compliance Monitoring and Enforcement Program) of NERC's 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").

Program in ROP section 600, the Training and Education Program in ROP section 900, and Confidential Information in ROP section 1500. The FERC approved CMEP-related ROP sections 401, 404, 407-409; Appendix 2 (other than the definition of “Self-Logging”); and Appendix 4C sections 5.0, 6.0, 7.0, 8.0, 9.0, and Attachment 1. The FERC rejected certain of the proposed revisions to ROP sections 402, 403, 405, and 406, Appendix 2, and Appendix 4C (concerned that, taken together, those revisions could adversely impact the nature and extent of the ERO’s and the FERC’s oversight of reliability compliance and enforcement activities). Accordingly, the FERC directed that NERC submit a 60-day compliance filing (on or before July 18, 2022) reinstating language in its ROP. On July 18, 2022, NERC submitted a compliance filing in response to the requirements of the May 19, 2022 order. Comments on that compliance filing were due on or before August 8, 2022; none were filed. NERC’s compliance filing is pending before the FERC.

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

On August 25, 2022, the FERC approved NERC’s 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”).⁷⁸ The Reliability Standards Development ROP Revisions were approved and became effective as of August 25, 2022. In approving the Revisions, the FERC found Public Citizen’s protests related to NERC’s governance⁷⁹ outside the scope of this proceeding because NERC did not propose revisions to those governance arrangements.⁸⁰ Unless the August 25 order is challenged, this proceeding will be concluded.

XI. Misc. - of Regional Interest

- **203 Application: Centrica / CPower (EC22-90)**

On July 12, 2022, Centrica Business Solutions Optimize (“Centrica”) requested authorization for the sale of 100% of the equity interests in Centrica to Enerwise Global Technologies, LLC d/b/a CPower (“CPower”).⁸¹ Upon consummation, Centrica and CPower will become Related Persons and members of the AR Sector’s RG Sub-Sector.⁸² Comments on the 203 application were due on or before August 3, 2022; none were filed. Doc-less interventions were filed by PJM’s IMM and Public Citizen. This matter is pending before the FERC. If you have any questions, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **203 Application: Clearway / TotalEnergies (EC22-84)**

On July 1, 2022, Clearway requested authorization for, among other things, TotalEnergies Renewables USA, LLC’s (“TotalEnergies”) acquisition of a 50% percent indirect interest in the Clearway Group. Comments on the 203 application were due on or before July 22, 2022; none were filed. The PJM IMM and PJM (out-of-time) doc-lessly intervened. This matter remains pending before the FERC. If you have any questions, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

⁷⁸ *N. Am. Elec. Rel. Corp.*, 180 FERC ¶ 61,122 (Aug. 25, 2022).

⁷⁹ As previously reported, Public Citizen argued that NERC’s Compliance and Certification Committee voting structure is lacking a consumer advocate representative and there is a lack of diversity in the NERC Board of Trustees, both of which it argued contribute to a failure to ensure balanced viewpoints.

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⁸¹ JERA Americas Related Persons include Provisional Member Cricket Valley Energy Center, LLC.

⁸² CPower is a member of the AR Sector’s RG Sub-Sector with its Related Persons Jericho Power and LS Power Grid Northeast, LLC.

- **203 Application: Waterside Power / KKR (EC22-79)**

On August 19, 2022 the FERC authorized the sale of 100% of the equity interests in Applicants, including Generation Group Seat Member Waterside Power, among others,⁸³ to Cretaceous Bidco Limited (“Buyer”), a special purpose vehicle indirectly owned by funds, investment vehicles and/or separately managed accounts advised and/or managed by one or more subsidiaries of KKR & Co. Inc. (“KKR & Co.” and, together with its subsidiaries, (“KKR”)).⁸⁴ Pursuant to the *August 19 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, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **203 Application: Stonepeak / JERA Americas (EC22-71)**

On June 1, 2022, Stonepeak⁸⁵ requested authorization for the sale of 100% of the interests in Canal Power Holdings LLC to a wholly-owned affiliate of JERA Americas Inc. (“JERA Americas”).⁸⁶ Comments on the 203 application were due on or before June 22, 2022 and were filed by the MA AG (which encouraged the FERC to take the time necessary to comprehensively review the Application based on potential regional and SENE Capacity Zone competition and rate impacts) and Public Citizen (which raised four issues: (i) the potential threat to competition and rates that could be caused by the concentration of power generation ownership by JERA in ISO-NE and NYISO; (ii) the need for additional information to assess impacts on competition and rates as well as potential divestiture requirements to mitigate any threats to competition and rates; (iii) a desire for public disclosure of the purchase price; and (iv) what threats to rates might result from the Related Person relationships to be created and reflected in the NEPOOL stakeholder process). On July 1, 2022, Stonepeak answered the comments and protest. On August 8, 2022, Applicants submitted an informational filing informing the FERC that the Applicants and parties to the Transaction have received all other required regulatory approvals and the FERC’s authorization in this proceeding is the only remaining regulatory approval for the Transaction and requested a FERC order authorizing the transaction by August 15, 2022. Notwithstanding Applicants’ request, this matter remains pending before the FERC. If you have any questions, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Versant Power MPD OATT Order 881 Compliance Filing (ER22-2358)**

On July 12, 2022, in response to the requirements of *Order 881*, Versant Power filed a proposed new Attachment T to the Versant Power Open Access Transmission Tariff for the Maine Public District (“MPD OATT”). Attachment T, Versant reported, incorporates all the contents of the *pro forma* OATT’s new Attachment M. An effective date of July 12, 2025 was requested in an errata filing submitted on August 1, 2022. On August 2, 2022, MPUC submitted comments asserting that Versant’s Compliance Filing, without further detail, is insufficient to meet the requirements of *Order 881* and should either (i) be rejected outright, ordering Versant to re-file with sufficient detail, or (ii) subject to a deficiency letter requiring further information with respect to the Compliance Filing. 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).

⁸³ In addition to Waterside Power, “Applicants” are: Lea Power Partners, LLC; Badger Creek Limited; Chalk Cliff Limited; Double C Generation Limited Partnership; High Sierra Limited; Kern Front Limited; McKittrick Limited; Bear Mountain Limited; Live Oak Limited; and WGP Redwood Holdings, LLC.

⁸⁴ *Lea Power Partners, LLC*, 180 FERC ¶ 62,086 (Aug. 19, 2022) (“*August 19 Order*”).

⁸⁵ “Stonepeak” includes Canal Power Holdings LLC (“Seller”), and its indirect wholly-owned, public utility subsidiaries, Canal Generating LLC (“Canal Generating”), Canal 3 Generating LLC (“Canal 3”), Bucksport Generation LLC (“Bucksport”), and Stonepeak Kestrel Energy Marketing LLC (“Stonepeak Marketing”).

⁸⁶ JERA Americas Related Persons include Provisional Member Cricket Valley Energy Center, LLC.

- **VTransco Shared Structure Participation Agreements (ER22-2189)**

On August 22, 2022, the FERC accepted two Shared Structure Participation Agreements (“ShPA”) between VTransco and GMP⁸⁷ - the first ShPA relating to the Duxbury 115 kV transmission line (the “Duxbury ShPA”); the second, to the Bennington 115 kV transmission line (“Bennington ShPA”). As previously reported, the ShPAs calculate and allocate costs not recovered through the Tariff. The Duxbury ShPA provides for Shared Use Rent;⁸⁸ the Bennington ShPA does not. The ShPAs were accepted effective as of January 1, 2022, as requested. Unless the August 22 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **IAs: NEP / Narragansett (ER22-2039/2038)**

On August 3 and 4, 2022, the FERC accepted the filings made by Narragansett (ER22-2039) and New England Power (ER22-2038), respectively, that made a part of their respective filed rates the wires-to-wires interconnection agreement (“IA”) governing the interconnection of the two companies’ transmission systems.⁸⁹ The filings were accepted effective as of May 25, 2022, as requested. Unless either of the orders are challenged, this proceeding will be concluded. If you have any questions concerning these filings, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Versant Power MPD OATT Order 676-J Compliance Filing Part I (ER22-1142)**

As previously reported, Versant Power filed revisions to Section 4 of the Versant OATT for the Maine Public District (“MPD OATT”) to incorporate the new cybersecurity and PFV standards contained in NAESB WEQ Version 003.3 Standards in response to the requirements of *Order 676-J*, (“Versant MPD OATT Order 676-J Part I Changes”).⁶³ A placeholder effective date was submitted. Comments on this filing were due on or before March 23, 2022; 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).

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

In accordance with *Order 864*⁹⁰ and *Order 864-A*,⁹¹ 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

⁸⁷ *Vermont Transco LLC*, Docket No. ER22-2189-000 (Aug. 22, 2022) (unpublished letter order).

⁸⁸ The amount to be paid by GMP for its use of the non-PTF Shared Use Facilities on the Duxbury transmission line.

⁸⁹ *The Narragansett Elec. Co.*, Docket No. ER22-2039 (Aug. 3, 2022) (unpublished letter order); *New England Power Co.*, Docket No. ER22-2038 (Aug. 4, 2022) (unpublished letter order).

⁹⁰ *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.

⁹¹ *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*”).

to be acted on, and others submitting further compliance filings (generally to reflect a January 27, 2020 effective date). The *Order 864* compliance proceedings that remain open are as follows:

Docket(s)	Transmission Provider	Date of Last Filing	Date Accepted
ER21-1130 ER20-2572	New England TOs (RNS)	Feb 18, 2022	Pending
ER20-2429	CMP (LNS)	May 6, 2022	Pending
ER21-1702	CMP (Schedule 1 Appendix A Implem. Rule)	Feb 28, 2022	Pending
ER21-1654	CL&P (LNS)	Feb 28, 2022	Pending
ER21-1295	Eversource (CL&P, PSNH, NSTAR) (LNS; Schedule 21-ES)	Feb 23, 2022	Pending
ER21-1154	FG&E (LNS)	Feb 23, 2022	Pending
ER21-1694	Green Mountain Power	Feb 18, 2022	Pending
ER21-1241	NEP (LNS)	Feb 28, 2022	Pending
ER20-2551	NEP (Schedule 21-NEP and TSA-NEP-22 Compliance Revisions)	Jul 18, 2022	Pending
ER20-2219	NEP (Tariff No. 1)	Jul 19, 2022	Pending
ER20-2553	NEP (MECO/Nantucket LSA)	Jul 18, 2022	Pending
ER21-1293	NSTAR (LNS)	Feb 23, 2022	Pending
ER22-1850	UI	May 10, 2022	Pending
ER21-1709	VTransco (LNS)	Feb 22, 2022	Pending
ER20-2133	Versant Power (BHD Formula Rate)	Aug 12, 2022	Pending

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

♦ **ER20-2133-003 (Versant Power).** On August 12, 2022, Versant supplemented its April 12, 2022 *Order 864* compliance filing with further amendments to Attachment P-VP of Schedule 21-VP (the “BHD Formula Rate”).

