

**EXECUTIVE SUMMARY**  
**Status Report of Current Regulatory and Legal Proceedings**  
**as of April 5, 2023**

The following activity, as more fully described in the attached litigation report, has occurred since the report dated February 28, 2023 ("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**



4	NextEra/Avangrid/NECEC Seabrook Complaint (EL21-6) and Seabrook Declaratory Order (EL21-3)	Mar 3 Apr 3	NextEra requests rehearing and Avangrid requests clarification of the <i>Seabrook Dispute Order</i> FERC issues notice that NextEra and Avangrid requests may be deemed denied by operation of law
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**II. Rate, ICR, FCA, Cost Recovery Filings**



* 8	FCA17 Results Filing (ER23-1435)	Mar 21 Mar 22-Apr 4	ISO-NE files FCA17 results; comment date <b>May 5, 2023</b> NEPOOL, Calpine, Constellation, Dominion, NESCOE, EPSA, No Coal, No Gas, intervene
* 9	Add'l Cost Recovery Due to Dec 24 General Threshold Energy Mitigation: Dynegy (ER23-1261)	Mar 6-Apr 4 Mar 20 Mar 27 Apr 4	NEPOOL, ISO-NE, CT PURA, CT AG, EPSA, Public Citizen intervene MA AG, ME OPA, Public Citizen request extension of comment deadline to Apr 4, 2023 FERC extends comment deadline to Apr 4, 2023 NEPGA supports filing; MA AG/CT OCC, ME OPA protest
9	VTransco Deferral of Retiree Lump Sum Payment Cost Recovery (ER21-2627)	Mar 17	VTransco submits informational filing for lump sum payment elections taken in 2022 (24 elections totaling \$14.38 million resulting in \$2.15 million recorded VTransco's balance sheet)
10	<b>Mystic 8/9 COSA (ER18-1639)</b>		
10	(-019) <i>Mystic I Order on Remand</i> and Motion to Hold in Abeyance	Mar 28	FERC issues <i>Mystic I Order on Remand</i> ; 30-day compliance filing (revising the COSA to reinstate the revenue sharing mechanism) due on or before <b>Apr 27, 2023</b>
10	(-022) First CapEx Info. Filing Settlement Agreement Interim Rate Implementation	Mar 15 Mar 27	Mystic requests authorization to implement on an interim basis an Interim Settlement Rate Acting Chief ALJ Satten grants Mystic's Mar 15 request
10	(-021) First CapEx Info. Filing Settlement Agreement	Mar 15 Mar 16-Apr 4	Mystic submits Settlement Agreement to resolve all issues raised by the formal challenges to its First CapEx Info. Filing and set for hearing in the Apr 28, 2023 <i>Mystic First CapEx Info. Filing Order</i> NESCOE, National Grid, CT PURA, ENECOS, FERC Trial Staff, MA AG file comments on the Settlement Agreement; reply comments due on or before <b>Apr 14, 2023</b>
11	Limited Waiver of Certain Mystic COSA True-Up Deadlines (ER23-1159)	Mar 20	FERC grants waiver of certain Mystic COSA true-up deadlines
11	Transmission Rate Annual (2022-23) Update/Info Filing (ER09-1532; RT04-2)	Mar 16 Mar 31	<a href="#">Avangrid</a> , <a href="#">Eversource</a> , <a href="#">National Grid</a> , <a href="#">RI Energy</a> , <a href="#">Unitil</a> , <a href="#">VTransco/GMP</a> file comments/protests on RENEW Challenge RENEW <a href="#">answers</a> comments/protests to its Challenge

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

12	PPU CTR Clarifications (ER23-911)	Mar 21	FERC accepts PPU CTR Clarifications, eff. Mar 21, 2023
13	SATOA Revisions (ER23-739; ER23-743)	Mar 3	<a href="#">ISO-NE</a> answers <a href="#">Feb 16 National Grid answer</a>
13	New England's <i>Order 2222</i> Compliance Filing (ER22-983)	Mar 1	FERC accepts in part, and rejects in part, ISO-NE's compliance filing, to become effective Nov 1, 2022 and Nov 1, 2026, as requested, subject to further compliance filings to be submitted on or before Mar 31, May 1 and Aug 28, 2023
		Mar 23	NEPOOL requests 8-day extension of time, to <b>May 9, 2023</b> , of 60-day compliance filing deadline
		Mar 31	ISO-NE and New England Public Utilities request rehearing and/or clarification of the <i>Order 2222 Compliance Order</i>

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

15	Attachment K Economic Study Revisions (ER23-971)	Mar 30	FERC accepts Economic Study Revisions, eff. Mar 31, 2023
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**V. Financial Assurance/Billing Policy Amendments***No Activities to Report***VI. Schedule 20/21/22/23 Changes & Agreements**

16	Schedule 21-NEP: NEP/Dichotomy Collins Hydro SGIA (ER23-888)	Mar 17	FERC issues deficiency letter; response deadline <b>Apr 16, 2023</b>
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**VII. NEPOOL Agreement/Participants Agreement Amendments**

17	PA Amendment No. 12 (ISO Board Member Age Limit Increase) (ER23-980)	Mar 3	FERC accepts ISO Board Member Age Limit Increase (to 75), eff. Apr 1, 2023
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**VIII. Regional Reports**

17	Capital Projects Report - 2022 Q4 (ER23-1125)	Mar 3 Apr 5	Eversource, National Grid intervene FERC accepts 2022 Q4 Report, eff. Jan 1, 2023
* 19	Reserve Market Compliance (34th) Semi-Annual Report (ER06-613)	Mar 31	ISO-NE submits 34th semi-annual report
* 19	ISO-NE FERC Form 715 (undocketed)	Mar 29	ISO-NE submits 2021 annual report of total MWh of trans. service

**IX. Membership Filings**

19	Mar 2023 Membership Filing (ER23-1197)	Mar 24	FERC accepts (i) <b><i>the memberships of</i></b> Commonwealth New Bedford Energy; GF Power; and Industrial Wind Action Corp; (ii) <b><i>the termination of the Participant status of</i></b> Backyard Farms Energy and Backyard Farms; Bruce Power; Commonwealth Resource Management Corp.; Darby Energy; DFC ERG CT; Stones DR; and Vineyard Wind; and (iii) <b><i>the name change of</i></b> Advanced Energy United Inc. ("AEU")
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**X. Misc. - ERO Rules, Filings; Reliability Standards**

20	Revised Reliability Standard: CIP-003-9 (RD23-3)	Mar 16	FERC approves CIP-003-9, eff. Apr 1, 2026
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20	Revised Rel. Standards: EOP-011-3 and EOP-012-1 (RD23-1)	Mar 20	EPSA, NEPGA, P3 jointly request rehearing of <i>Cold Weather Standards Order</i> ; FERC action required on or before <b>Apr 19, 2023</b>
21	Inverter-Based Resource Registration (RD22-4)	Mar 20	<a href="#">ACPA</a> , <a href="#">APPA</a> , <a href="#">NRECA</a> , <a href="#">Arizona Public Service Co.</a> , <a href="#">Pine Gate Renewables</a> file comments
22	CIP Standards Development: Info Filings on Virtualization and Cloud Computing Srvs. Projects (RD20-2)	Mar 15	NERC files required quarterly report with further revised schedule for Project 2016-02 (projected filing of revised standards now <b>Sep 2023</b> )
22	NOPR: IBR Reliability Standards (RM22-12)	Mar 6	<a href="#">ISO-NE</a> , <a href="#">APPA</a> , <a href="#">CA DWP</a> file reply comments

## XI. Misc. - of Regional Interest



* 23	203 Application: Weaver Wind / Greenbacker (EC23-68)	Mar 27	Weaver Wind requests the FERC authorize the acquisition of all of its membership interests by a wholly-owned subsidiary of Greenbacker Renewable Energy Co. (upon consummation, making Weaver Wind a Related Person to Howard Wind and Hectate Energy); comment deadline <b>Apr 17, 2023</b>
24	203 Application: Saddleback / CPV (EC23-52)	Mar 23	FERC authorizes CPV's acquisition of Saddleback Transaction consummated
24	203 Application: Salem Harbor / Castleton Commodities (EC23-50)	Apr 4	FERC authorizes Castleton Commodities acquisition of at least 67%, and up to 100%, of the issued and outstanding Series A-1 or A-2 Common Units of Salem Harbor
24	203 Application: Talen Energy Supply Reorganization (EC23-42)	Mar 30	FERC authorizes transaction
24	203 Application: Cogentrix / EGCO (Rhode Island State Energy Center) (EC23-41)	Mar 16 Mar 24 Apr 3	FERC authorizes transaction Transaction consummated RISEC files notice that the transaction was consummated
25	203 Application: ConEd / RWE (EC23-17)	Mar 1	RWE informs FERC that the transaction was consummated on Mar 1, 2023; Clean Energy Businesses join Supplier Sector and are renamed
* 25	Study Work Agreement Cancellation: CL&P/NYISO (ER23-1483)	Mar 28	CL&P submits Notice of Termination of a Study Work Agreement with NYISO; comment deadline <b>Apr 18, 2023</b>
* 25	PSNH / National Grid D&E Agreement (ER23-1481)	Mar 28	Eversource files D&E Agreement in connection with National Grid's asset separation project with Great River Hydro; comment deadline <b>Apr 18, 2023</b>
* 25	LGIA: CL&P/Generate NB Fuel Cells/ISO-NE (ER23-1479)	Mar 27	CL&P and ISO-NE file a revised non-conforming LGIA with Generate NB to govern the interconnection of Generate NB's 20 MW fuel cell project in New Britain, CT; comment deadline <b>Apr 17, 2023</b>
26	Shared Structure Participation Agreement: VELCO/GMP (ER23-1101)	Mar 21	FERC accepts ShSPA VTransco files Shared Structure Participation Agreement with Green Mountain Power, eff. Feb 1, 2023
26	LGIA: RI Energy / Deepwater Block Island Wind (ER23-1023)	Mar 27	FERC accepts LGIA, eff. Jan 1, 2023
26	IA: RI Energy / Manchester Street (ER23-1007)	Mar 27	FERC accepts IA revisions, eff. Jan 1, 2023
26	LSAs: RI Energy/ISO-NE/BIPCO (ER23-1003; ER23-1000)	Mar 31	FERC conditionally accepts one LSA (ER23-1003) and issues a deficiency letter requesting additional information regarding the LSA filed in ER23-1003; response to deficiency letter and compliance filing both due on or before <b>May 1, 2023</b>

* 27	VELCO Phase II Vermont DMNRC Support Agreement Info Filing (ER90-591)	Mar 31	VELCO submits annual informational filing pursuant to the Phase II Vermont DMNRC Support Agreement
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## XII. Misc. - Administrative & Rulemaking Proceedings