XII. Misc. - Administrative & Rulemaking Proceedings

- **Interregional HVDC Merchant Transmission (AD22-13)**

On July 19, 2022, Invenergy Transmission filed a petition requesting that the FERC hold a technical conference to explore ways to potentially make available and compensate certain grid reliability and resilience benefits associated with interregional high voltage direct current (“HVDC”) merchant transmission. Any comments to be considered by the FERC in its determination of any action to be taken were due on or before August 26, 2022. Comments were filed by 12 parties and included, among others, [CSC](#), [Invenergy](#), [Phase I/II Asset Owners and IRH](#), [Joint Consumer Advocates](#), [ACORE](#), [ACPA](#), [SEIA](#), and [Neptune and Hudson](#). This matter is pending before the FERC.

- **Reliability Technical Conference (Nov 10) (AD22-10)**

On November 10, 2022, the FERC will convene its annual Commissioner-led technical conference to discuss policy issues related to the reliability of the Bulk-Power System (“BPS”). The conference will be open for the public to attend, and there is no fee for attendance. Supplemental notices will be issued prior to the conference with further details regarding the agenda, how to register, how to participate, and the conference format.

- **New England Gas-Electric Forum (AD22-9)**

The FERC will hold a forum on September 8, 2022 at the DoubleTree by Hilton in Burlington, VT, to discuss and achieve a greater understanding among stakeholders in defining the electric and natural gas system challenges in the New England Region. Since the last Report, the FERC issued On July 21, the FERC issued a supplemental notice of the forum that included an agenda, description of proposed panels and panelist identities.

Planned ISO-NE comments will be discussed at the September 1 meeting and is materials filed in this proceeding by September 2. Those interested in participating in person were strongly encouraged to register [here](#) at their earliest convenience (due to space constraints, seating for the forum will be limited). There is no fee for attendance. Those unable to attend in person will be able to watch via a free webcast.

- **NOI: Dynamic Line Ratings (AD22-5)**

On February 17, 2022, the FERC issued a notice of inquiry (“NOI”)⁹² seeking comments on (i) whether and how the required use of dynamic line ratings (“DLR”) is needed to ensure just and reasonable wholesale rates; (ii) whether the lack of DLR requirements renders current wholesale rates unjust and unreasonable; (iii) potential criteria for DLR requirements; (iv) the benefits, costs, and challenges of implementing DLRs; (v) the nature of potential DLR requirements; and (vi) potential timeframes for implementing DLR requirements. This NOI represents the first step in the FERC’s effort to gather more information about the costs and benefits, and potentially mandating the use, of DLRs. A more [detailed summary](#) was provided to the Transmission Committee and is posted on the Transmission Committee’s [webpage](#).

Initial comments were due April 25, 2022 and filed by: [ISO-NE](#); [DC Energy](#); [Eversource](#); [Clean Energy Parties](#); [Potomac Economics](#); [CT DEEP](#); [NERC](#); [US DOE](#); [CAISO](#); [MISO](#); [NYISO](#); [Org of MISO States](#); [PJM](#), [SPP](#); [SPP MMU](#); [AEP](#); [Alliant](#); [APPA](#); [APS](#); [AZ PUC](#); [Clean Energy Entities](#); [Dayton Power](#); [EEL](#); [ELCON](#); [Entergy](#); [IN Util. Reg. Comm.](#); [ITC](#); [LA DPW](#); [MISO TOs](#); [NRECA](#); [NYISO TOs](#); [PPL](#); [R Street Institute](#); [Southern Co.](#); [TAPS](#); [Tri-State](#); [Electricity Canada](#); [Electric Grid Monitoring](#); [Line Vision](#); [Idaho Power](#).

Reply comments were due on or before May 25, 2022⁹³ and were filed by: [AEP](#), [Clean Energy Entities](#),⁹⁴ [EEL](#), [Joint Consumer Advocates](#), [MISO TOs](#), and the [R Street Institute](#). This matter is pending before the FERC.

- **Improving Generating Units Winter Readiness (AD22-4)**

On April 27-28, 2022, the FERC convened a joint technical conference with NERC and its Regional Entities to discuss how to improve the winter-readiness of generating units, including best practices, lessons learned and increased use of the NERC Guidelines, as recommended in the Joint February 2021 Cold Weather Outages Report.⁹⁵ Panels included discussion of (i) cold weather preparedness plans; (ii) planning, engineering and technologies for cold weather preparedness; (iii) implementing cold weather preparedness plans for reliable operations; and (iv) communications, coordination, training, and education for cold weather operations. Speaker materials have been posted in eLibrary.

- **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”).⁹⁶ 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

⁹² *Implementation of Dynamic Line Ratings*, 178 FERC ¶ 61,110 (Feb. 17, 2022) (“*Dynamic Line Ratings NOI*”).

⁹³ The *Dynamic Line Ratings NOI* was published in the Fed. Reg. on Feb. 24, 2022 (Vol. 87, No. 37) pp. 10,349-10,354.

⁹⁴ The “Clean Energy Entities” are the Working for Advanced Transmission Technologies Coalition (“WATT”), ACPA, AEE, and SEIA.

⁹⁵ See *The February 2021 Cold Weather Outages in Texas and the South Central United States - FERC, NERC and Regional Entity Staff Report* at pp 18, 192 (Nov. 16, 2021), <https://www.ferc.gov/news-events/news/final-report-february-2021-freeze-undercores-winterization-recommendations>.

⁹⁶ *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.”⁹⁷ New England is represented by Commissioners Riley Allen (VT PUC) and Matt Nelson (Chair, MA DPU), each of whom will be serving a second term during the September 1, 2022 – August 31, 2023 term.⁹⁸

Public Meetings.

♦ **July 20, 2022.** A fourth meeting was held in San Diego, CA, on July 20, 2022. Discussion addressed (i) interregional transmission planning & transmission project development; and (ii) the FERC’s *Transmission NOPR*. A transcript of the meeting was posted in eLibrary on August 11, 2022. The FERC invited post-meeting comments addressing issues raised during and in the agenda for the July 20 meeting. Those comments are due on or before September 2, 2022.

♦ **May 6, 2022.** A third meeting was held virtually on May 16, 2022. Discussion addressed (i) the generator interconnection queue processes and current backlog; and (ii) cost allocation for generator interconnection-related network upgrades, including participant funding. A transcript of this meeting was posted in eLibrary on May 18, 2022. The FERC invited post-meeting comments addressing issues raised during and in the agenda for the May 6 meeting. Those comments were due on June 1, 2022 and were filed by: [AEP](#), [Ameren](#), [Clean Energy Coalition](#), [EEL](#), [Invenergy Transmission](#), [MISO](#), [Old Dominion Electric Cooperative](#), [Omaha Power District](#), [PJM](#), and [Xcel Energy](#).

♦ **Feb 16, 2022.** A second meeting was held February 16, 2022 in Washington, DC. The agenda included a discussion, for purposes of transmission planning and cost allocation, specific categories and types of transmission benefits that transmission providers should consider and cost allocation principles, methodologies, and decision processes. A transcript of this meeting is posted in eLibrary. Post-meeting comments addressing issues raised during the February 16 meeting and identified in the agenda issued February 2, 2022 were due on or before April 1, 2022 and were filed by AZ PSC, NJ PBU, NARUC, ND PSC, OH PUC Office of the Federal Energy Advocate, VA State Corp. Comm., Americans for a Clean Energy Grid, ITC, PJM, and Sunflower Electric.

♦ **Nov 10, 2021.** The first Joint Federal-State Task Force meeting, which focused on incorporating state perspectives into regional transmission planning, was convened on November 10, 2021. A transcript of this meeting is posted in eLibrary. Comments on the issues discussed at the first meeting were filed by: [AEP](#), [LA PSC](#), [MI PSC](#), [PJM](#), and [Public Citizen](#).

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

ISO/RTO Reports. On April 21, 2022, the FERC issued an order⁹⁹ directing each independent system operator (“ISO”) and regional transmission organization (“RTO”), including ISO-NE, to submit on or before **October 17, 2022** a report that describes: (1) current system needs given changing resource mixes and load profiles; (2) how it expects its system needs to change over the next five and 10 years; (3) whether and how it plans to reform its energy and ancillary services (“EAS”) markets to meet expected system needs over the next five and 10 years; and (4) information about any other reforms, including capacity market reforms and any other resource adequacy reforms that would help it meet changes in system needs. Public comments in response to the RTO/ISO reports

⁹⁷ 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.

⁹⁸ See Order on Nominations, *Joint Federal-State Task Force on Electric Transmission*, 180 FERC ¶ 61,030 (July 15, 2022).

⁹⁹ *Modernizing Wholesale Electricity Market Design*, 179 FERC ¶ 61,029 (Apr. 21, 2022) (“*Order Directing Reports*”).

may be submitted within 60 days following the filing of the reports. The FERC will review the reports and comments to determine whether further action is appropriate.

2021 Technical Conferences. The *Order Directing Reports* follows a series of staff-led technical conferences, convened in 2021 and summarized in previous Reports, addressing ISO/RTO resource adequacy¹⁰⁰ and energy and ancillary services markets.¹⁰¹

- **NOPR: Duty of Candor (RM22-20)**

On July 28, 2022, the FERC issued a NOPR¹⁰² proposing to add a new section to its regulations to require that any entity communicating with the FERC or other specified organizations (e.g. ISO/RTOs, FERC-approved market monitors, NERC and its Regional Entities, or transmission providers) related to a matter subject to FERC jurisdiction submit accurate and factual information and not submit false or misleading information, or omit material information. An entity would be shielded from violation of the new regulation if it has exercised due diligence to prevent such occurrences. The FERC's current regulations prohibit, in defined circumstances, inaccurate communications to the FERC and other organizations upon which the FERC relies to carry out its statutory obligations. However, because those requirements cover only certain communications and impose a patchwork of different standards of care for such communications, the FERC believes that a broadly applicable duty of candor will improve its ability to effectively oversee jurisdictional markets. It further indicated that its proposed due 'diligence standard' and other limitations are intended to minimize the additional burdens to industry that come with the new requirement. Initial comments are due **October 11, 2022**.¹⁰³

- **NOPR: Extreme Weather Vulnerability Assessments (RM22-16; AD21-13)**

On June 16, 2022, as corrected on July 12, 2022, the FERC issued a notice¹⁰⁴ proposing to require transmission providers to submit one-time informational reports describing their current or planned policies and processes for conducting extreme weather vulnerability assessments¹⁰⁵ (how they establish a scope for their extreme weather vulnerability assessments, develop inputs, identify vulnerabilities and determine exposure to extreme weather hazards, estimate the costs of impacts, and develop mitigation measures to address extreme

¹⁰⁰ The FERC held two staff-led technical conferences addressing resource adequacy, one on Mar. 23, 2021 (with post-conference comments focused on PJM-specific issues) and the other on May 25, 2021 (focused on the wholesale markets administered by ISO-NE). Following the Mar. 23 conference, more than 45 sets of initial comments were filed, including by: [AEE](#), [Calpine](#), [Cogentrix](#), [Dominion](#), [Exelon](#), [FirstLight](#), [LS Power](#), [NESCOE](#), [NEPGA](#), [NRG](#), [PSEG](#), [Shell](#), [Vistra](#), [CT DEEP](#), [EEL](#), [EPSC](#), and [NRECA/APPA](#). Reply comments were filed by the [American Clean Power Association](#) ("ACPA"), [AEP](#), [EPSC](#), [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"). Following the May 25 conference, comments were filed by: [AEE](#), [Calpine](#), [CT Parties](#), [Dominion](#), [Eversource](#), [MMWEC](#), [NESCOE](#), [NEPGA](#), [NextEra](#), [NRG](#), [Public Interest Orgs](#), [Vistra](#), [AEMA](#), [EPSC](#), [RENEW](#).

¹⁰¹ The FERC held two staff-led technical conferences addressing ISO/RTO EAS markets, one on Sept. 14, 2021; the second on Oct. 12, 2021. Transcripts of both technical conferences are posted in eLibrary. In advance of the EAS 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 EAS markets reforms as well as reforms then under consideration. Initial comments on the topics discussed during the EAS technical conferences were filed by: [ISO-NE](#), [Appian Way Energy Partners](#), [Constellation](#), [Dominion](#), [Envir. Defense Fund](#), [FirstLight](#), [LS Power](#), [CAISO](#), [MISO](#), [NYISO](#), [PJM](#), [SPP](#), [MMU](#), [ACPA](#), [Clean Energy Organizations](#), [EEL](#), [Energy Trading Institute](#), [EPRI](#), [EPSC](#), [Middle River Power](#), [National Hydropower Assoc.](#), [NYSERDA](#), [PJM Providers Group](#), and [Public Citizen](#). Reply comments were filed by [EPRI](#), [NERC and its Regional Entities](#) and [Vistra](#).

¹⁰² *Duty of Candor*, 180 FERC ¶ 61,052 (July 28, 2022) ("*Duty of Candor NOPR*").

¹⁰³ The *Duty of Candor NOPR* was published in the *Fed. Reg.* on Aug. 12, 2022 (Vol. 87, No. 155) pp. 49,784-49,793.

¹⁰⁴ *One-Time Informational Reports on Extreme Weather Vulnerability Assessments; Climate Change, Extreme Weather, and Elec. Sys. Rel.*, 179 FERC ¶ 61,196 (June 16, 2022) ("*Extreme Weather Vulnerability Assessments NOPR*").

¹⁰⁵ "Extreme weather vulnerability assessments" are proposed to be defined as "analyses that identify where and under what conditions jurisdictional transmission assets and operations are at risk from the impacts of extreme weather events, how those risks will manifest themselves, and what the consequences will be for system operations".

weather risks). Initial comments were due August 30, 2022¹⁰⁶ and were filed by over 13 parties, including among others, [Eversource](#), [NRDC](#), [NERC](#), [MISO](#), [PJM](#), and [EPSA](#).

- **NOPR: Interconnection Reforms (RM22-14)**

On June 16, 2022, the FERC issued a notice of proposed rulemaking (“NOPR”),¹⁰⁷ more than 400 pages long, that proposes reforms to the *pro forma* Large Generator Interconnection Procedures (“LGIP”), *pro forma* Small Generator Interconnection Procedures (“SGIP”), *pro forma* Large Generator Interconnection Agreement (“LGIA”), and *pro forma* Small Generator Interconnection Agreement (“SGIA”) to address interconnection queue backlogs, improve certainty, and prevent undue discrimination for new technologies. Initial comments and reply comments are due **October 13, 2022** and **November 14, 2022**, respectively.¹⁰⁸

The proposed reforms fall into three main categories: (1) reforms to implement a first-ready, first-served cluster study process; (2) reforms to increase the speed of interconnection queue processing; and (3) reforms to incorporate technological advancements to the interconnection process. Within each of these categories, the FERC proposes a wide array of reforms, and requests comment.

To implement the **first-ready, first-served cluster study process**, the FERC proposes to:

- ♦ Require transmission providers offer an alternative option for an informational interconnection study that would not require a project enter the interconnection queue;
- ♦ Make cluster studies the required interconnection study method under the *pro forma* LGIP;
- ♦ Allocate the shared costs of the cluster studies so that 90% of the applicable study costs are allocated to interconnection customers on a pro rate basis based on the requested MWs included in the applicable cluster, and 10% of the applicable study costs are allocated to interconnection customers on a per capita basis based on the number of interconnection requests in the applicable cluster;
- ♦ Require transmission providers to allocate network upgrade costs to interconnection customers within a cluster using a proportional impact method, in which the transmission provider will determine the degree to which each generating facility in the cluster contributes to the need for a specific network upgrade;
- ♦ Allow interconnection customers in an earlier-in-time cluster to share the costs of network upgrades with interconnection customers who will significantly benefit from those upgrades but would not share the cost of the network upgrades solely by virtue of being in a later cluster;
- ♦ Increase study deposits based on the size of the generating facility from \$35,000 to \$250,000;
- ♦ Require more stringent site control requirements, and proposes to require an interconnection customer to demonstrate 100% site control for a proposed generating facility when they submit the interconnection request;¹⁰⁹
- ♦ Implement a commercial readiness framework whereby interconnection customers must show demonstrable milestones towards commercial readiness in order to enter the cluster, such as an

¹⁰⁶ The *Extreme Weather Vulnerability Assessments NOPR* was published in the *Fed. Reg.* on July 1, 2022 (Vol. 87, No. 126) pp. 39,414-39,426.

¹⁰⁷ *Improvements to Generator Interconnection Procedures and Agreements*, 179 FERC ¶ 61,194 (June 16, 2022) (“*Interconnection Reforms NOPR*”).

¹⁰⁸ The *Interconnection Reforms NOPR* was published in the *Fed. Reg.* on July 5, 2022 (Vol. 87, No. 127) pp. 39,934-40,032.

¹⁰⁹ The FERC proposes to limit the option to provide a financial deposit in lieu of site control and would only allow this option when regulatory limitations prohibit the interconnection customer from obtaining site control. In such instances, the interconnection customer would submit a deposit of \$10,000 per MW, subject to a floor of \$500,000 and a ceiling of \$2 million.

executed term sheet, reasonable evidence the project was selected in a resource plan, or a provisional LGIA;¹¹⁰ and

- ♦ Impose withdrawal penalties when the interconnection customer withdraws from the interconnection queue.¹¹¹

To **increase the speed of the interconnection queue process**, the FERC proposes to:

- ♦ Eliminate the “reasonable efforts” standard for transmission providers completing interconnection studies and instead impose firm study deadlines and establish penalties that would apply when transmission providers fail to meet these deadlines. The penalty imposed would be \$500 per day that the study is late and would be distributed to interconnection customers on a pro rata basis;
- ♦ Add an entirely *pro forma* affected system study process to address the current lack of uniformity in the study of affected systems, which results in late-stage withdrawals, re-studies and increased costs to remaining interconnection customers;
- ♦ Establish two new *pro forma* agreements, a *pro forma* Affected System Study Agreement (new Appendix 15) and a *pro forma* Affected Systems Facilities Construction Agreement (new Appendix 16); and
- ♦ Implement an optional resource solicitation study that can be performed by entities required to conduct a resource plan or solicitation. Under this proposed study process, a resource planning agency (such as a state agency or load-serving entity implementing a state mandate) would facilitate a study to group together interconnection requests associated with the qualifying resource solicitation process, and the resources vying for selection in a qualifying state resource solicitation process would be studied together for the purposes of informational interconnection studies.

Finally, as **technological advances to the interconnection process**, the FERC proposes to:

- ♦ Require transmission providers to allow more than one resource to co-locate on a shared site behind a single point of interconnection and share a single interconnection request;
- ♦ Change the way in which transmission providers assess an addition of a generating facility to an interconnection request, requiring that transmission providers evaluate a proposed addition as long as the addition does not change the requested interconnection service level;
- ♦ Enable customers with unused interconnection capacity share that surplus capacity with other resources as long as the original interconnection customer executes an LGIA or requests filing of an unexecuted LGIA;
- ♦ Require transmission providers, at the request of the interconnection customer to use operating assumptions for interconnection studies that reflect the proposed operation of an electric storage resource or co-located storage resource; and
- ♦ Require transmission providers to evaluate grid-enhancing solutions and file an annual informational report on their use of grid-enhancing technologies.