27	Interregional HVDC Merchant Transmission (AD22-13)	Mar 8	Comments on Invenergy's request for a tech. conf. filed by: <a href="#">AEU</a> , <a href="#">NRDC</a> , <a href="#">IRC</a> , <a href="#">SPP</a> , <a href="#">NARUC</a> , <a href="#">ACRE</a> , <a href="#">Assoc Industries of MO</a> , <a href="#">Clean Energy Buyers Assoc</a> , <a href="#">Converge Strategies</a> , <a href="#">ELCON</a> , <a href="#">Grid United</a> , <a href="#">IL Manufac. Assoc</a> , <a href="#">MN PSC</a> , <a href="#">Natl. Elec. Manufac. Assoc</a> , <a href="#">ND PSC</a> , <a href="#">Public Citizen</a> , <a href="#">Niskanen Center</a> , <a href="#">Prysmian Group</a> , <a href="#">P. Stockton</a> , <a href="#">R Street Institute</a> , <a href="#">Rail Electrification Council</a> , <a href="#">Renew Missouri Advocates</a> , <a href="#">SOO Green HVDC Link ProjectCo</a> , <a href="#">World Resources Institute</a>
29	Transmission Planning and Cost Management Technical Conference (AD22-8)	Mar 23	Post-tech. conf. comments filed by: <a href="#">ISO-NE</a> , <a href="#">AEU</a> , <a href="#">Avangrid</a> , <a href="#">Cypress Creek</a> , <a href="#">Eversource</a> , <a href="#">LS Power</a> , <a href="#">MA AG</a> , <a href="#">NE Public Systems</a> , <a href="#">NESCOE</a> , <a href="#">NextEra</a> , <a href="#">NRDC</a> , <a href="#">NRG</a> , <a href="#">Maine PUC</a> , <a href="#">ACRE</a> , <a href="#">APPA</a> , <a href="#">EEI</a> , <a href="#">Harvard Elec. Law Inst.</a> , <a href="#">LPPC</a> , <a href="#">NASUCA</a> , <a href="#">NRECA</a> , <a href="#">R Street Institute</a>
30	Joint Federal-State Task Force on Electric Transmission (AD21-15)	Mar 6	Transcript of Feb 15, 2023 (6 <sup>th</sup> ) JFSTF meeting posted to eLibrary
32	NOPR: Interconnection Reforms (RM22-14)	Apr 3	Elevate submits comments out-of-time
35	NOPR: Transmission Siting (RM22-7)	Mar 3	FERC grants 30-day extension of time, to <b>May 17, 2023</b> , to file comments

## XIII. FERC Enforcement Proceedings



*No Activity to Report*

## XIV. Natural Gas Proceedings



*No Activity to Report*

## XV. State Proceedings & Federal Legislative Proceedings



*No Activity to Report*

## XVI. Federal Courts



41	2nd Revised Narragansett LSA Orders (22-1161, 22-1108) (consolidated)	Mar 20	Oral argument held before Judges Henderson, Pillard and Katsas
42	<i>Opinion 531-A</i> Compliance Filing Undo (20-1329)	Apr 4	FERC files status report indicating that proceedings before the FERC remain ongoing and appeal should continue to remain in abeyance
43	Northern Access Project (22-1233)	Mar 14 Mar 21 Apr 4	Sierra Club files Reply Brief Sierra Club files Joint Deferred Appendix Sierra Club, the FERC, INGA (Amicus for FERC) and Empire Pipeline and National Fuel Gas Supply (Intervenor for Respondent FERC) file Final Briefs
44	Algonquin Atlantic Bridge Project Orders (22-1146, 22-1147) (consol.)	Mar 2 Mar 9	Petitioners file Deferred Appendix Final Briefs filed; oral argument set for <b>Apr 20, 2023</b> before Judges Srinivasan, Millett and Tatel

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

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

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

**DATE:** April 5, 2023

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

We have summarized below the status of key ongoing proceedings relating to NEPOOL matters before the Federal Energy Regulatory Commission ("FERC"),<sup>1</sup> state regulatory commissions, and the Federal Courts and legislatures through April 5, 2023. If you have questions, please contact us.

### I. Complaints/Section 206 Proceedings

- RENEW Network Upgrades O&M Cost Allocation Complaint (EL23-16)**

The December 13, 2022 complaint by RENEW Northeast, Inc. ("RENEW") against ISO-NE and the Participating Transmission Owners ("PTOs"), which seeks changes to the ISO-NE Tariff (Schedules 11 and 21) that would eliminate the direct assignment of Network Upgrade Operations and Maintenance ("O&M") costs to Interconnection Customers,<sup>2</sup> is pending before the FERC. As previously reported, the proposed revisions to Schedule 11 of the Tariff were voted by the Transmission Committee at its October 26, 2021 meeting, and were discussed at the Participants Committee November 3, 2021 meeting. RENEW asked the FERC to issue an order granting the Complaint by April 14, 2023 (approximately 60 days prior to the June 15, 2023 deadline for the NE PTOs to publish a draft of the Annual Update to the data used in the transmission formula rate).

Following a request by the PTO AC for a 20-day extension of time to submit comments, supported by NEPOOL, the Massachusetts Attorney General's Office ("MA AG") and NESCOE, and granted by the FERC on December 22, 2022, comments were due on or before January 23, 2023. On January 19, 2023, [ISO-NE](#) moved to dismiss itself as a party or, in the alternative, answer the Complaint ("ISO-NE Jan 19 Motion"). On January 23, responses, comments and protests were filed by the [PTO AC](#), [NEPOOL](#), [AEU/Clean Energy Council](#), [CPV Towantic](#), [Glenvale](#), [MA AG](#), [NECOS](#), [NEPGA](#), and [NESCOE](#). Doc-less interventions only were filed by Calpine, CMMEC, EMI, Eversource, Narragansett, National Grid, New Leaf Energy, NextEra, NRG, Versant, CT DEEP, MA DPU, the American Clean Power Association ("ACPA"), Solar Energy Industries Association ("SEIA"), and Public Citizen.

Since the last Report, [RENEW](#) answered [ISO-NE's Jan 19 Motion](#). On February 7, 2023, [RENEW](#), the [PTO AC](#), and [National Grid](#) filed answers to the January 23 protests/comments. On February 16, 2023, ISO-NE answered RENEW's February 7 answer. On February 22, 2023, [CPV Towantic](#), [Glenvale](#), and the [MA AG](#) filed answers to the February 7 answers. This matter is pending before the FERC. If you have questions on this proceeding, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)) or Margaret Czepiel (202-218-3906; [mzczepiel@daypitney.com](mailto:mzczepiel@daypitney.com)).

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

<sup>2</sup> RENEW also requested (i) that it be considered an Interested Party or afforded adequate opportunity to participate and access transmission rate information under the PTOs' Formula Rate Protocols and (ii) the PTOs be directed to provide greater transparency regarding O&M costs in the interconnection process.

- **ENECOS Mystic COSA Complaint (EL23-4)**

On March 28, 2023, the FERC denied in part, and accepted in part, Eastern New England Consumer-Owned Systems' ("ENECOS") Complaint against Mystic and ISO-NE challenging the pass-through to ISO-NE customers of firm pipeline transportation costs under the 2nd Amended and Restated Mystic Cost-of-Service Agreement ("COSA").<sup>3</sup> The FERC found that ENECOS did not demonstrate that it is unjust and unreasonable for Mystic customers to pay for firm pipeline transportation service. However, the FERC also found that the COSA is unjust and unreasonable to the extent that it allocates the Pipeline Transportation Costs entirely to Mystic without an offset to ensure that third parties who benefit from the pipelines reasonably contribute to Pipeline Transportation Costs. The FERC went on to conclude that the practice of crediting Mystic to account for firm gas transportation charges that Constellation LNG collects from third-party sales of gas is a just and reasonable method of allocating the Pipeline Transportation Costs and directed Mystic to include as part of a 30-day compliance filing this pipeline-related crediting as an explicit provision in the Mystic COSA.<sup>4</sup> Challenges, if any, to the *Order on ENECOS Mystic COSA Complaint* are due on or before **April 27, 2023**. If you have questions on this proceeding, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)) or Margaret Czepiel (202-218-3906; [mczepiel@daypitney.com](mailto:mczepiel@daypitney.com)).

- **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.<sup>5</sup> 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.<sup>6</sup> As noted below, ISO-NE answered by explaining why it believes its existing Tariff provisions to be just and reasonable and changes not necessary.

By way of background, the *FTR Collateral Show Cause Order* follows PJM's *Green Hat* experience,<sup>7</sup> 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,<sup>8</sup> and a two-day technical conference in February 2021 that discussed principles and best practices for credit risk management in organized wholesale electric markets.<sup>9</sup> In the *FTR Collateral Show Cause Order*, the FERC stated that, although the record developed through the technical

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<sup>3</sup> *Belmont Municipal Light Dept., et al. v. Constellation Mystic Power, LLC and ISO New England, Inc.*, 182 FERC ¶ 61,199 (Mar. 28, 2023) ("*Order on ENECOS Mystic COSA Complaint*").

<sup>4</sup> Specifically, the FERC directed Mystic in a 30-day compliance filing to revise the COSA to (1) provide all necessary details as to how the crediting process works; (2) differentiate, through both an explanation in its compliance filing and creation of two new line items in Schedule 3A, the credits and charges included as part of the Fixed Pipeline Costs; (3) address how and whether this pipeline-related crediting procedure interacts or should interact with the true-up procedure already included in the Mystic Agreement and revise the true-up as necessary; and (4) differentiate in the Mystic Agreement the Pipeline Transportation Costs as Fixed O&M/Return on Investment Costs from the Pipeline Transportation Agreement Costs. *Id.* at P 29.

<sup>5</sup> *CAISO, ISO-NE, NYISO, and SPP*, 180 FERC ¶ 61,049 (July 28, 2022) ("*FTR Collateral Show Cause Order*").

<sup>6</sup> *Id.* at P 31.

<sup>7</sup> 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.

<sup>8</sup> 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).

<sup>9</sup> See Supp. Notice of Tech. Conf., *RTO/ISO Credit Principles and Practices*, Docket No. AD21-6, et al. (Feb. 10, 2021).



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.”<sup>10</sup> 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, August 3, 2022.<sup>11</sup> Those interested in participating in this proceeding were required to intervene on or before August 18, 2022. Doc-less interventions were filed by NEPOOL, Calpine, DC Energy, NRG, the Maine Public Utilities Commission (“MPUC”), Electric Power Supply Association (“EPSA”), PJM, SPP, Public Citizen, and Financial Marketers Coalition<sup>12</sup> (out-of-time).

**ISO-NE Response.** On October 26, 2022, ISO-NE submitted its answer in response to the *FTR Collateral Show Cause Order*. In its Answer, ISO-NE explained how the FTR financial assurance calculations contained in the Financial Assurance Policy (“FAP”) remain just and reasonable, adequately accounting for FTR risk in the absence of a more sophisticated risk management solution such as a clearing solution. ISO-NE asked that, should the FERC not agree and proceed to require volumetric FTR collateral requirements, that it be permitted to follow the Participants Processes to propose revisions to the FAP consistent with any such order. Comments on ISO-NE’s response were due on or before November 25, 2022; none were filed. This matter is pending before the FERC.

If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; [pnbelval@daypitney.com](mailto:pnbelval@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.<sup>13</sup> 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.<sup>14</sup>

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<sup>10</sup> 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 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.

<sup>11</sup> The *Notice* was published in the *Fed. Reg.* on Aug 3, 2022 (Vol. 87, No. 148) p. 47,409.

<sup>12</sup> “Financial Marketers Coalition” identified themselves in their doc-less intervention as “financial market participants participating in the various ISO/RTO markets, including those operated by CAISO, SPP, NYISO and ISO-NE. Many of the Coalition members participate in these ISO/RTOs’ FTR markets.”

<sup>13</sup> *NECEC Transmission LLC and Avangrid, Inc. v. NextEra Energy Resources, LLC et al. and ISO New England Inc.*, 176 FERC ¶ 61,148 (Sep. 7, 2021) (“*Sep 7 Order*”).

<sup>14</sup> *Id.* at P 20.

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 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, 2021<sup>15</sup> 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, 2022, [NextEra](#) answered the NECEC/Avangrid comments. On January 28, 2022, [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](mailto:ekrunge@daypitney.com)).

- **NextEra / Avangrid/NECEC Dispute - (“Seabrook Complaint”) (EL21-6)<sup>16</sup> and (“Seabrook Declaratory Order Petition”) (EL21-3)<sup>17</sup>**

As previously reported, the FERC issued, on February 1, 2023, a single order addressing these two proceedings.<sup>18</sup> In the *Seabrook Dispute Order*, the FERC (i) both denied and granted in part the Seabrook Complaint; (ii) dismissed the Seabrook Declaratory Order Petition; and (iii) directed Seabrook to replace the Seabrook Station breaker pursuant to its obligations under the Seabrook LGIA and Good Utility Practice. Specifically, the FERC denied the Seabrook Complaint in part because it found that Avangrid had “not shown that Seabrook is obligated to replace the breaker due to Seabrook failing to meet certain open access obligations or because Seabrook has failed to comply with Schedule 25 of the ISO-NE Tariff”.<sup>19</sup> However, the FERC found that, “under Seabrook’s LGIA, Seabrook may not refuse to replace the breaker because it is needed for reliable operation of Seabrook Station and required by Good Utility Practice” and thus, given the specific facts and circumstances in the record, granted the Seabrook Complaint in part.<sup>20</sup> With respect to cost issues, the FERC

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

<sup>16</sup> On Oct. 13, 2020, NECEC and Avangrid Inc. (together, “Avangrid”) filed a complaint requesting FERC action “to stop NextEra from unlawfully interfering with the interconnection of the NECEC Project and seeking, among other things, an initial, expedited order that would grant certain relief 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 “Seabrook Complaint”).

<sup>17</sup> On Oct. 5, 2020, NextEra Energy Seabrook, LLC (“Seabrook”) filed a Petition for a Declaratory Order seeking 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 Declaratory Order Petition” or “Petition”). Please see prior Reports for additional procedural details related to these proceedings.

<sup>18</sup> *NextEra Energy Seabrook, LLC and NECEC Transmission LLC and Avangrid, Inc. v. NextEra Energy Resources, LLC and NextEra Energy Seabrook, LLC*, 182 FERC ¶ 61,044 (Feb. 1, 2023) (“*Seabrook Dispute Order*”).

<sup>19</sup> *Id.* at P 74.

<sup>20</sup> *Id.*



agreed with Avangrid that, in this case, Seabrook should not recover opportunity costs (e.g. lost profits, lost revenues, and foregone Pay for Performance (“PFP”) bonuses) or legal costs.<sup>21</sup> In dismissing the Declaratory Order Petition, the FERC noted that the issues raised in the Petition were addressed in the *Seabrook Dispute Order*, that additional findings were unnecessary, and thus exercised its discretion to not take action on, and to dismiss, the Petition.<sup>22</sup> The breaker replacement is currently expected to take place during the Fall 2024 refueling outage and the commercial operation date for the NECEC Project is December 2024.<sup>23</sup> Seabrook plans to file an agreement governing installation at the earlier of 30 days prior to delivery of the breaker or 120 days prior to the start of the Fall 2024 outage.<sup>24</sup> The FERC noted its expectation that such an agreement would resolve whatever remaining issues exist between the parties to allow replacement of the breaker to move forward during the 2024 outage, or if not, an unexecuted agreement would be filed.<sup>25</sup>

**Request for Rehearing Denied by Operation of Law.** On March 3, 2023, NextEra filed a request for rehearing of the *Seabrook Dispute Order* on the basis that, among other things, the FERC lacked authority to require Seabrook to replace its generation breaker and to rule that Seabrook cannot recover all its costs. On April 3, 2023, the FERC issued a “Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration”.<sup>26</sup> The Notice confirmed that the 60-day period during which a petition for review of the *Seabrook Dispute Order* can be filed with an appropriate federal court was triggered when the FERC did not act on NextEra’s request for rehearing of the *Seabrook Dispute Order*. The Notice also indicated that the FERC would address, as is its right, the rehearing request in a future order, and may modify or set aside its order, in whole or in part, “in such manner as it shall deem proper.”

**Avangrid Request for Clarification.** As previously reported, Avangrid filed a motion for clarification on March 17, 2023 requesting that the FERC clarify the basis for its jurisdiction in the *Seabrook Dispute Order*. Avangrid’s request for clarification remains pending, with FERC action required on or before April 17, 2023 or that request, too, may be deemed denied by operation of law.

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

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

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

- **Base ROE Complaint I (EL11-66).** In the first Base ROE Complaint proceeding, the FERC concluded that the TOs’ ROE had become unjust and unreasonable,<sup>27</sup> set the TOs’ Base ROE at 10.57% (reduced from 11.14%), capped the TOs’ total ROE (Base ROE *plus* transmission incentive adders) at 11.74%, and required implementation effective as of October 16, 2014 (the date of *Opinion*

<sup>21</sup> *Id.* at P 100. The FERC noted that Avangrid has agreed to pay for the direct costs of the engineering, procurement and construction of the Seabrook breaker replacement. The FERC further noted that it did not address arguments over consequential damages in light of the fact that both Seabrook and Avangrid both asserted that consequential damages were no longer a live issue.

<sup>22</sup> *Id.* at P 112.

<sup>23</sup> A&R E&P Agreement Between NextEra Energy Seabrook and NECEC Transmission at 2, NextEra Energy Seabrook, LLC, Docket No. ER22-2807-000 (filed Sep. 7, 2022).

<sup>24</sup> Amended E&P Agreement, Art. VI, Docket No. ER22-2807-000 (filed Sept. 7, 2022).

<sup>25</sup> *Id.* at P 88.

<sup>26</sup> *NextEra Energy Seabrook, LLC et al.*, 183 FERC ¶ 62,001 (Apr. 3, 2023) (“*Seabrook Dispute Allegheny Order*”).

<sup>27</sup> The TOs’ 11.14% pre-existing Base ROE was established in *Opinion 489*. *Bangor Hydro-Elec. Co.*, Opinion No. 489, 117 FERC ¶ 61,129 (2006), *order on reh’g*, 122 FERC ¶ 61,265 (2008), *order granting clarif.*, 124 FERC ¶ 61,136 (2008), *aff’d sub nom.*, Conn. Dep’t of Pub. Util. Control v. FERC, 593 F.3d 30 (D.C. Cir. 2010) (“*Opinion 489*”).

531-A).<sup>28</sup> However, the FERC's orders were challenged, and in *Emera Maine*,<sup>29</sup> 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)<sup>30</sup> and third (EL14-86)<sup>31</sup> ROE complaint proceedings were consolidated for purposes of hearing and decision, though the parties were permitted to litigate a separate ROE for each refund period. After hearings were completed, ALJ Sterner issued a 939-paragraph, 371-page *Initial Decision*, which lowered the base ROEs for the EL13-33 and EL14-86 refund periods from 11.14% to 9.59% and 10.90%, respectively.<sup>32</sup> The *Initial Decision* also lowered the ROE ceilings. Parties to these proceedings filed briefs on exception to the FERC, which has not yet issued an opinion on the ALJ's *Initial Decision*.
- **Base ROE Complaint IV (EL16-64).** The fourth and final ROE proceeding<sup>33</sup> also went to hearing before an Administrative Law Judge ("ALJ"), Judge Glazer, who issued his initial decision on March 27, 2017.<sup>34</sup> 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.<sup>35</sup> Parties in this proceeding filed briefs on exception to the FERC, which has not yet issued an opinion on the *Base ROE IV Initial Decision*.

<sup>28</sup> *Coakley Mass. Att'y Gen. v. Bangor Hydro-Elec. Co.*, 147 FERC ¶ 61,234 (2014) ("*Opinion 531*"), order on paper hearing, 149 FERC ¶ 61,032 (2014) ("*Opinion 531-A*"), order on reh'g, 150 FERC ¶ 61,165 (2015) ("*Opinion 531-B*").

<sup>29</sup> *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*"). *Emera Maine* vacated the FERC's prior orders in the Base ROE Complaint I proceeding, and remanded the case for further proceedings consistent with its order. The Court agreed with both the TOs (that the FERC did not meet the Section 206 obligation to first find the existing rate unlawful before setting the new rate) and "Customers" (that the 10.57% ROE was not based on reasoned decision-making, and was a departure from past precedent of setting the ROE at the midpoint of the zone of reasonableness).

<sup>30</sup> The 2012 Base ROE Complaint, filed by Environment Northeast (now known as Acadia Center), Greater Boston Real Estate Board, National Consumer Law Center, and the NEPOOL Industrial Customer Coalition ("NICC", and together, the "2012 Complainants"), challenged the TOs' 11.14% ROE, and seeks a reduction of the Base ROE to 8.7%.

<sup>31</sup> The 2014 Base ROE Complaint, filed July 31, 2014 by the Massachusetts Attorney General, together with a group of State Advocates, Publicly Owned Entities, End Users, and End User Organizations (together, the "2014 ROE Complainants"), seeks to reduce the current 11.14% Base ROE to 8.84% (but in any case no more than 9.44%) and to cap the Combined ROE for all rate base components at 12.54%. 2014 ROE Complainants state that they submitted this Complaint seeking refund protection against payments based on a pre-incentives Base ROE of 11.14%, and a reduction in the Combined ROE, relief as yet not afforded through the prior ROE proceedings.

<sup>32</sup> *Environment Northeast v. Bangor Hydro-Elec. Co. and Mass. Att'y Gen. v. Bangor Hydro-Elec. Co.*, 154 FERC ¶ 63,024 (Mar. 22, 2016) ("*2012/14 ROE Initial Decision*").

<sup>33</sup> The 4th ROE Complaint asked the FERC to reduce the TOs' current 10.57% return on equity ("Base ROE") to 8.93% and to determine that the upper end of the zone of reasonableness (which sets the incentives cap) is no higher than 11.24%. The FERC established hearing and settlement judge procedures (and set a refund effective date of April 29, 2016) for the 4th ROE Complaint on September 20, 2016. Settlement procedures did not lead to a settlement, were terminated, and hearings were held subsequently held December 11-15, 2017. The September 26, 2016 order was challenged on rehearing, but rehearing of that order was denied on January 16, 2018. *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 156 FERC ¶ 61,198 (Sep. 20, 2016) ("*Base ROE Complaint IV Order*"), reh'g denied, 162 FERC ¶ 61,035 (Jan. 18, 2018) (together, the "*Base ROE Complaint IV Orders*"). The *Base ROE Complaint IV Orders*, as described in Section XVI below, have been appealed to, and are pending before, the DC Circuit.