The FERC proposes to require compliance within 180 days of a final rule in this proceeding. Compliance would require transmission providers to file updates to their *pro forma* LGIA, LGIP, SGIA and SGIP, as applicable. If

¹¹⁰ *Id.* at P 128.

¹¹¹ The proposed withdrawal penalty will increase as the interconnection customer moves through the interconnection queue and proposes a chart demonstrating the possible penalties at P 144.

you have any questions concerning the *Interconnection Reforms NOPR*, please contact Margaret Czepiel (202-218-3906; mczepiel@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **NOPR: ISO/RTO Credit Information Sharing (RM22-13)**

On July 28, 2022, the FERC issued a NOPR¹¹² proposing to revise its regulations to permit ISO/RTOs to share among themselves¹¹³ credit-related information regarding market participants.¹¹⁴ The FERC believes that the proposed credit information sharing could improve ISO/RTOs' ability to accurately assess market participants' credit exposure and risks and enable ISO/RTOs to respond to credit events more quickly and effectively (minimizing the overall credit-related risks, including risks of unexpected defaults by market participants, in organized wholesale electric markets). The FERC proposal would not permit the information sharing to be conditioned on the specific consent of the market participant, would permit the receiving ISO/RTO to use market participant credit-related information received from another ISO/RTO to the same extent and for the same purposes that the receiving ISO/RTO may use credit-related information collected from its own market participants, and would not change the existing discretion an ISO/RTO has to act on credit-related information, regardless of the source of that information. The FERC seeks comment on whether ISO/RTOs' credit-related information sharing discretion should be limited in any specific ways or to any specific circumstances. Initial comments are due **October 7, 2022**; reply comments **November 7, 2022**.¹¹⁵

- **NOPR: Transmission System Planning Performance Requirements for Extreme Weather (RM22-10)**

On June 16, 2022, the FERC issued a notice¹¹⁶ proposing to require that NERC modify Reliability Standard TPL-001-5.1 (Transmission System Planning Performance Requirements) within one year of the effective date of a final rule in this proceeding to address reliability concerns pertaining to transmission system planning for extreme heat and cold weather events that impact the reliable operations of the Bulk-Power System. Specifically, the FERC proposed modifications to TPL-001-5.1 to require: (i) development of benchmark planning cases; (ii) planning for extreme heat and cold events using steady state and transient stability analyses expanded to cover a range of extreme weather scenarios; and (iii) corrective action plans that include mitigation for any instances where performance requirements for extreme heat and cold events are not met. Initial comments were due August 26, 2022¹¹⁷ and were filed by over 37 parties, including, among others, [ISO-NE](#), [Eversource](#), [NESCOE](#), [NRDC](#), [UCS](#), [NERC](#), [ERCOT](#), [MISO](#), [NYISO](#), [PJM](#), [ACPA](#), [EPRI](#), [EPSA](#), [NARUC](#), and [Trade Associations](#). This matter is pending before the FERC.

¹¹² *Credit-Related Information Sharing in Organized Wholesale Electric Markets*, 180 FERC ¶ 61,048 (July 28, 2022) ("ISO/RTO Credit-Related Info Sharing NOPR").

¹¹³ The *ISO/RTO Credit-Related Info Sharing NOPR* does propose credit-related information sharing with markets that are not Commission-jurisdictional (i.e. ERCOT, AESO, IESO or commodities and derivative markets that are subject to the jurisdiction of other regulators, including the Commodity Futures Trading Commission).

¹¹⁴ Revisions would be to 18 CFR § 35.47(h). The changes would "[p]ermit the sharing of market participant credit-related information with, and receipt of market participant credit-related information from, other organized wholesale electric markets for the purpose of credit risk management and mitigation, provided such market participant credit-related information is treated upon receipt as confidential under the terms for the confidential treatment of market participant information set forth in the tariff or other governing document of the receiving organized wholesale electric market; and permit the receiving organized wholesale electric market to use market participant credit-related information received from another organized wholesale electric market to the same extent and for the same purposes that the receiving organized wholesale electric market may use credit-related information collected from its own market participants.

¹¹⁵ The *ISO/RTO Credit-Related Info Sharing NOPR* was published in the *Fed. Reg.* on Aug. 8, 2022 (Vol. 87, No. 151) pp. 48,118-48,125.

¹¹⁶ *Transmission System Planning Performance Requirements for Extreme Weather*, 179 FERC ¶ 61,195 (June 16, 2022) ("Extreme Weather Transmission System Planning NOPR").

¹¹⁷ The *Extreme Weather Transmission System Planning NOPR* was published in the *Fed. Reg.* on June 27, 2022 (Vol. 87, No. 122) pp. 38,021-38,044.

- **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 inquiry¹¹⁸ 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 were due February 22, 2022 and were filed by [AGA](#), [APPA](#), [EEI](#), [EPRI](#), [Harvard Electricity Law Institute](#), [INGA](#), [Joint RTO Commenters](#),¹¹⁹ [MA AG](#), [National Grid](#), [NEI](#), [Nexamp](#), [NRECA](#), [Public Citizen](#), [Public Interest Organizations](#), [Ratepayers](#), [Sunova](#), and [UCS](#). Reply comments were due on or before March 23, 2022 and were filed by, among others: [DTE](#), [MA AG](#), [NECOS](#), [AGA](#), [EEI](#), [INGA](#), [Joint Consumer Advocates](#), and [WIRES](#). Since the last Report, [Joint RTO Commenters](#) replied to NECOS' discussion and characterization of the Initial Joint RTO Comments and a question of First Amendment constitutional law. This matter is pending before the FERC.

- **NOPR: Internal Network Security Monitoring for High and Medium Impact BES Cyber Systems (RM22-3)**

On January 20, 2022, the FERC issued a NOPR¹²⁰ proposing to direct NERC to develop and submit for FERC approval new or modified Reliability Standards that require internal network security monitoring ("INSM")¹²¹ within a trusted Critical Infrastructure Protection networked environment for high and medium impact Bulk Electric System ("BES") Cyber Systems. The FERC stated that "including INSM requirements in the CIP Reliability Standards would ensure that responsible entities maintain visibility over communications between networked devices within a trust zone (i.e., within an ESP), not simply monitor communications at the network perimeter access point(s), i.e., at the boundary of an ESP as required by the current CIP requirements. In the event of a compromised ESP, improving visibility within a network would increase the probability of early detection of malicious activities and would allow for quicker mitigation and recovery from an attack."¹²²

Comments on the *Internal Network Security Monitoring NOPR* were due on or before March 28, 2022.¹²³ Comments were filed by: the IRC, NERC, EEI, EPSA, TAPS, Bonneville Power Admin., Consumers Energy, Cynalytica, CA Department of Water Resources, Electricity Canada, Entergy, Idaho Power, Juniper Networks, ITC, Microsoft, North American Generator Forum, Nozomi Networks, Operational Technology Cybersecurity Coalition, the US Bureau of Reclamation, and T. Conway. This matter is pending before the FERC.

- **NOI: Reactive Power Capability Compensation (RM22-2)**

On November 18, 2021, the FERC issued a notice of inquiry¹²⁴ seeking comments on reactive power capability compensation and market design. Specifically, the FERC seeks comments on whether (i) the AEP

¹¹⁸ *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").

¹¹⁹ "Joint RTO Commenters" are PJM Interconnection, L.L.C. ("PJM"), California Independent System Operator Corp. ("CAISO"), Midcontinent Independent System Operator, Inc. ("MISO"), and Southwest Power Pool ("SPP").

¹²⁰ *Internal Network Security Monitoring for High and Medium Impact Bulk Electric System Cyber Systems*, 178 FERC ¶ 61,038 (Jan. 20, 2022) ("Internal Network Security Monitoring NOPR").

¹²¹ INSM is a subset of network security monitoring that is applied within a "trust zone," such as an Electronic Security Perimeter ("ESP"), and is designed to address situations where vendors or individuals with authorized access are considered secure and trust worthy but could still introduce a cybersecurity risk to a high or medium impact BES Cyber System.

¹²² *Id.* at P 2.

¹²³ The *Internal Network Security Monitoring NOPR* was published in the *Fed. Reg.* on Jan. 27, 2022 (Vol. 87, No. 18) pp. 4,173-4,180.

¹²⁴ *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").

Methodology remains a just and reasonable approach to determining reactive power revenue requirements in all circumstances; (ii) other potential alternative methodologies not based on the costs of the particular resource(s) at issue in a given proceeding should be considered or better used to develop reactive power capability revenue requirements; and (iii) resources interconnected to a distribution system and participating in wholesale markets are technically capable of providing reactive power to the transmission system in such a way that they should be eligible for reactive power capability compensation through transmission rates. Initial comments were due February 21; Reply Comments, March 23, 2022. Initial comments were filed by over 35 parties. Reply comments were filed by: Ameren, Clean Energy Coalition, DE Shaw, EDF, EEI, EPSA, Joint Customers,¹²⁵ MISO TOs, PJM IMM, PSEG, Vistra, and N. Bhushan. This matter is pending before the FERC.

- **Transmission NOPR (RM21-17)**

Following its ANOPR process,¹²⁶ the FERC issued on April 21, 2022 a NOPR¹²⁷ that would require public utility transmission providers to:

- (i) conduct long-term regional transmission planning on a sufficiently forward-looking basis to meet transmission needs driven by changes in the resource mix and demand;
- (ii) more fully consider dynamic line ratings and advanced power flow control devices in regional transmission planning processes;
- (iii) seek the agreement of relevant state entities within the transmission planning region regarding the cost allocation method or methods that will apply to transmission facilities selected in the regional transmission plan for purposes of cost allocation through long-term regional transmission planning;
- (iv) adopt enhanced transparency requirements for local transmission planning processes and improve coordination between regional and local transmission planning with the aim of identifying potential opportunities to “right-size” replacement transmission facilities; and
- (v) revise their existing interregional transmission coordination procedures to reflect the long-term regional transmission planning reforms proposed in this NOPR.