<sup>34</sup> *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 162 FERC ¶ 63,026 (Mar. 27, 2018) ("*Base ROE Complaint IV Initial Decision*").

<sup>35</sup> *Id.* at P 2.; Finding of Fact (B).

**October 16, 2018 Order Proposing Methodology for Addressing ROE Issues Remanded in *Emera Maine* and Directing Briefs.** On October 16, 2018, the FERC, addressing the issues that were remanded in *Emera Maine*, proposed a new methodology for determining whether an existing ROE remains just and reasonable.<sup>36</sup> The FERC indicated its intention that the methodology be its policy going forward, including in the four currently pending New England proceedings (*see, however, Opinion 569-A*<sup>37</sup> (EL14-12; EL15-45) in Section XI below). The FERC established a paper hearing on how its proposed methodology should apply to the four pending ROE proceedings.<sup>38</sup>

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

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

The FERC provided preliminary analysis of how it would apply the proposed methodology in the Base ROE I Complaint, suggesting that it would affirm its holding that an 11.14% Base ROE is unjust and unreasonable. The FERC suggested that it would adopt a 10.41% Base ROE and cap any preexisting incentive-based total ROE at 13.08%.<sup>39</sup> The new ROE would be effective as of the date of *Opinion 531-A*, or October 16, 2014. Accordingly, the issue to be addressed in the Base ROE Complaint II proceeding is whether the ROE established on remand in the first complaint proceeding remained just and reasonable based on financial data for the six-month period September 2013 through February 2014 addressed by the evidence presented by the 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

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<sup>36</sup> *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (Oct. 18, 2018) (“*Order Directing Briefs*” or “*Coakley*”).

<sup>37</sup> *Ass’n of Buss. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569-A, 171 FERC ¶ 61,154 (2020) (“*Opinion 569-A*”). The refinements to the FERC’s ROE methodology included: (i) the use of the Risk Premium model instead of only relying on the DCF model and CAPM under both prongs of FPA Section 206; (ii) adjusting the relative weighting of long- and short-term growth rates, increasing the weight for the short-term growth rate to 80% and reducing to 20% the weight given to the long-term growth rate in the two-step DCF model; (iii) modifying the high-end outlier test to treat any proxy company as high-end outlier if its cost of equity estimated under the model in question is more than 200% of the median result of all the potential proxy group members in that model before any high- or low-end outlier test is applied, subject to a natural break analysis. This is a shift from the 150% threshold applied in *Opinion 569*; and (iv) calculating the zone of reasonableness in equal thirds, instead of using the quartile approach that was applied in *Opinion 569*.

<sup>38</sup> *Id.* at P 19.

<sup>39</sup> *Id.* at P 59.

proceeding). Additional financial data or evidence concerning economic conditions in any proceeding must relate to periods before the conclusion of the hearings in the relevant complaint proceeding. Following a FERC notice granting a request by the TOs and Customers<sup>40</sup> for an extension of time to submit briefs, the latest date for filing initial and reply briefs was extended to January 11 and March 8, 2019, respectively. On January 11, initial briefs were filed by EMCOS, Complainant-Aligned Parties, TOs, 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*<sup>41</sup> and requested that the FERC re-open the record to permit that additional testimony on the impacts of the *MISO ROE Order*’s changes. On January 21, 2020, EMCOS and CAPs opposed the TOs’ request and brief.

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

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

- **FCA17 Results Filing (ER23-1435)**

On March 21, 2023, ISO-NE filed the results of the seventeenth FCA (“FCA17”) held March 6, 2023 for the June 1, 2026 - May 31, 2027 Capacity Commitment Period (“CCP”). ISO-NE reported the following highlights:

- ♦ FCA17 Capacity Zones were the Northern New England (“NNE”) Capacity Zone (the Maine, New Hampshire and Vermont Load Zones), the Maine Capacity Zone (the Maine Load Zone) and the Rest-of-Pool (“ROP”) Capacity Zone (the Southeastern Massachusetts, Rhode Island, Northeastern Massachusetts/Boston, Connecticut and Western/Central Massachusetts Load Zones). NNE was modeled as an export-constrained Capacity Zone. The Maine Load Zone was modeled as a separate nested export-constrained Capacity Zone within NNE.
- ♦ FCA17 commenced with a starting price of \$12.76/kW-mo. and concluded for all Capacity Zones after four rounds.
- ♦ Capacity Clearing Prices were as follows (prices expressed per kw-mo.): All Capacity Zones - \$2.59; imports over the NY AC Ties (390 MW); and imports over the New Brunswick external interface (177 MW) - \$2.55.<sup>42</sup>
- ♦ There were no active demand bids for the substitution auction and, accordingly, the substitution auction was not conducted.
- ♦ No resources cleared as Conditional Qualified New Generating Capacity Resources.
- ♦ No Long Lead Time Generating Facilities secured a Queue Position to participate as a New Generating Capacity Resource.
- ♦ No De-List Bids were rejected for reliability reasons.

<sup>40</sup> For purposes of the motion seeking clarification, “Customers” are CT PURA, MA AG and EMCOS.

<sup>41</sup> *Ass’n of Buss. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569, 169 FERC ¶ 61,129 (Nov. 21, 2019) (“*MISO ROE Order*”), *order on reh’g*, Opinion No. 569-A, 171 FERC ¶ 61,154 (May 21, 2020).

<sup>42</sup> The HQ Highgate external interface and Phase I/II HQ Excess external interface were priced at \$2.59, with no imports receiving a Capacity Supply Obligation over either interface.

ISO-NE asked the FERC to accept the FCA17 rates and results, effective July 19, 2023. Comments on this filing are due on or before **May 5, 2023**. Thus far, NEPOOL, Calpine, Constellation, Dominion, NESCOE, EPSA, No Coal No Gas, and Public Citizen have filed doc-less interventions. If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; [rgarza@daypitney.com](mailto:rgarza@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **Add'l Cost Recovery Due to Dec 24 General Threshold Energy Mitigation: Dynegy (ER23-1261)**

On March 6, 2023, Dynegy Marketing and Trade, LLC ("Dynegy") requested, pursuant to § 15 of Appendix A to Market Rule 1, that the FERC authorize the recovery of \$903,400 in unrecovered costs incurred by Dynegy because its Resources were subject to General Threshold Energy Mitigation on December 24, 2022. Specifically, Dynegy requested (i) \$903,400 in under-recovered fuel and variable operating and maintenance costs consistent with calculations set forth in ISO-NE IMMU's Report and (ii) reasonable, related regulatory costs (\$62,000 plus any further regulatory costs to be identified in a compliance filing). Comments on this filing were due, after an extension of time requested by Public Citizen, Maine Office of the Public Advocate ("ME OPA"), and MA AG, and subsequently granted by the FERC, on or before April 4, 2023. On April 4, NEPGA filed comments supporting Dynegy's request. Protests were filed by ME OPA and jointly by MA AG and the Connecticut Office of Consumer Counsel ("CT OCC"). The protests generally asserted that Dynegy did not demonstrate that its request for recovery associated with Upward Mitigation is consistent with or required by the Market Rules (recovery, which they assert, is limited to fuel and variable operating and maintenance costs of a Resource for the hours during which a supply offer was capped). Should the FERC grants Dynegy's cost recovery request, they suggested that the FERC utilize the Day-Ahead Real-Time approach described in the proceeding as the basis to calculate any cost recovery. Doc-less interventions only were filed by NEPOOL, ISO-NE, National Grid, CT AG, EPSA, and Public Citizen. This matter is now pending before the FERC. If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; [rgarza@daypitney.com](mailto:rgarza@daypitney.com)) or Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Mystic COS Agreement Updates to Reflect Constellation Spin Transaction<sup>43</sup> (ER22-1192)**

As previously reported, on May 2, 2022, 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.<sup>44</sup> The changes were accepted effective as of June 1, 2022, but subject to refund and to the outcome of paper hearing (or settlement procedures) on the issues of capital structure and cost of debt raises issues. Mystic filed an offer of settlement on September 8, 2022 to resolve all issues set for hearing and settlement proceedings and the FERC accepted that offer of settlement on November 2, 2022,<sup>45</sup> directing Mystic to make a compliance filing with revised tariff records in eTariff format reflecting the FERC's action in the November 2 order. Mystic submitted that compliance filing on December 2, 2022 (ER22-1192-003). No comments were received by the December 23, 2022 comment date, and there was no activity in this proceeding since the last Report. This compliance filing remains pending before the FERC. FERC action on the compliance filing will conclude this proceeding. If you have questions on any aspect of this proceeding, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

- **VTransco Deferral of Retiree Lump Sum Payment Cost Recovery (ER21-2627)**

On March 17, 2023, Vermont Transco LLC ("VTransco") submitted an informational filing for lump sum payment elections taken in 2022. As previously reported, the FERC authorized VTransco to defer for future

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<sup>43</sup> 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.

<sup>44</sup> *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,081 (May 2, 2022) ("May 2, 2022 Order").

<sup>45</sup> *Constellation Mystic Power, LLC*, 181 FERC ¶ 61,099 (Nov. 2, 2022).

recovery costs associated with lump sum payments to employees who retire in 2021 and 2022.<sup>46</sup> VTransco reported that 24 plan participants elected lump sum payments in 2022, with the lump sum payments totaling approximately \$14.38 million. As a result, \$2.15 million was recorded as a regulatory asset on VTransco's balance sheet and will be amortized pursuant to the FERC-approved methodology and recovered from Vermont distribution utilities under the 1991 Vermont Transmission Agreement. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

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

**Mystic I Remand.** As previously reported, the DC Circuit issued a decision on August 23, 2022<sup>47</sup> that, among other things: (i) granted State Petitioners' petitions for review on the cost allocation issue; (ii) vacated the clawback portions excluding Everett costs and the challenged delay provision of the orders under review; and (iii) remanded the cases to 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*.

**(-019) FERC Order on Remand and Motion to Hold in Abeyance.** On March 28, 2023, the FERC issued its order on Remand<sup>48</sup> (1) finding the initial allocation of 91% of Everett's fixed operating costs to Mystic remains just and reasonable and requiring that the revenue sharing mechanism be reinstated in the COSA; (2) holding its ruling on the clawback issue in abeyance pending resolution in the settlement proceeding; (3) finding that the existing language of the COSA mitigates the incentive to unduly delay capital projects; and (4) clarifying that all interested parties can review and challenge Mystic's revenue credits and tank congestion charges during a subsequent true-up process. The FERC directed Mystic to submit a 30-day compliance filing, on or before **April 27, 2023**, revising the COSA to reinstate the revenue sharing mechanism. Challenges, if any, to the *Mystic I Order on Remand* are also due on or before **April 27, 2023**.

**Other Mystic COSA-Related Matters Still Pending or With Activity Since the Last Report include:**

**(-022) First CapEx Info. Filing Settlement Agreement Interim Rate Implementation.** On March 27, 2023, Acting Chief ALJ Satten granted Mystic's March 15, 2023 request to implement the settlement rates on an interim basis, effective as of June 1, 2022. The interim rates will remain in effect pending FERC action on the First CapEx Settlement Agreement (-021).<sup>49</sup>

**(-021) First CapEx Info. Filing Settlement Agreement.** On March 15, 2023, Mystic filed a Settlement Agreement to resolve all issues raised by the formal challenges to its First CapEx Info. Filing<sup>50</sup> and set for hearing in the April 28, 2023 *Mystic First CapEx Info. Filing Order* ("Settlement Agreement").<sup>51</sup> The Settling Parties asked that the FERC act on the Settlement Agreement as soon as possible, but no later than September 1, 2023. Initial comments on the Settlement Agreement were due by April 4, 2023. Comments on the Settlement Agreement

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

<sup>47</sup> *Constellation Mystic Power, LLC v. FERC*, 45 F.4th 1028 (D.C. Cir. 2022) ("*Mystic I Remand Order*").

<sup>48</sup> *Constellation Mystic Power, LLC*, 182 FERC ¶ 61,200 (Mar. 28, 2023) ("*Mystic I Order on Remand*").

<sup>49</sup> *Constellation Mystic Power, LLC*, 182 FERC ¶ 63,026 (Mar. 27, 2023) (Chief ALJ order granting motion to implement settlement rate on an interim basis).

<sup>50</sup> As previously reported, Mystic submitted, on Sep. 15, 2021, as required by orders in this proceeding and Sections I.B.1.i. and II.6. of Schedule 3A of the COSA ("Protocols"), its informational filing to provide support for the capital expenditures and related costs that Mystic projected would be collected as an expense between June 1, 2022 and Dec. 31, 2022 ("First CapEx Projects Info. Filing"). Formal challenges to the First CapEx Projects Info. Filing were submitted by the Eastern New England Customer-Owned Systems ("ENECOS") and NESCOE.

<sup>51</sup> *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,011 (Apr. 28, 2022) ("*Mystic First CapEx Info. Filing Order*") (granting in part, and denying in part, ENECOS' and NESCOE's formal challenges, subject to refund, and establishing hearing and settlement judge procedures).



were filed by ENECOS, CT PURA, FERC Trial Staff, MA AG, NESCOE, and National Grid. Reply comments, if any, are due on or before **April 14, 2023**.

**(-020) Fuel Supply Agreement Revision Info Filing.** On December 9, 2022, Mystic submitted a revision to its Fuel Supply Agreement (“FSA”) that memorializes Constellation LNG’s pre-existing business practice of crediting Mystic under the FSA to account for firm gas transportation (“FT”) charges that Constellation LNG collects from forward third-party sales of gas. This crediting mechanism, along with the other credits already included in the FSA, Mystic explained, ensures that Mystic (and thus ISO New England) only bears the cost responsibility for the pipeline transportation costs that are not offset by third-party sales of gas. Mystic stated the credit to the FSA reduces Mystic’s cost-of-service. This informational filing was not noticed for public comment.

**(-018) Second CapEx Info Filing.** On September 15, 2022, 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 “Second CapEx Info Filing” to provide support for the capital expenditures and related costs that Mystic projects will be collected as an expense between January 1, 2023 to December 31, 2023 (“2023 CapEx Projects”). Formal challenges to the Second CapEx Info Filing were submitted by NESCOE and ENECOS. Comments on NESCOE’s and ENECOS’ challenges were due on or before November 16, 2022 and November 17, 2022, respectively. Mystic responded separately to NESCOE’s and ENECOS’ challenges. MMWEC/NHEC filed comments supporting ENECOS’ formal challenge, emphasizing its support for formal challenge to the pass through of charges incurred by Everett for pipeline transportation reservations (see ENECOS Mystic COSA Complaint (EL23-4) above). On December 6, 2022, ENECOS answered Mystic’s November 17, 2022 answer. Later, on December 22, 2022, Mystic filed a response to ENECOS’ December 6 answer, and requested that the FERC reject the Formal Challenges, and accept the Second Filing as expeditiously as possible.

On February 17, 2023, reporting that it intends to file a settlement agreement in the *First CapEx Info. Filing* proceeding that would also impact certain pending Formal Challenges filed in response to the *Second CapEx Info. Filing*, Mystic requested that the FERC hold off on acting on the pending Formal Challenges in this proceeding until after the FERC acts on the Settlement Agreement (summarized in (-021) above) (“Motion for Abeyance”). On March 6, 2023, ENECOS filed a protest to Mystic’s Motion for Abeyance. That request is pending before the FERC.

**(-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.

**Limited Waiver of Certain Mystic COSA True-Up Deadlines (ER23-1159).** On March 20, 2023, the FERC granted Mystic’s request for waiver of certain deadlines required by Schedule 3A of the Mystic COSA.<sup>52</sup> to provide Settling Parties sufficient time to implement the terms of the Settlement Agreement as part of the Mystic COSA annual true-up process.

If you have questions on any aspect of these proceedings, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)) or Margaret Czepiel (202-218-3906; [mczepiel@daypitney.com](mailto:mczepiel@daypitney.com)).

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

On July 29, 2022, the PTO AC submitted its 2023 annual filing identifying adjustments to Regional Transmission Service charges, Local Service charges, and Schedule 12C Costs under Section II of the Tariff. The filing reflected the charges to be assessed under annual transmission and settlement formula rates, reflecting

<sup>52</sup> *Constellation Mystic Power, LLC*, 182 FERC ¶ 61,181 (Mar. 20, 2023).

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,<sup>53</sup> 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 stated that the annual updates result 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 included 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, 2023), a \$0.12/kW-year decrease from the Schedule 1 charge that last went into effect on June 1, 2022. This filing was not 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 had until September 15, 2022 to submit information and document requests, and the PTOs were 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 had until November 15, 2022 to submit Informal Challenges to the PTOs, and the PTOs were required to make a good faith effort to respond to any Informal Challenges by no later than December 15, 2022. Interested Parties had until January 31, 2023 to file a Formal Challenge with the FERC.

**RENEW Formal Challenge.** On January 31, 2023, RENEW filed a formal challenge (“Challenge”). RENEW asserted that (i) the TOs failed to provide adequate rate input information in the Annual Informational Filing and in the Information Exchange Period under the Interim Formula Rate Protocols regarding inclusion or exclusion of “O&M costs” on Network Upgrades that the TOs directly assign to Interconnection Customers (and thereby failing to demonstrate that such O&M costs are not being double counted in transmission rates); and (ii) the TO’s Interpretation of “Interested Party” to exclude RENEW violated the Interim Formula Rate Protocols. RENEW thus asked that the FERC (a) require the TOs to show the calculation of the annual O&M charges with sources of data inputs and show how such O&M charges are not being double recovered in transmission rates, and (b) determine that an entity such as RENEW is an Interested Party under the Interim Formula Rate Protocols and that its Information Requests seeking rate inputs and support for the O&M charges on Network Upgrades are within the scope of the Interim Formula Rate Protocols process. Comments on RENEW’s Challenge were due on or before March 16, 2023. Comments and protests were filed by: [Avangrid](#), [Eversource](#), [National Grid](#), [Public Systems](#), [RI Energy](#), [Unitil](#), [Versant Power](#), [VTransco/GMP](#). On March 31, RENEW answered the comments and protests to its Challenge. This matter is pending before the FERC.

If there are questions on this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

- **PPU CTR Clarifications (ER23-911)**

On March 21, 2023, the FERC accepted the revisions to Section III.13.7.5.4.5 of Market Rule 1 that clarify the calculation of FCM Capacity Transfer Rights (“CTR”) that are related to Pool-Planned Units (“PPU”) (the “PPU

<sup>53</sup> 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 FERC ¶ 61,270 (2020) (“Settlement Order”).

CTR Clarifications”).<sup>54</sup> Specifically, the PPU CTR Clarifications make clear (i) the allocation of PPU CTRs for each Capacity Commitment Period; (ii) PPU CTR self-supply designations; and (iii) the settlement of any remaining PPU CTRs not designated as self-supply. The PPU CTR Clarifications were accepted effective as of March 21, 2023, as requested. Unless the March 21 order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Rosendo Garza (860-275-0660; [rgarza@daypitney.com](mailto:rgarza@daypitney.com)).

- **SATOA Revisions (ER23-739; ER23-743)**

On December 29, 2022, ISO-NE, NEPOOL and the PTO AC filed revisions to the Tariff and the TOA, in two parts, to enable electric storage facilities to be planned and operated as transmission-only assets (“SATOA”) to address system needs identified in the OATT’s regional system planning process (“SATOA Revisions”). The SATOA Revisions were supported by the Participants Committee at its October 6, 2022 meeting (Agenda Item #7). ISO-NE requested a FERC order by March 29, 2023 and indicated that it intends to implement the SATOA Revisions effective July 1, 2024. ISO-NE committed to submit a filing specifying the precise effective date prior to implementation. For eTariff reasons, Part I included the ISO-NE Tariff revisions (ER23-739); Part II, the TOA revisions (ER23-743). Comments on the SATOA Revisions were due on or before January 19, 2023.

On January 19, 2023, comments and protests were filed by: [AEU](#), [FirstLight](#), [National Grid](#), [NEPGA](#), [NESCOE](#), [UCS](#), and [VELCO](#). Doc-less interventions only were filed by Avangrid, Vistra, MA DPU, LSP Transmission Holdings, RENEW, RI Energy, ACPA, and EPSA. On February 3, 2023, [NEPOOL](#) answered VELCO’s comments and [ISO-NE](#) answered VELCO’s comments and National Grid’s limited protest. [NEPGA](#) answered VELCO’s comments and National Grid’s limited protest on February 7. In turn, on February 16, [National Grid](#) answered NEPGA’s and ISO-NE’s answers. ISO-NE answered National Grid’s February 16 answer. This matter is pending before the FERC.

If you have any questions concerning this proceeding, please contact Rosendo Garza (860-275-0660; [rgarza@daypitney.com](mailto:rgarza@daypitney.com)).

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

In a lengthy compliance Order<sup>55</sup> issued March 1, 2023, the FERC approved in part, and rejected in part, ISO-NE, NEPOOL and the PTO AC’s (“Filing Parties”) Order 2222 compliance filing<sup>56</sup> (“Order 2222 Compliance Order”).<sup>57</sup>

In the *Order 2222 Compliance Order*, the FERC directed a number of revisions and additional compliance and informational filings to be filed within 30, 60, or 180 days of the *Order 2222 Compliance Order*:

- **30-Day Compliance Requirements (-003).** ISO-NE was directed to submit two filings by March 31, 2023. The first, a compliance filing to explain how current Tariff capacity market mitigation rules

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<sup>54</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, Docket No. ER23-911-000 (Mar. 21, 2023) (unpublished letter order).

<sup>55</sup> Commissioners Danly and Clements each provided separate concurrences with, and Commissioner Christie provided a separate dissent from, the Compliance Order. Commissioners Danly and Christie, despite their opposing positions on the Compliance Order, both reiterated their reasons for dissenting from Order 2222 and concern for FERC overreach and difficulty with complying with Order 2222. In her separate concurrence, Commissioner Clements urged the ISO on compliance to “modify its proposal to address undue barriers and make participation more workable” and “to pursue steps that genuinely open [the New England Markets] to DERs like behind-the-meter resources.”

<sup>56</sup> As previously reported, the Filing Parties submitted on Feb. 2, 2022 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.