In addition, the *Transmission NOPR* would not permit public utility transmission providers to take advantage of the construction-work-in-progress (“CWIP”) incentive for regional transmission facilities selected for purposes of cost allocation through long-term regional transmission planning and would permit the exercise of federal rights of first refusal (“ROFR”) for transmission facilities selected in a regional transmission plan for purposes of cost allocation, conditioned on the incumbent transmission provider with the federal ROFR for such regional transmission facilities establishing joint ownership of the transmission facilities. While the ANOPR sought comment on reforms related to cost allocation for interconnection-related network upgrades, interconnection

¹²⁵ “Joint Customers” are Old Dominion Electric Cooperative (“ODEC”), Northern Virginia Electric Cooperative, Inc. (“NOVEC”), and Dominion Energy Services, Inc. on behalf of Virginia Electric and Power Company d/b/a Dominion Energy Virginia (“Dominion”).

¹²⁶ See *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*”). The FERC convened a tech. conf. on Nov. 15, 2021, to examine in detail the issues and potential reforms described in the ANOPR. Speaker materials and a transcript of the tech. conf. are posted in FERC’s eLibrary. 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](#), [MAAG](#), [MMWEC](#), [National Grid](#), [NECOS](#), [NESCOE](#), [NextEra](#), [NRDC](#), [Orsted](#), [Shell](#), [UCS](#), [VELCO](#), [Vistra](#), [Potomac Economics](#), [ACORE](#), [ACPA/ESA](#), [APPA](#), [EEI](#), [ELCON](#), [Industrial Customer Orgs](#), [LPPC](#), [MADOER](#), [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](#). ANOPR reply comments and post-technical conference comments were filed by over 100 parties, including by: [CTAG](#), [Acadia Center/CLF](#), [CTAG](#), [Dominion](#), [Enel](#), [Eversource](#), [LS Power](#), [MAAG](#), [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](#). Supplemental reply comments were filed by [WIRES](#), and a group of [former military leaders and former Department of Defense officials](#), and [ACPA/AEE/SEIA](#).

¹²⁷ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 179 FERC ¶ 61,028 (Apr. 21, 2022) (“*Transmission NOPR*”).

queue processes, interregional transmission coordination and planning, and oversight of transmission planning and costs, the *Transmission NOPR* does not propose broad or comprehensive reforms directly related to these topics. The FERC indicated that it would continue to review the record developed to date and expects to address possible inadequacies through subsequent proceedings that propose reforms, as warranted, related to these topics.

A number of the elements of the *Transmission NOPR*, if adopted as part of a final rule, would result in some significant changes to how the region's transmission needs are identified, solutions are evaluated and selected, and costs recovered and allocated. A more fulsome high-level summary from NEPOOL Counsel of the *Transmission NOPR* was distributed to, and was reviewed with, the Transmission Committee, which will recommend whether NEPOOL should submit comments on the *Transmission NOPR*.

Comments. Following a number of requests for extensions of time, comments on the *Transmission NOPR* were due August 17, 2022.¹²⁸ Nearly 200 sets of comments were filed, including by [NEPOOL](#), [ISO-NE](#), [Acadia/CLF](#), [Anbaric](#), [AEE](#), [Avangrid](#), [BP](#), [Dominion](#), [Enel](#), [Engie](#), [Eversource](#), [Invenergy](#), [LSP Power](#), [MOPA](#), [MMWEC/CMEEC/NHEC/VPPSA](#), [National Grid](#), [NECOES](#), [NESCOE](#), [NextEra](#), [NRG](#), [Onward Energy](#), [Orsted](#), [PPL](#), [Shell](#), [Transource](#), [VELCO](#), [Vistra](#), [ISO/RTO Council](#), [NERC](#), [US DOJ/FTC](#), [MA AG](#), [State Agencies](#), [VT PUC/DPS](#), [Potomac Economics](#), [ACPA](#), [ACRE](#), [APPA](#), [EEI](#), [EPSA](#), [Industrial Customer Organizations](#), [LPPC](#), [NASUCA](#), [NRECA](#), [Public Interest Organizations](#), [SEIA](#), [TAPS](#), [WIRES](#), [Harvard Electricity Law Initiative](#), [New England for Offshore Wind](#), and the [R Street Institute](#).

Reply Comments. Reply comments are due **September 19, 2022**.

If you have any questions concerning the *Transmission NOPR*, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com) or Margaret Czepiel (202-218-3906; mzczepiel@daypitney.com).

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

On March 18, 2021, the FERC issued a NOI¹²⁹ seeking comments on whether to revise its Demand Response ("DR") Opt-Out regulations established in *Orders 719 and 719-A*. Those regulations require an ISO/RTO not to accept bids from an aggregator of retail customers ("ARC") that aggregates DR of the customers of utilities that distributed more than 4 million MWh in the previous fiscal year, where the relevant electric retail regulatory authority prohibits such customers' DR to be bid into ISO/RTO markets by an ARC. The FERC now seek information to help it examine the potential costs/burdens and benefits, both quantitative and qualitative, of removing the DR Opt-Out, as well as other changes relating to DR since the FERC issued *Orders 719 and 719-A*. The FERC is not seeking comment on the Small Utility Opt-In. Comments on the NOI, following an extension, were due on or before July 23, 2021 and were filed by nearly 30 parties, including by [AEE](#), [Voltus](#), [AEMA](#), [APPA/NRECA](#), [EEI](#), and [NARUC](#). Reply comments were due on or before August 23, 2021, and were filed by [AEP](#), [Armada Power](#), [Entergy](#), [Southern Pioneer Electric](#), [Voltus](#), State Commissions from [LA/MS](#), [MI](#), [MO](#), [NC](#), [APPA/NRECA](#), Assoc. of Bus. Advocating Tariff Equity ("[ABATE](#)"), and [PIOs](#). On March 28, 2022, the Mississippi PSC moved to lodge its Protest and Response filed in a recent Complaint proceeding initiated and subsequently withdrawn by Voltus (EL21-12), to ensure its pleading is a part of the record of this proceeding. On March 29, 2022, the U.S. House Sustainable Energy and Environment Coalition ("SEEC") Power Sector Task Force urged the FERC to proceed to a NOPR that would eliminate the demand response Opt-Out. In July, [Voltus](#) again submitted comments in support of eliminating the DR Opt-Out, with responses to those comments filed by the [Mississippi PSC](#) and [R. Borlick](#) (further supplemented on August 1, 2022 by the submission of a copy of the Supreme Court's decision in *FERC v. EPSA*, 577 U.S. 260 (2016)). This matter remains pending before the FERC.

¹²⁸ A July 27, 2022, request by the Georgia Public Service Commission ("GAPUC") for an additional 30 days of time to submit comments and reply comments was denied on Aug. 9, 2022.

¹²⁹ *Participation of Aggregators of Retail Demand Response Customers in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 174 FERC ¶ 61,198 (Mar. 18, 2021) ("DR Aggregator NOI").

- **NOPR: Accounting and Reporting Treatment of Certain Renewable Energy Assets (RM21-11)**

On July 28, 2022, the FERC issued a NOPR¹³⁰ proposing reforms to the accounting and reporting treatment of certain renewable energy assets. Specifically, the FERC proposes changes to the Uniform System of Accounts (“USoFA”) and relevant FERC forms to: (i) include new accounts for wind, solar, and other non-hydro renewable assets; (ii) create a new functional class for energy storage accounts; (iii) codify the accounting treatment of renewable energy credits; and (iv) create new accounts within existing functions for hardware, software, and communication equipment. The FERC also seeks comment on whether the Chief Accountant should issue guidance on the accounting for hydrogen. Comments on the *Renewable Energy Assets USoFA and Reporting NOPR* are due **[45 days after the date of publication in the Federal Register]**.¹³¹

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

On December 17, 2020, the FERC issued a NOPR¹³² 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.](#),¹³³ [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, 2021¹³⁴ and were filed by [APPA/TAPS](#), [EEI](#), [SEIA](#), California Public Utilities Commission and California Department of Water Resources (“[CA PUC/DWR](#)”), and the Office of the Ohio Federal Energy Advocate (“[Ohio FEA](#)”). This matter remains pending before the FERC.

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

Supplemental NOPR. In light of comments already received in this proceeding,¹³⁵ the FERC issued on April 15, 2021 a *Supplemental NOPR*¹³⁶ to propose and seek comment on a revised incentive for transmitting and electric utilities that join Transmission Organizations (“Transmission Organization Incentive”). The Incentive would be reduced from 100 to 50 basis points and would be available only for three years. The FERC sought 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*.¹³⁷

¹³⁰ *Accounting and Reporting Treatment of Certain Renewable Energy Assets*, 180 FERC ¶ 61,050 (July 28, 2022) (“*Renewable Energy Assets USoFA and Reporting NOPR*”).

¹³¹ The *Renewable Energy Assets USoFA and Reporting NOPR* has not yet published in the *Fed. Reg.*

¹³² *Cybersecurity Incentives*, 173 FERC ¶ 61,240 (Dec. 17, 2020) (“*Cybersecurity Incentives NOPR*”).

¹³³ These joint comments were filed by aDolus Inc., Fortress Information Security, GMO GlobalSign Inc., Ion Channel, ReFirm Labs and Reliable Energy Analytics LLC.

¹³⁴ The *Cybersecurity Incentives NOPR* was published in the *Fed. Reg.* on Feb. 5, 2021 (Vol. 86, No. 23) pp. 8,309-8,325.

¹³⁵ 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.

¹³⁶ *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, 175 FERC ¶ 61,035 (Apr. 15, 2021) (“*Supplemental NOPR*”).

¹³⁷ 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.

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](#).¹³⁸ Reply comments were also posted from New England State Parties,¹³⁹ Alliant/Consumers/DTE, AEP, Pacific Gas & Electric, Joint Consumer Advocates, and the American Clean Power Association ("ACPA").