<sup>57</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 182 FERC ¶ 61,137 (March 1, 2023).

would apply to Distributed Energy Capacity Resources (“DECR”) participating in FCA18. The second, an informational filing that provides an update on implementation timeline milestones associated with DECR participation in FCA18 and the other markets. Those compliance filings were submitted on March 31, 2023. Comments on the DECT compliance filing (ER22-983-003) are due on or before **April 21, 2023**. The March 31 informational filing was not noticed for public comment,

- **60-Day Compliance Filing.** On or before **May 1, 2023** (NEPOOL’s March 23 request that the 60-day compliance deadline be extended by 8 days, to May 9, 2023, is pending before the FERC), the FERC ordered ISO-NE:
  - ◆ to revise the Tariff to (1) have RERRA make the determination of whether to allow customers of small utilities to participate in ISO-NE’s markets through aggregation; (2) require that each DER Aggregator maintain and submit aggregate settlement data for the DERA; (3) designate the DER Aggregator as the entity responsible for providing any required metering information to ISO-NE, and if necessary, establish protocols for sharing meter data that minimize costs and other burdens and address concerns raised with respect to privacy and cybersecurity; (4) designate the DER Aggregator as the entity responsible for providing any required metering information to ISO-NE; and (5) add specificity regarding existing resource non-performance penalties that would apply to a DERA when a Host Utility overrides ISO-NE dispatch instructions.
  - ◆ ISO-NE was also directed to (1) identify the existing rules requiring a Market Participant that provides energy withdrawal service to be a load serving entity that is billed for energy withdrawal (“LSE Requirement”) and explain whether the LSE Requirement is required of all resources seeking to provide wholesale energy withdrawal service in the energy market; (2) explain why its proposed metering and telemetry requirements were just and reasonable and did not pose an unnecessary and undue barrier to individual DERs joining a DERA; (3) establish protocols for sharing metering data that minimize costs and other burdens and address privacy and cybersecurity concerns; and (4) address how ISO-NE will resolve disputes that are within its authority and subject to its Tariff, regardless of whether there is an available dispute resolution process established by the RERRA.
- **180-Day Compliance Filing.** On or before **August 28, 2023**, the FERC directed ISO-NE to file a further compliance filing explaining how the current Tariff capacity market mitigation rules would apply to DECRs participating in FCA19 and beyond.

**Requests for Rehearing and/or Clarification (-002).** On March 31, 2023, [ISO-NE](#) and [New England Public Utilities](#)<sup>58</sup> requested rehearing and/or clarification of the *Order 2222 Compliance Order*. **ISO-NE** urges the FERC to reconsider allowing DECRs to participate in FCA18 and designating DER Aggregator as the entity responsible for transmitting DERA metering data. **New England Public Utilities** urge the FERC to adopt the DER metering and settlement approach proposed by the Filing Parties (*Order 2222 Changes*) and clarify (1) that PTOs and distribution utilities are not prohibited from requiring metering and settlement data from DERs to satisfy their obligations to perform wholesale settlement and retail customer billing and (2) that it would not be unjust and unreasonable for utilities to recover costs related to investment and expenses incurred to modify its metering, billing, settlement, cyber security and other systems, to accommodate submetering of Behind-the-Meter DER participating in the wholesale market as part of a DERA. The FERC must take action on these challenges by May 1, 2023, or the

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<sup>58</sup> “New England Public Utilities” are: National Grid USA on behalf of Massachusetts Electric Co., Nantucket Electric Co., and New England Power Co. (“NGUSA”); Avangrid Networks, Inc. on behalf of CMP and UI (“Avangrid Networks”); and Eversource on behalf of The Connecticut Light and Power Co. (“CL&P”), Public Service Co. of New Hampshire (“PSNH”), and NSTAR Electric Co. (“NSTAR”).

challenges will be deemed denied by operation of law. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)); Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)); or Rosendo Garza (860-275-0660; [rgarza@daypitney.com](mailto:rgarza@daypitney.com)).

- **IEP Remand (ER19-1428-006)**

On November 22, 2022, ISO-NE filed Tariff provisions governing the Inventoried Energy Program (“IEP”) consistent with the D.C. Circuit’s *IEP Decision*.<sup>59</sup> ISO-NE’s proposed Tariff changes remove nuclear, biomass, coal, and hydroelectric generators from the IEP. ISO-NE’s Tariff changes were supported by the Participants Committee at its November 2 meeting (as were alternative Tariff changes proposed by Brookfield that explicitly allow pumped hydro resources to participate in the IEP as Electric Storage Facilities).

Comments were due on or before December 13, 2022, and were filed by: [NEPOOL](#), [Brookfield, MA AG](#), [National Hydropower Association](#), and [RENEW](#); doc-less interventions only, by Calpine, FirstLight and National Grid. On December 28, 2022, New England Consumer-Owned Systems<sup>60</sup> and Energy New England (“ENE”) responded to those protests and comments (urging the FERC to accept ISO-NE’s compliance filing without modification). ISO-NE did not respond. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)) or Rosendo Garza (860-275-0660; [rgarza@daypitney.com](mailto:rgarza@daypitney.com)).

#### IV. OATT Amendments / TOAs / Coordination Agreements

- **Attachment K Economic Study Revisions (ER23-971)**

On March 30, 2023, the FERC accepted the Attachment K Economic Study Revisions, effective March 31, 2023.<sup>61</sup> As previously reported, the Attachment K Economic Study Revisions require ISO-NE (1) to identify market efficiency issues, and as applicable, market efficiency needs on the Pool Transmission Facilities (“PTF”) portion of the New England Transmission System as part of the Economic Study process; (2) to provide the New England region more insight into system trends and consistent analysis; and (3) to facilitate comparison across Economic Study cycles, all of which can inform future decisions in transmission investment. Unless the *Economic Study 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](mailto:ekrunge@daypitney.com)).

- **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,<sup>62</sup> and the Schedule 20A Service

<sup>59</sup> *Belmont Mun. Light Dept., et al., v. FERC*, 2022 WL 2182810 (June 17, 2022) (the “*IEP Decision*”). The *IEP Decision* leaves intact the FERC’s June 2020 *IEP Remand Order* (*ISO New England Inc.*, 171 FERC ¶ 61,235 (June 18, 2020)) 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.

<sup>60</sup> New England Consumer-Owned Systems (“NECOS”) are Belmont, Block Island Utility District, Braintree, Georgetown, Groveland, Hingham, Littleton (MA), Merrimac, Middleborough, Middleton, Norwood, Pascoag, Reading, Rowley, Stowe, Taunton, Wellesley, and Westfield.

<sup>61</sup> *ISO New England Inc.*, 182 FERC ¶ 61,211 (Mar. 30, 2023) (“*Economic Study Revisions Order*”).

<sup>62</sup> 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”).



Providers.<sup>63</sup> 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 remains pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

- **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*<sup>64</sup> (“*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 were due on or before August 2, 2022; none were filed. Eversource, Narragansett Electric Company (“RI Energy”) and National Grid filed doc-less interventions. This matter remains pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

## V. Financial Assurance/Billing Policy Amendments

No Activities to Report

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

- **Schedule 21-NEP: NEP/Dichotomy Collins Hydro SGIA (ER23-888)**

As previously reported, on January 18, 2023, NEP filed a non-conforming Small Generation Interconnection Agreement (“SGIA”) with Dichotomy Collins Hydro LLC (“Dichotomy”) to cover the continued interconnection of Dichotomy’s 1.3 MW hydroelectric (run-of-river) generating facility in Wilbraham, Massachusetts. National Grid requested a December 19, 2022 effective date for the SGIA. Initial comments on this filing were due on or before February 8, 2023; none were filed. On March 17, 2023, the FERC issued a deficiency letter requesting additional information related to the QF status of the Dichotomy facility to be submitted on or before **April 16, 2023**. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Schedule 21-VP: Revised 2021 Annual Update Settlement Agreement (ER20-2119-002)**

On January 12, 2023, Versant submitted a revised uncontested Joint Offer of Settlement (“Revised 2021 Annual Update Settlement”) between itself and the MPUC that replaces in full the Versant 2021 Annual Update Settlement Agreement submitted March 25, 2022. Versant stated that, if approved, the Revised 2021 Annual Update Settlement would resolve all issues raised by the MPUC with respect to the 2021 Annual Update. Comments on the Revised 2021 Annual Update Settlement were due on or before February 2, 2023;

<sup>63</sup> 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 Corp. (“GMP”); New England Power Co. (“NEP”); NSTAR Electric Co.; The United Illuminating Co. (“UI”); Vermont Electric Cooperative, Inc. (“VEC”); and Versant Power.

<sup>64</sup> *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*”).



none were filed. There was no activity in this proceeding since the last Report; the Revised 2021 Annual Update Settlement remains pending before the FERC. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Schedule 21-VP: Revised 2020 Annual Update Settlement Agreement (ER15-1434-006)**

Similarly, Versant's January 12, 2023 submission of a revised, uncontested Joint Offer of Settlement ("Revised 2020 Annual Update Settlement") between itself and the MPUC, which replaces in full the Versant 2020 Annual Update Settlement Agreement submitted November 19, 2021,<sup>65</sup> remains pending before the FERC. Versant stated that, if approved, the Revised 2020 Annual Update Settlement would resolve all issues raised by the MPUC with respect to the 2020 Annual Update. Comments on the Revised 2020 Annual Update Settlement were due on or before February 2, 2023; none were filed. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

## VII. NEPOOL Agreement/Participants Agreement Amendments

- **Participants Agreement Amendment No. 12 (ISO Board Member Age Limit Increase) (ER23-980)**

On March 3, 2023, the FERC accepted, effective April 1, 2023, Amendment No. 12 to the Participants Agreement ("PA 12"), which raises the age limitation prohibiting the election or re-election of any candidate to the ISO Board of Directors from 70 to 75.<sup>66</sup> The *PA 12 Letter Order* was not challenged and is final and unappealable. Reporting on this proceeding has now concluded. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

## VIII. Regional Reports

- **Opinion 531 Refund Reports (EL11-66)**

The following refund reports filed in response to *Opinions No. 531-A*<sup>67</sup> and *531-B*<sup>68</sup> remain pending:

- ♦ The TOs' November 2, 2015 regional refund report;
- ♦ The TOs'<sup>69</sup> local refund reports; and
- ♦ Fitchburg Gas & Electric's ("FG&E") June 29, 2015 local refund report.

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

- **Capital Projects Report - 2022 Q4 (ER23-1125)**

On April 5, 2023, the FERC accepted ISO-NE's Capital Projects Report and Unamortized Cost Schedule covering the fourth quarter ("Q4") of calendar year 2022 (the "Report").<sup>70</sup> As previously reported, Report highlights included the following new projects: (i) Solar Do-Not-Exceed ("DNE") Dispatch Phase II (\$2 million); (ii) Windows Server 2019R Deployment Phase I (\$1.15 million); (iii) Security Orchestration and Automation Response

<sup>65</sup> As previously reported, on Nov. 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 (the "Versant 2020 Annual Update Settlement Agreement").

<sup>66</sup> *ISO New England Inc.*, Docket No. ER23-980-000 (Mar. 3, 2023) ("PA 12 Letter Order").

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

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

<sup>69</sup> TOs filing local refund reports include: CMP, National Grid, UI, Versant Power (f/k/a Emera Maine), NHT, VTransco, Eversource, and NSTAR.

<sup>70</sup> *ISO New England, Inc.*, Docket No. ER23-1125-000 (Apr. 5, 2023) (unpublished letter order).

(\$359,400); (iv) Control Room Voice Recorder Upgrade (\$297,000); and (v) Mobile Application Rebuild (\$195,400). Due to a reallocation of funds from 2022 to 2023, significant changes to the 2023 capital budget projects included increases of \$678,600 for the nGEM Market Clearing Engine Implementation and nGEM Software Development Part II project and \$411,200 for Windows Server 2019R2 Deployment Phase I project. The Q4 2022 Report was accepted effective as of January 1, 2023, as requested. Unless the April 5 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; [pnbval@daypitney.com](mailto:pnbval@daypitney.com)).

- **Interconnection Study Metrics Processing Time Exceedance Report Q3 2022 (ER19-1951)**

On February 14, 2023, ISO-NE filed, as required,<sup>71</sup> public and confidential<sup>72</sup> versions of its Interconnection Study Metrics Processing Time Exceedance Report (the “Exceedance Report”) for the Fourth Quarter of 2022 (“2022 Q4”). ISO-NE reported that with respect to:

- ♦ **Interconnection Feasibility Study (“IFS”) Reports**

- All 10 of the 2022 Q4 IFS Reports delivered to Interconnection Customers were delivered **later** than the best efforts completion timeline (90 days from the Interconnection Customer’s execution of the study agreement).
- 7 IFS Reports 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 192 days (roughly 5 days longer than in 2022 Q3).

- ♦ **System Impact Study (“SIS”) Reports**

- 7 of the 8 SIS Reports delivered to Interconnection Customers were delivered **later** than the best efforts completion timeline of 270 days.
- 16 SIS Studies that are not yet completed have 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 446 days (a decrease of roughly 3 days from 2022 Q3).

- ♦ **Facility Study Reports**

- There were no Facility Study reports were delivered to an Interconnection Customer and no Facility Studies are in process that have exceeded completion expectations.

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.

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

On January 30, 2023, ISO-NE filed, as required under Section 4.1(j)(iii) of the OATT, its annual informational filing of projects on the Regional System Plan (“RSP”) project list that had a year of need three years or less from the completion of the Needs Assessment. The list of prior year designations is maintained

<sup>71</sup> Under section 3.5.4 of ISO-NE’s Large Generator Interconnection Procedures (“LGIP”), ISO-NE must submit an informational report to the FERC describing each study that exceeds its Interconnection Study deadline, the basis for the delay, and any steps taken to remedy the issue and prevent such delays in the future. The Exceedance Report must be filed within 45 days of the end of the calendar quarter, and ISO-NE must continue to report the information until it reports four consecutive quarters where the delayed amounts do not exceed 25 percent of all the studies conducted for any study type in two consecutive quarters.

<sup>72</sup> ISO-NE requested that the information contained in Section 3 of the un-redacted version of the Exceedance Report, which contains detailed information regarding ongoing Interconnection Studies and if released could harm or prejudice the competitive position of the Interconnection Customer, be treated as confidential under FERC regulations.

on the ISO-NE website at <https://www.iso-ne.com/static-assets/documents/2023/01/2022-prior-year-projects-section-4-j-iii.pdf>. This filing was not be noticed for public comment.

- **Reserve Market Compliance (34th) Semi-Annual Report (ER06-613)**

As directed by the original ASM II Order,<sup>73</sup> as modified,<sup>74</sup> ISO-NE submitted its 34th semi-annual reserve market compliance report on March 31, 2023. In the 34th report, ISO-NE stated that it “is currently discussing with stakeholders the development of day-ahead ancillary services, and it anticipates filing proposed market design changes by the end of 2023. It is contemplated that those changes will include a ten-minute reserve product procured in the day-ahead market, which may satisfy the region’s need for a forward TMSR market. [ISO-NE] will continue to update the [FERC] on the progress of the Day-Ahead Ancillary Services project and its relation to a forward TMSR market through future reports in this docket.”

- **ISO-NE FERC Form 715 (not docketed)**

On March 29, 2023, ISO-NE submitted its 2022 Annual Transmission Planning and Evaluation Report. These filings are not noticed for public comment.

## IX. Membership Filings

- **March 2023 Membership Filing (ER23-1197)**

On February 28, 2023, NEPOOL requested that the FERC accept (i) the membership of Calpine Community Energy [Related Person to Calpine Energy Services et al. (Generation Sector)]; (ii) the termination of the Participant status of Clean Choice Energy (Supplier Sector); InBalance, Inc. (Supplier Sector); and Stored Solar J&WE, LLC (AR Sector, RG Sub-Sector); and (iii) the name change of Interstate Gas Supply, LLC (f/k/a Interstate Gas Supply, Inc.). Comments on the March membership filing were due on or before March 21, 2023; none were filed. The March 2023 Membership Filing is pending before the FERC.

- **February 2023 Membership Filing (ER23-1020)**

On March 24, 2023, the FERC accepted<sup>75</sup> (i) the memberships of Commonwealth New Bedford Energy LLC (AR Sector, RG Sub-Sector, Small RG Group Seat); GF Power LLC (Supplier Sector); and Industrial Wind Action Corp (End User Sector); (ii) the termination of the Participant status of Backyard Farms Energy, LLC and Backyard Farms LLC (End User Sector); Bruce Power Inc. (Supplier Sector); Commonwealth Resource Management Corporation (Replaced by Commonwealth New Bedford Energy); Darby Energy, LLC [Related Person to Protor Energy, LLC (Supplier Sector)]; DFC ERG CT, LLC [Related Person to Bridgeport and Derby Fuel Cell (AR Sector, RG Sub-Sector)]; Stones DR, LLC [Related Person to Jericho Power, CPower, et al. (AR Sector, RG Sub-Sector)]; and Vineyard Wind LLC [Related Person to Avangrid (Transmission Sector)]; and (iii) the name change of Advanced Energy United Inc. (f/k/a Advanced Energy Economy Inc.) (“AEU”).

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

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

<sup>73</sup> See *NEPOOL and ISO New England Inc.*, 115 FERC ¶ 61,175 (2006) (“ASM II Order”) (directing the ISO to provide updates on the implementation of a forward TMSR market), *reh’g denied* 117 FERC ¶ 61,106 (2006).

<sup>74</sup> See *NEPOOL and ISO New England Inc.*, 123 FERC ¶ 61,298 (2008) (continuing the semi-annual reporting requirement with respect to the consideration and implementation of a forward market for Ten-Minute Spinning Reserve (“TMSR”)).

<sup>75</sup> *New England Power Pool Participants Comm.*, Docket No. ER23-1020-000 (Mar. 24, 2023).

- **NERC Annual Report on FFT & Compliance Exception Programs (RC11-6-016)**

On March 7, 2023, the FERC accepted NERC's most recent annual report on Find, Fix, and Track ("FFT") and Compliance Exception programs.<sup>76</sup> In the report, NERC stated that the ERO Enterprise appropriately handles noncompliance posing a minimal or moderate risk through these programs and that the results of the annual report show consistent improvement in program implementation. The report also demonstrates, NERC suggests, significant alignment across the ERO Enterprise, particularly in the processing and understanding of the risk associated with individual noncompliance. Unless the March 7 order is challenged, this proceeding will be concluded.

- **Revised Reliability Standard: CIP-003-9 (RD23-3)**

On March 16, 2023, the FERC approved NERC's changes to Reliability Standards CIP-003-9 (Cyber Security – Security Management Controls).<sup>77</sup> CIP-003-9 improves upon CIP-003-8 by adding new requirements focused on supply chain risk management for low impact bulk electric system ("BES") Cyber Systems. The changes to CIP-003-9 will become effective on April 1, 2026.

- **Revised Reliability Standards: EOP-011-3 and EOP-012-1 (RD23-1)**

On February 16, 2023, the FERC approved NERC's changes to Reliability Standards EOP-011-3 (Emergency Operations) and EOP-012-1 (Extreme Cold Weather Preparedness and Operations) (the "*Cold Weather Standards*").<sup>78</sup> As previously reported, the changes to the *Cold Weather Standards*, which address certain key recommendations from the *Feb 2021 Cold Weather Outages Joint Report*,<sup>79</sup> establish a more comprehensive framework of requirements addressing generator preparedness for cold weather operations. The *Cold Weather Standards* also address the use of manual load shed during Emergency conditions, requiring Transmission Operators to take steps to minimize the use of manual load shed that could further exacerbate Emergency conditions and threaten system reliability.

In accepting the *Cold Weather Standards*, the FERC directed a number of changes and follow-up items. For example, the FERC directed NERC to modify EOP-012-1:

- ♦ to ensure that it captures all bulk electric system generation resources needed for reliable operation and excludes only those generation resources not relied upon during freezing conditions by clarifying "the language of the applicability section to align with NERC's explanation of the entities that should already be preparing to comply with the Standard, and should not need additional implementation time";<sup>80</sup>
- ♦ Requirements R1 and R7, to address concerns related to the ambiguity of generator-defined declarations of technical, commercial, or operational constraints that exempt a generator owner from implementing the appropriate freeze protection measures by including "objective criteria on permissible technical, commercial, and operational constraints, to identify the appropriate entity that would receive the generator owners' constraint declarations under [ ] Requirements R1 and R7, to describe how that entity would confirm that the generator owners comply with the objective criteria, and to describe the consequences of providing a

<sup>76</sup> *N. Am. Elec. Rel. Corp.*, Docket No. RC11-6-016 (Mar. 7, 2023) (unpublished letter order).

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

<sup>77</sup> *N. Amer. Elec. Rel. Corp.*, 182 FERC ¶ 61,155 (Mar. 16, 2023).

<sup>78</sup> *N. Amer. Elec. Rel. Corp.*, 182 FERC ¶ 61,094 (Feb. 16, 2023).

<sup>79</sup> FERC, NERC, Regional Entity Staff Report: The February 2021 Cold Weather Outages in Texas and the South Central United States (Nov. 2021), <https://www.ferc.gov/media/february-2021-cold-weather-outages-texasand-south-central-united-states-ferc-nerc-and-feb-2021-cold-weather-outages-joint-report> ("Feb 2021 Cold Weather Outages Joint Report").