September 10, 2021 Workshop. The FERC convened a workshop on September 10, 2021¹⁴⁰ to discuss certain performance-based ratemaking approaches, particularly shared savings, that may foster deployment of transmission technologies. The notice states that the workshop will explore: the maturity of the modeling approaches for various transmission technologies; the data needed to study the benefits/costs of such technologies; issues pertaining to access to or confidentiality of this data; the time horizons that should be considered for such studies; and other issues related to verifying forecasted benefits. The workshop also discussed whether and how to account for circumstances in which benefits do not materialize as anticipated and may explore other performance-based ratemaking approaches for transmission technologies seeking incentives under FPA section 219, particularly market-based incentives. The FERC issued an agenda for the workshop, which included the final workshop program and expected speakers, on August 23, 2021. The FERC supplemented that notice on September 9, 2021. 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,¹⁴¹ EDF Renewables, EEI, the Industrial Energy Consumers of America ("IECA"), National Grid, PJM IMM, TAPS.

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- ◆ **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.

¹³⁸ "Public Interest Groups" are NRDC, Sierra Club, Sustainable FERC Project, and Western Grid Group.

¹³⁹ "New England State Parties" are CT PURA, CT DEEP and the MA AG.

¹⁴⁰ 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).

¹⁴¹ The "Clean Energy Parties" are: Working for Advanced Transmission Technologies ("WATT Coalition"), ACPA, AEE, American Council on Renewable Energy ("ACORE"), NRDC, and the Sustainable FERC Project.

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).

XIII. FERC Enforcement Proceedings

Electric-Related Enforcement Actions

- **CPower (IN22-7)**

On August 25, 2022, the FERC approved a Stipulation and Consent Agreement with Enerwise Global Technologies, LLC d/b/a CPower ("CPower")¹⁴² that resolved OE's investigation into whether CPower complied with its offer obligations in the Energy Market during the June 1, 2018 through February 28, 2019 period (the "Period"). Specifically, OE concluded that CPower violated Market Rule 1 § III.13.6.1.5.1 (Energy Market Offer Requirements) during the Period by failing to submit Demand Reduction Offers for certain Demand Response Resources at a value equal to or greater than its Active Demand Capacity Resources' CSOs.¹⁴³ Under the Settlement, in which CPower neither admits nor denies the alleged violations, CPower agreed to **disgorge \$2,460,628**, to **pay a civil penalty of \$2,539,372** to the United States Treasury, and to submit one annual compliance monitoring report, with the requirement of a second annual report at OE's option. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Salem Harbor (IN18-8)**

On June 27, 2022, the FERC approved a Stipulation and Consent Agreement with Salem Harbor Power Development LP ("Salem Harbor")¹⁴⁴ that resolved OE's Part 1b investigation into Salem Harbor's receipt of capacity payments from ISO-NE for its New Salem Harbor Generating Station project ("Project") during the 2017-18 Capacity Commitment Period, a period during which the Project had neither been built nor commenced commercial operation. OE determined, among other things, that Salem Harbor failed to provide "complete updated version[s] of [its] critical path schedule ("CPS") as required by sections III.13.3.2 and III.13.3.2.1 of the ISO-NE Tariff, that narratives Salem Harbor submitted to ISO-NE made false claims regarding the Project's schedule trajectory and omitted numerous important and relevant details regarding the status of the Project and its construction-related delays, and that its CPS submission violated Salem Harbor's Duty of Candor under the FERC's Market Behavior Rules.¹⁴⁵ Under the Settlement, in which Salem Harbor neither admits nor denies the alleged violations, and subject to limitations of the Bankruptcy Code and in accordance with the treatment afforded to Allowed General Unsecured Claims pursuant to a plan to be approved by the Bankruptcy Court in Salem Harbor's ongoing Chapter 11 Cases, Salem Harbor must **disgorge \$26.7 million**,¹⁴⁶ and **pay a \$17.1 million civil penalty** to the United States Treasury.¹⁴⁷ If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

¹⁴² *Enerwise Global Technologies, LLC d/b/a CPower*, 180 FERC ¶ 61,126 (Aug. 25, 2022).

¹⁴³ OE determined that CPower's Demand Reduction Offers were deficient because it failed to enroll sufficient capacity by the start of the delivery month to meet its offer obligation. Because CPower maintained CSOs in excess of its Demand Reduction Offers, rather than entering into transactions to bring its CSOs in line with its Demand Reduction Offers, CPower earned excess monthly capacity revenues.

¹⁴⁴ *Salem Harbor Power Development LP*, 179 FERC ¶ 61,228 (June 27, 2022) ("Salem Harbor Order").

¹⁴⁵ 18 CFR § 35.41(b) (2022).

¹⁴⁶ ISO-NE was directed to distribute the disgorgement *pro rata* to network load, subject to the limitations of the Bankruptcy Code and the order of the Bankruptcy Court.

¹⁴⁷ In recommending the remedies, OE considered the roles that multiple individuals and entities played in ISO-NE not submitting a demand bid on Salem Harbor's behalf into ARA3. Neither the Agreement nor the *Salem Harbor Order* asserted violations by any individual

- **PacifiCorp (IN21-6)**

On April 15, 2021, in the FERC's first-ever Show Cause Order addressing alleged violations of NERC Reliability Standards,¹⁴⁸ 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. This matter remains pending before the FERC. (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).

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.¹⁴⁹

As previously reported, on March 18, 2021, the FERC issued a show cause order¹⁵⁰ 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).¹⁵¹ The FERC directed Respondents to show cause why they should not be assessed civil penalties in

or any entity other than Salem Harbor. However, the FERC reserves its right to make a determination as to the facts or issues of law that might give rise to any violation by any other individual or entity. *Salem Harbor Order* at P 58.

¹⁴⁸ *PacifiCorp*, 175 FERC ¶ 61,039 (Apr. 15, 2021) ("*PacifiCorp Show Cause Order*").

¹⁴⁹ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 178 FERC ¶ 61,028 (Jan. 20, 2022) ("*Rover/ETP Hearings Order*").

¹⁵⁰ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 174 FERC ¶ 61,208 (Mar. 18, 2021) ("*Rover/ETP CPCN Show Cause Order*").

¹⁵¹ 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,

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, 2021.

Procedural Schedule Suspended. As previously reported, ALJ Joel DeJesus will be the presiding judge for hearings in this matter. On May 24, 2022, the Honorable Judge Karen Gren Scholer of the U.S. District Court for the Northern District of Texas issued an order staying this proceeding. Consistent with that order and out of an abundance of caution, Judge DeJesus suspended the procedural schedule until such time as the Court's stay is lifted and the parties provide jointly a proposed amended procedural schedule.

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

On December 16, 2021, the FERC issued a show cause order¹⁵² 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,¹⁵³ 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;¹⁵⁴ (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**.

On March 21, 2022, Respondents answered and denied the allegations in the *Rover/ETP CPCN Show Cause Order*. On April 20, 2022, OE Staff answered Respondents' March 21 answer. On May 13, Respondents submitted a surreply, reinforcing their position that "there is no factual or legal basis to hold either [Respondent] liable for the intentional wrongdoing of others that is alleged in the Staff Report." Also since the last Report, the FERC denied Respondents' request for rehearing of the FERC's January 21, 2022 designation notice.¹⁵⁵ This matter is pending before the FERC.

- **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

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.

¹⁵² *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 177 FERC ¶ 61,182 (Dec. 16, 2021) ("*Rover/ETP Tuscarawas River HDD Show Cause Order*").

¹⁵³ *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*").

¹⁵⁴ 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.

¹⁵⁵ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 179 FERC ¶ 61,090 (May 11, 2022) ("*Designation Notice Rehearing Order*"). The "Designation Notice" provided updated notice of designation of the staff of the FERC's Office of Enforcement ("OE") as non-decisional in deliberations by the FERC in this docket, with the exception of certain staff named in that notice.

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*").

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*.

- **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 Krolkowski as the Presiding ALJ and established an extended Track III Schedule¹⁶³ for the proceeding.

¹⁵⁸ *BP Penalties Allegheny Order* at P 1.

¹⁵⁹ *Id.* at P 319.

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.

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.

Respondents requested reconsideration or in the alternative permission to file an interlocutory appeal of Judge Krolikowski's March 24 order confirming his bench rulings ("Reconsideration Motion"). OE Staff opposed the Motion. On April 25, finding Respondents had not raised any new arguments that would merit reconsideration of his prior rulings, nor had Respondents identified any "exceptional circumstances" requiring interlocutory appeal, Judge Krolikowski denied Respondents' Reconsideration Motion. Respondents May 2, 2022 interlocutory appeal was denied on May 9, 2022.¹⁶⁴

Since the last Report, highlights from the procedural activity in this proceeding have included continuing discovery and an extension of the hearing commencement date and the initial decision deadline, which have been extended to **January 23, 2023** and **July 10, 2023**, respectively.

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.
 - On March 25, 2022, after procedural developments summarized in previous Reports, the FERC issued to Iroquois a certificate of public convenience and necessity, authorizing it to construct and operate the proposed facilities.¹⁶⁵ The certificate was conditioned on: (i) Iroquois' completion of construction of the proposed facilities and making them available for service within **three years** of the date of the; (ii) Iroquois' compliance with all applicable FERC regulations under the NGA; (iii) Iroquois' compliance with the environmental conditions listed in the appendix to the order; and (iv) Iroquois' filing written statements affirming that it has executed firm service agreements for volumes and service terms equivalent to those in its precedent agreements, prior to commencing construction. The March 25, 2022 order also approved, as modified, Iroquois' proposed incremental recourse rate and incremental fuel retention percentages as the initial rates for transportation on the Enhancement by Compression Project.
 - On April 18, 2022, Iroquois accepted the certificate issued in the *Iroquois Certificate Order*.
 - On June 17, 2022, in accordance with the *Iroquois Certificate Order*, Iroquois submitted its Implementation Plan, documenting how it will comply with the FERC's Certificate conditions.
 - The Project is targeted for a 4th quarter, 2023 in-service date.

¹⁶⁴ Notice of Determination by the Chairman, *Total Gas & Power North America, Inc. et al.*, Docket No. IN12-17 (May 9, 2022).

¹⁶⁵ *Iroquois Gas Transmission Sys., L.P.*, 178 FERC ¶ 61,200 (2022) (*Iroquois Certificate Order*).

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.¹⁶⁶ 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*.¹⁶⁷ 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,¹⁶⁸ 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, 2017.¹⁶⁹ 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.¹⁷⁰ 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.

¹⁶⁶ *Nat’l Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 167 FERC ¶ 61,007 (Apr. 2, 2019).

¹⁶⁷ *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).

¹⁶⁸ 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).

¹⁶⁹ *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*”).

¹⁷⁰ *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,¹⁷¹ 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.¹⁷²
- ▶ 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,¹⁷³ 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.¹⁷⁴
- ▶ 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 were due on or before February 16, 2022. Many individual comments and protests were received.
- ▶ On June 29, 2022, the FERC granted Applicants’ request for an additional extension of time. Applicants now have until December 31, 2024 to construct and place the Project into service.¹⁷⁵
- ▶ A request for rehearing of the *Northern Access Project Add’l Extension Order* was denied by operation of law.¹⁷⁶

XV. State Proceedings & Federal Legislative Proceedings

¹⁷¹ 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).

¹⁷² 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).

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

¹⁷⁴ *Id.* at P 10.

¹⁷⁵ *National Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 179 FERC ¶ 61,226 (June 29, 2022) (“*Northern Access Project Add’l Extension Order*”).

¹⁷⁶ *National Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 180 FERC ¶ 62,099 (Aug. 30, 2022).

- **Maine - NECEC Transmission LLC et al. v. Bureau of Parks and Lands et al. (BCD-21-416)**

On August 30, 2022, the Maine Supreme Judicial Court concluded that the legislation enacted as a result of the passage of Maine's November 2, 2021 ballot question,¹⁷⁷ and that effectively halted construction of the NECEC Project,¹⁷⁸ was unconstitutional to the extent it required the legislation to be applied retroactively to the certificate of public convenience and necessity ("CPCN") issued for the Project if NECEC had acquired vested rights to proceed with Project construction (by undertaking substantial construction consistent with and in good-faith reliance on the CPCN before the Initiative was enacted). The Court remanded to the Business and Consumer Docket the factual question of whether NECEC performed substantial construction in good faith according to a schedule that was not created or expedited for the purpose of generating a vested rights claim (which it suggested appeared to be the case from the limited record developed in connection with the request for preliminary injunctive relief in this matter).

- **New England States' Vision Statement**

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

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

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

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

¹⁷⁷ The ballot question, approved by 59% of Maine voters, which summarized the citizen's initiative pursued under Maine's constitutional provision for direct initiative of legislation (ME. Const. Art. IV, pt. 3, § 18), read: "Do you want to ban the construction of high-impact electric transmission lines in the Upper Kennebec Region and to require the Legislature to approve all other such projects anywhere in Maine, both retroactively to 2020, and to require the Legislature, retroactively to 2014, to approve by a two-thirds vote such projects using public land?"

¹⁷⁸ The New England Clean Energy Connect ("NECEC") project (the "NECEC Project") is designed to transmit power generated in Québec through Maine and into Massachusetts. The Project includes a new 145.3-mile, high-voltage direct current ("HVDC") transmission line, proposed to run from the Maine-Québec border in Beattie Township, ME to a new converter station in Lewiston, ME and from there to an existing substation by a new 1.2-mile, high-voltage alternating current transmission line.

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).

- **Mystic III (True-Up Orders) (22-1215)**
Underlying FERC Proceeding: EL18-1639-000,¹⁷⁹ -017¹⁸⁰

Petitioner: Mystic

Status: Consolidated with Mystic ROE (21-1198 et al.)

On August 22, 2022, Mystic petitioned the DC Circuit Court of Appeals for review of the FERC’s orders addressing its filing providing 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”).¹⁸¹ On August 25, 2022, the Court issued an order consolidating this proceeding with the Mystic ROE cases in Case Nos. 21-1198 et al. Mystic was further directed to file a docketing statement and statement of issues to be raised on or before **September 26, 2022**. Reporting on this matter will continue under the Mystic ROE appeal summary (Case Nos. 21-1198 et al. (see below)).

- **2nd Revised Narragansett LSA Orders (22-1161, 22-1108) (consolidated)**

Underlying FERC Proceeding: ER22-707¹⁸²

Petitioner: Green Development

Status: Initial Submissions Submitted; Revised Briefing Scheduled Established

On June 15, 2022, Green Development petitioned the DC Circuit for review of the FERC’s *2nd Revised Narragansett LSA Orders*.¹⁸³ On June 17, 2022, the Court directed Green Development to file, and Green Development filed, a Docketing Statement, Statement of Issues, any Procedural Motions, and the underlying decisions from which the appeal arises. The FERC filed the Certified Index to the Record on July 28, 2022.

Since the Last Report, Green Development filed, on August 15, 2022, a Statement of Issues and Docketing Statement. On August 30, 2022, the Court established a revised briefing schedule that calls for the following: Petitioner’s Brief (October 11, 2022); Respondent’s Brief (December 12, 2022); Intervenor for Respondent’s Brief (December 19, 2022); Petitioner’s Reply Brief (January 9, 2023); Deferred Appendix (January 17, 2023); and Final

¹⁷⁹ *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,011 (Apr. 28, 2022) (“*Mystic First CapEx Info. Filing Order*”)

¹⁸⁰ *Constellation Mystic Power, LLC*, 179 FERC ¶ 62,179 (June 27, 2022) (“*June 27 Notice*”) (Notice of Denial By Operation of Law of Rehearings of *Mystic First CapEx Info. Filing Order*).

¹⁸¹ The FERC appealed from granted in part, and denied in part, ENECOS’ and NESCOE’s formal challenges to Mystic’s First CapEx Projects Info. Filing, subject to refund, and established hearing and settlement judge procedures.

¹⁸² *ISO New England Inc. and New England Power Co. d/b/a National Grid*, 178 FERC ¶ 61,115 (Feb. 18, 2022) (“*2nd Rev Narragansett LSA Order*”). *ISO New England Inc. and New England Power Co. d/b/a National Grid*, 179 FERC ¶ 62,035 (Apr. 18, 2022) (notice of denial of rehearing by operation of law and providing for further consideration). Together, these orders referred to as the “*2nd Revised Narragansett LSA Orders*”.

¹⁸³ The 2nd Revised Narragansett LSA is a Local Service Agreement (“LSA”) among New England Power, Narragansett and ISO-NE. The LSA reflects 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.

Briefs (January 31, 2023). New England Power Company's August 10, 2022 motion for leave to intervene was granted on August 29, 2022.

- **Mystic II (ROE & True-Up)**
(21-1198; 21-1222, 21-1223, 21-1224, 22-1001, 22-1008, 22-1026, 22-1215) (consolidated)

Underlying FERC Proceeding: EL18-1639-010, -011,¹⁸⁴ -013¹⁸⁵ -017¹⁸⁶

Petitioners: Mystic, CT Parties,¹⁸⁷ MA AG, ENECOS

Status: Abeyance Ended; Motions to Govern Future Proceedings Due Sep 8, 2022

As previously reported, this case was initiated when, 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%. The *Mystic ROE Order* and subsequent FERC orders addressing the Mystic ROE issues have all also been appealed by various parties and consolidated under 21-1198. Docketing Statements and Statements of Issues to be Raised, and the Underlying Decision from which the various appeals arise have been filed as new dockets have been opened and then consolidated with 21-1198. As previously reported, the Certified Index to the Record was due, and filed by the FERC, on February 22, 2022. On March 10, 2022, MMWEC and NHEC filed a notice of intent to participate in support of FERC in Case Nos. 21-1198, 22-1008, and 22-1026 and in support of Petitioners in the remaining consolidated cases, and filed a statement of issues. On March 17, 2022, CT Parties moved to intervene, and those interventions were granted on May 4, 2022.

As previously reported, on July 8, 2022, Connecticut Parties and ENECOS jointly moved to hold these proceedings in abeyance until 30 days after the DC Circuit issues an opinion in *MISO Transmission Owners v. FERC*, 16-1325 ("*MISO TOs*") (see below). They requested abeyance on the basis that the consolidated petitions in this proceeding and *MISO TOs* both involve challenges to the FERC's ROE methodology (the FERC set the ROE used in calculating Constellation's rates using the methodology challenged in *MISO TOs*). Although Constellation opposed the abeyance request, the Court granted the abeyance request on July 27, 2022, directing the Parties to file motions to govern future proceedings within 30 days of the court's disposition of *MISO TOs*.

Since the last Report, on August 9, 2022, the Court decided *MISO TOs*, and ordered the parties to file motions to govern future proceedings in this case by September 8, 2022. In addition, On August 25, 2022, the Court consolidated Mystic III (Case No. 22-1215) with these cases, Case No. 21-1198 continuing as the lead case.

- **Mystic I (Original Cost Test, Capital Structure, Everett Cost Recovery, Clawback, True-Up Mechanism)**
(20-1343; 20-1361, 20-1362; 20-1365, 20-1368; 21-1067; 21-1070)(consolidated)

Underlying FERC Proceeding: EL18-1639¹⁸⁸

Petitioners: Mystic (20-1343), NESCOE (20-1361, 21-1067), MA AG (20-1362), CT Parties (20-1365, 20-1368, 21-1070)

Status: Court Issues Decision

As previously reported, Mystic, NESCOE, MA AG, and CT Parties separately petitioned the DC Circuit Court of Appeals for review of the FERC's orders addressing the COS Agreement among Mystic, Constellation and ISO-

¹⁸⁴ *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).

¹⁸⁵ *Constellation Mystic Power, LLC*, 178 FERC ¶ 61,116 (Feb. 18, 2022) ("*Mystic ROE Second Allegheny Order*"); *Constellation Mystic Power, LLC*, 178 FERC ¶ 62,028 (Jan. 18, 2022) ("*January 18 Notice*") (Notice of Denial By Operation of Law of Rehearings of Mystic ROE Second Allegheny Order).

¹⁸⁶ *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,011 (Apr. 28, 2022) ("*Mystic First CapEx Info. Filing Order*"); *Constellation Mystic Power, LLC*, 179 FERC ¶ 62,179 (June 27, 2022) ("*June 27 Notice*") (Notice of Denial By Operation of Law of Rehearings of *Mystic First CapEx Info. Filing Order*).

¹⁸⁷ 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").

¹⁸⁸ *July 2018 Order; July 2018 Rehearing Order; Dec 2018 Order; Dec 2018 Rehearing Order; Jul 17 Compliance Order.*

NE.¹⁸⁹ The cases were consolidated into Case No. 20-1343. Following briefing, oral argument was held on May 5, 2022 before Judges Srinivasan, Henderson and Rao.

On August 23, 2022, the Court issued its decision holding that:

- Mystic's petition for review be dismissed in part and denied in part;
- State Petitioners' petitions for review on the cost allocation issue be granted;
- the clawback portions excluding Everett costs and the challenged delay provision of the orders under review be vacated; and
- the cases be remanded for the FERC to address NESCOE's request for clarification about revenue credits and for clarification of the apparent contradictions in the FERC's December 2020 Rehearing Order.

The Court ordered that issuance of the mandate be withheld until seven days after disposition of any timely petition for rehearing or petition for rehearing en banc.

- **CASPR (20-1333, 21-1031) (consolidated)****
Underlying FERC Proceeding: ER18-619¹⁹⁰
Petitioners: Sierra Club, NRDC, RENEW Northeast, and CLF
Status: Being Held in Abeyance (until March 1, 2024)

As previously reported, the Sierra Club, NRDC, RENEW Northeast, and CLF petitioned the DC Circuit Court of Appeals on August 31, 2020 for review of the FERC's order accepting ISO-NE's CASPR revisions and the FERC's subsequent *CASPR Allegheny Order*. Appearances, docketing statements, a statement of issues to be raised, and a statement of intent to utilize deferred joint appendix were filed. A motion by the FERC to dismiss the case was dismissed as moot by the Court, referred to the merits panel (Judges Pillard, Katsas and Walker), and is to be addressed by the parties in their briefs.

Petitioners have moved to hold this matter in abeyance three times. The Court has granted each request. The most recent request was submitted on July 22, 2022 (third abeyance request) and moved the Court to hold this matter in abeyance until March 1, 2024, the date on which the elimination of MOPR is to be implemented, with motions to govern due 30 days thereafter. The Court granted the third abeyance request on July 25, 2022.

- **Opinion 531-A Compliance Filing Undo (20-1329)**
Underlying FERC Proceeding: ER15-414¹⁹¹
Petitioners: TOs' (CMP et al.)
Status: Being Held in Abeyance

On August 28, 2020, the TOs¹⁹² 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*¹⁹³ 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

¹⁸⁹ 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.

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

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

¹⁹² 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.

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

in this case by February 2, 2021. On January 25, 2021, the FERC requested that the Court continue to hold this petition for review in abeyance for an additional three months, with parties to file motions to govern future proceedings at the end of that period. The FERC requested continued abeyance because of its intention to issue a future order on petitioners' request for rehearing of the order challenged in this appeal, and the rate proceeding in which the challenged order was issued remains ongoing before the FERC. Petitioners consented to the requested abeyance. On February 11, 2021, the Court issued an order that this case remain in abeyance pending further order of the court. On April 21, 2021, the FERC filed an unopposed motion for continued abeyance of this case *because* the Commission intends to issue a future order on Petitioners' request for rehearing of the challenged Order Rejecting Compliance Filing, and because the remand proceeding in which the challenged order was issued remains ongoing.

On May 4, 2021, the Court ordered that this case remain in abeyance pending further order of the Court, directing the FERC to file a status report by September 1, 2021 and at 120-day intervals thereafter. The parties were directed to file motions to govern future proceedings in this case within 30 days of the completion of agency proceedings. The FERC's last status report, indicating that the proceedings before the Commission remain ongoing and that this appeal should continue to remain in abeyance, was filed on August 11, 2022. The next status report is due on or before **December 9, 2022**.

- **ISO-NE's Inventoried Energy Program ("IEP") Proposal (19-1224***; 19-1247; 19-1252; 19-1253)(consolidated); Underlying FERC Proceeding: ER19-1428¹⁹⁴**
Petitioners: ENECOS (Belmont et al.) (19-1224); MA AG (19-1247); NH PUC/NH OCA (19-1252); Sierra Club/UCS (19-1253)
Status: Court Issues Decision Leaving Intact the IEP Except for the Inclusion of Nuclear, Biomass, Coal and Hydroelectric Generators.

On June 17, 2022, the DC Circuit issued a decision¹⁹⁵ leaving intact the FERC's June 2020 *IEP Remand Order*¹⁹⁶ **except** for the inclusion of nuclear, biomass, coal, and hydroelectric generators in ISO-NE's IEP, the inclusion of which the Court found arbitrary and capricious (because those resources were unlikely to change their behavior in response to the IEP payments). Because the Court believed "there is not substantial doubt that FERC would have adopted IEP if it had not included these resources in the first place [and] IEP can function sensibly without them", the Court found that it had the authority to sever this portion from the overall program and therefore vacated that portion of IEP from the remainder of the IEP. The Court upheld the remainder of the IEP and remanded the matter to the FERC for further proceedings consistent with its opinion. Since the last Report, On August 9, 2022, the Court issued the mandate to the FERC, putting the matter back in the FERC's hands consistent with the June 17, 2022 decision. Reporting on this matter will return to Section III in future Reports.

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

¹⁹⁵ *Belmont Mun. Light Dept., et al., v. FERC*, 2022 WL 2182810 (June 17, 2022).

¹⁹⁶ *ISO New England Inc.*, 171 FERC ¶ 61,235 (June 18, 2020) ("IEP Remand Order").

Other Federal Court Activity of Interest

- **Order 872 (20-72788, * 21-70113; 20-73375, 21-70113) (consol.) (9th Cir.)**

Underlying FERC Proceeding: RM19-15¹⁹⁷

Petitioners: SEIA et al.

Status: Oral Argument Held March 8, 2022; Awaiting Decision

On September 17, 2020, SEIA petitioned the 9th Circuit Court of Appeals for review of *Order 872*.¹⁹⁸

Briefing is complete and oral argument was held March 8, 2022 before Judges Nguyen, Miller and Bumatay. This matter is pending before the Court.

- **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; EL15-45¹⁹⁹

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

Status: Decision Issued on August 9, 2022

The MISO TOs, Transource and "Dec 23 Petitioners",²⁰⁰ among others, appealed *Opinion 569/569-A*. The MISO TOs' case was 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.

On August 9, 2022, the Court issued its decision granting customers' petitions for review, dismissing transmission owners' petitions for review, vacating the underlying FERC orders, and remanding the cases to the FERC to reopen proceedings. In reaching its decision, the Court found that the "FERC failed to offer a reasoned explanation for its decision to reintroduce the risk-premium model [] after initially, and forcefully, rejecting it. Because FERC adopted that significant portion of its model in an arbitrary and capricious fashion, the new [ROE] produced by that model cannot stand. We therefore vacate FERC's orders." Because the Court ordered the FERC to vacate its prior rate orders, it dismissed the remaining surviving challenges (e.g. refund and authority issues), which can be resolved in and following the FERC proceedings that will ensue following this remand. Of course, this decision and those proceedings to follow are expected to impact multiple proceedings in which the FERC this now-vacated ROE methodology, including the Mystic ROE proceeding pending before the DC Circuit and the New England ROE cases that are pending before the FERC and from which the ROE issue originated.

¹⁹⁷ *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).

¹⁹⁸ *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.

¹⁹⁹ *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).

²⁰⁰ "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 Pub. Svc. Comm.; MO Joint Mun. Electric Utility Comm.; Org. of MISO States, Inc.; Southwestern Elec. Coop., Inc.; and Wabash Valley Power Assoc.

- **Algonquin Atlantic Bridge Project Orders (21-1115*, 21-1138, 21-1153, 21-1155 consol.) and (22-1146, 22-1147 consol.)**
Underlying FERC Proceeding: CP16-9-012²⁰¹
Petitioners: LS Power, Algonquin, INGA
Status: Cases 22-1146/47 Deconsolidated and Briefing Schedule Set; Remaining Cases (21-1115 et al.) Being Held in Abeyance Pending Disposition of 22-1146/47

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. On January 31, 2022, Algonquin and INGA asked the Court to extend the abeyance by an additional 120 days (to May 31, 2022). On February 15, 2022, the Court issued an order extending the abeyance and directing the Petitioners to file motions to govern future proceedings by May 31, 2022. On May 31, 2022, Petitioners asked the Court to continue to hold this proceeding in abeyance pending the First Circuit’s disposition of Algonquin’s pending motions to transfer that Court’s cases 20-1458 and 22-1201 (which also challenge the FERC’s authorization of the “Atlantic Bridge Project”).

On June 30, the First Circuit transferred cases 20-1458 and 22-1201 to the DC Circuit. The DC Circuit docketed those cases as 22-1146 and 22-1147, consolidated them with its cases challenging the Atlantic Bridge Project orders (with 21-1115 remaining the lead case), and directed the parties to file a proposed briefing schedule. On July 19, the parties filed a proposal that cases 22-1146 and 22-1147 be severed, proposed a revised briefing format and schedule for those cases, and asked the Court to continue to hold the remaining cases in abeyance (asserting that abeyance may avoid the need for briefing and adjudication of the issues that Algonquin and INGAA would press).

On August 16, 2022, the Court deconsolidated 22-1146 and 22-1147 from 21-1115 et al., which is to remain in abeyance pending a further order of the Court. The Court consolidated Cases 22-1146 and 22-1147 together and issued a briefing schedule that calls for Joint Brief of Petitioners by October 28, 2022; Respondent Brief by January 12, 2023, Joint Brief of Intervenors by January 26, 2023, Joint Reply Brief of Petitioners by February 16, 2023, Deferred Joint Appendix by March 2, 2023, and Final Briefs by March 9, 2023. The date of oral argument and the composition of the merits panel will be provided at a later date.

²⁰¹ *Briefing Order; April 19 Notice of Denial of Rehearings by Operation of Law.*

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