<sup>80</sup> *Id.* at P 4.

constraint declaration,” ensuring that “declarations cannot be used to opt out of mandatory compliance with the Standard or obligations set forth in a corrective action plan”;<sup>81</sup>

- ♦ to clarify R1 to ensure that generators that are technically incapable of operating for 12 continuous hours (e.g., solar facilities during winter months with less than 12 hours of sunlight) are not excluded from complying with the Standard;<sup>82</sup>

- ♦ to increase the length of R2’s continuous operations requirement (one hour being too short);<sup>83</sup>

- ♦ to include in R7 deadlines for implementation completion of corrective action plans, as recommended in the *November 2021 Report*;<sup>84</sup>

- ♦ to shorten the implementation plan for existing generating units, staggering the implementation for existing unit(s) in a generator owner’s fleet;<sup>85</sup> and

- ♦ to work with FERC staff to submit a plan no later than February 16, 2024 explaining how it will collect and assess data prior to and after the implementation of the following elements of EOP-012-1: (1) generator owner declared constraints and explanations thereof; and (2) the adequacy of the Extreme Cold Weather Temperature definition.<sup>86</sup>

The FERC deferred its decision on whether to approve or modify NERC’s proposed implementation date for EOP-011-3 (and proposed retirement of EOP-011-2) until NERC submits its revised applicability section for EOP-012. The FERC stated that “allowing EOP-011-2 requirements to remain mandatory and enforceable until such time as the revised applicability is effective for EOP-012 will ensure all bulk electric system generating units are required to maintain cold weather preparedness plans.”<sup>87</sup>

**Request for Rehearing.** On March 20, 2023, EPSA, NEPGA and the PJM Power Providers Group (“P3”) filed a joint request for rehearing. The petitioners allege that, by approving the *Cold Weather Standards* without addressing how generators can recover the costs associated with complying with EOP-012-1, the FERC “breached its duty to ensure that proposed reliability standards are ‘just’ and ‘reasonable’ ... and failed to engage in reasoned decision-making.” The request for rehearing is pending before the FERC, with FERC action required on or before **April 19, 2023**, or the request will be deemed denied by operation of law.

- **Inverter-Based Resource Registration (RD22-4)**

On November 17, 2022, to address FERC concerns regarding the reliability impacts of inverter-based resources (“IBRs”)<sup>88</sup> on the Bulk-Power System (“BPS”), the FERC issued an order<sup>89</sup> directing NERC to submit a work plan on or before February 15, 2023 describing how it plans to identify and register owners and operators of IBRs that are connected to the BPS, but that are not currently required to register with NERC under the bulk electric system (“BES”) definition (“unregistered IBRs”), and that “have an aggregate, material impact on the reliable operation of the [BPS]”. FERC stated that the work plan should explain how NERC will modify its processes to address unregistered IBRs within 12 months of approval of the work plan. The work plan must also include implementation milestones ensuring that owners and operators meeting the new registration criteria are

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<sup>81</sup> *Id.* at P 6.

<sup>82</sup> *Id.* at P 7.

<sup>83</sup> *Id.* at P 8.

<sup>84</sup> *Id.* at P 9.

<sup>85</sup> *Id.* at P 10.

<sup>86</sup> *Id.* at P 11.

<sup>87</sup> *Id.* at P 5.

<sup>88</sup> IBRs include all generating facilities that connect to the BPS using power electronic devices that change direct current (“DC”) power produced by a resource to alternating current (“AC”) power compatible with distribution and transmission systems. IBRs connected to the distribution system are not addressed in the *IBR Registration Order*.

<sup>89</sup> *Registration of Inverter-based Resources*, 181 FERC 61,124 (Nov. 17, 2022) (“*IBR Registration Order*”).

identified within 24 months of the approval date of the work plan, and that they are registered and required to comply with applicable Reliability Standards within 36 months of the approval date of the work plan. The FERC will notice the work plan for public comment. Once approved, NERC must file progress reports every 90 days thereafter detailing the progress towards identifying and registering owners and operators of unregistered IBRs.

On February 16, 2023, NERC filed its IBR Work plan, which outlined NERC's proposed approach to identify and register owners and operators of IBRs within 36 months of FERC approval of the Work Plan. Comments on the IBR Work Plan were due on or before March 20, 2023. Comments were filed by [ACPA](#), [APPA](#), [NRECA](#), [Arizona Public Service Co.](#), and [Pine Gate Renewables](#). This matter is pending before the FERC.

- **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”))<sup>90</sup> on March 15, 2023. Project 2016-02 focuses on modifications to the CIP Reliability Standards to incorporate applicable protections for virtualized environments. In the March 15 report, NERC reported that, because ballot body approval was again not achieved for two related Reliability Standards, the schedule for Project 2016-02 has been further revised and now calls for final balloting of revised standards in May 2023, NERC Board of Trustees Adoption in August 2023 and filing of the revised standards with the FERC in September 2023.

- **NOPR: IBR Reliability Standards (RM22-12)**

On November 17, 2022, the FERC issued a notice<sup>91</sup> proposing to direct NERC (i) to develop new or modified Reliability Standards that address the following reliability gaps related to inverter-based resources (“IBR”): data sharing; model validation; planning and operational studies; and performance requirements; and (ii) to submit a 90-day compliance filing that includes a detailed, comprehensive standards development and implementation plan to ensure all new or modified Reliability Standards necessary to address the IBR-related reliability gaps identified in the final rule are submitted to the FERC within 36 months of FERC approval of the plan. Initial comments were due February 6, 2023<sup>92</sup> and were filed by nearly 20 parties, including, among others, [ISO-NE](#), the [IRC](#), [SPP](#), [CAISO](#), [Advanced Energy United](#), [ACPA/SEIA](#), [EEI](#), and [EPRI](#). Reply comments were due on March 6, 2023 and were filed by [ISO-NE](#), [APPA](#), and [CA DWP](#). This matter is pending before the FERC.

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

On June 16, 2022, the FERC issued a notice<sup>93</sup> 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,

<sup>90</sup> 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.

<sup>91</sup> *Reliability Standards to Address Inverter-Based Resources*, 181 FERC ¶ 61,125 (Nov. 17, 2022) (“IBR NOPR”).

<sup>92</sup> The IBR NOPR was published in the *Fed. Reg.* on Dec. 6, 2022 (Vol. 87, No. 233) pp. 74,541-74,563.

<sup>93</sup> *Transmission System Planning Performance Requirements for Extreme Weather*, 179 FERC ¶ 61,195 (June 16, 2022) (“Extreme Weather Transmission System Planning NOPR”).



2022<sup>94</sup> 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.

- **Order 887: Internal Network Security Monitoring for High and Medium Impact BES Cyber Systems (RM22-3)**

One year after the FERC issued its *Internal Network Security Monitoring NOPR*,<sup>95</sup> the FERC issued *Order 887*.<sup>96</sup> *Order 887* directs NERC to develop and submit, on or before July 10, 2024<sup>97</sup> for FERC approval, new or modified Reliability Standards that require internal network security monitoring (“INSM”)<sup>98</sup> within a trusted Critical Infrastructure Protection (“CIP”) networked environment for all high impact bulk electric system (“BES”) Cyber Systems with and without external routable connectivity and medium impact BES Cyber Systems with external routable connectivity. In addition, the FERC directed NERC to perform a study of all low impact BES Cyber Systems with and without external routable connectivity and medium impact BES Cyber Systems without external routable connectivity, and to submit its study report to the FERC on or before January 19, 2024. *Order 887* will become effective April 10, 2023.

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

As previously reported, the FERC accepted, subject to a 60-day compliance filing, NERC’s proposed Business Plan and Budget, as well as the Business Plans and Budgets for the Regional Entities, including NPCC, for 2023.<sup>99</sup> In accepting NERC’s Business Plan/Budget Filing, the FERC agreed with EEI that additional transparency into certain Electricity Information Sharing and Analysis Center (“E-ISAC”) costs would better allow the FERC to fulfill its oversight duties, and thus directed NERC to submit a compliance filing providing additional information related to E-ISAC costs, the E-ISAC vendor affiliate program, and the E-ISAC and natural gas stakeholder partnership. That compliance filing was due, and was filed, on January 3, 2023. Comments on the January 3 compliance filing were due on or before January 24, 2023; none were filed. The 60-day compliance filing is pending before the FERC.

## XI. Misc. - of Regional Interest

- **203 Application: Weaver Wind / Greenbacker (EC23-68)**

On March 27, 2023, Weaver Wind, LLC and Weaver Wind Maine Master Tenant, LLC (“Weaver Wind”) requested FERC authorization for a proposed transaction pursuant to which Jade Energy LLC, a wholly-owned subsidiary of Greenbacker Renewable Energy Company, will acquire all the membership interests in Weaver Wind (upon consummation, making Weaver Wind a Related Person to Howard Wind and Hectate Energy). Comments on this 203 application are due on or before **April 17, 2023**. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

<sup>94</sup> 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.

<sup>95</sup> *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*”).

<sup>96</sup> *Internal Network Security Monitoring for High and Medium Impact Bulk Electric System Cyber Systems*, Order No. 887, 182 FERC ¶ 61,021 (Jan. 19, 2023) (“*Order 887*”).

<sup>97</sup> *Order 887* was published in the *Fed. Reg.* on Feb. 9, 2023 (Vol. 88, No. 27) pp. 8,354-8,368.

<sup>98</sup> 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 trustworthy but could still introduce a cybersecurity risk to a high or medium impact BES Cyber System.

<sup>99</sup> *N. Am. Elec. Rel. Corp.*, 181 FERC ¶ 61,095 (Nov. 2, 2022) (“*2023 Budgets Order*”).

- **203 Application: Saddleback / CPV (EC23-52)**

On March 23, 2023, the FERC authorized CPV Mountain Wind Holdings, LLC's ("Buyer") acquisition of all of the membership interests in Saddleback Ridge Wind, LLC ("Saddleback").<sup>100</sup> Pursuant to the March 23 order, Saddleback must file a notice within 10 days of consummation of the transaction, which as of the date of this Report has not yet occurred. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **203 Application: Salem Harbor / Castleton Commodities (EC23-50)**

On April 4, 2023, the FERC authorized a proposed transaction pursuant to which CCI U.S. Asset Holdings LLC ("Castleton Commodities") will acquire at least 67%, and up to 100%, of the issued and outstanding Series A-1 Common Units and/or Series A-2 Common Units of Salem Harbor Power Holdco LLC ("Salem Harbor").<sup>101</sup> Pursuant to the April 4 order, Salem Harbor must file a notice within 10 days of consummation of the transaction, which as of the date of this Report has not yet occurred. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **203 Application: Talen Energy Supply Reorganization (EC23-42)**

On March 30, 2023, the FERC issued an order authorizing a change in control transaction whereby 10% or more of the voting securities of a new parent of Talen Energy Supply, LLC ("TES") and its affiliated debtors will be distributed to some or all of Indicated Noteholders pursuant to a joint plan of reorganization of the TES Debtors subject to confirmation by the Bankruptcy Court.<sup>102</sup> If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **203 Application: Cogentrix / EGCO (Rhode Island State Energy Center) (EC23-41)**

On March 16, 2023, FERC issued an order authorizing the proposed transaction between Rhode Island State Energy Center, LP ("RISEC") and EGCO RISEC II, LLC ("Buyer"),<sup>103</sup> pursuant to which Buyer, a wholly owned indirect subsidiary of Electricity Generating Public Company Limited ("EGCO"), will acquire a 49% indirect ownership interest in RISEC from Cogentrix Sellers.<sup>104</sup> On April 3, 2023, RISEC informed the FERC that the transaction was consummated on March 24, 2023. RISEC is now indirectly owned by Buyer (49%) and the Cogentrix Sellers (51%). Reporting on this matter is concluded. If you have any remaining questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **203 Application: Agilitas Companies / AB CarVal Funds (EC23-30)**

On January 24, 2023, the FERC authorized<sup>105</sup> a transaction pursuant to which the AB CarVal Funds<sup>106</sup> will convert their existing passive, non-voting ownership interest in Agilitas Energy, Inc., which indirectly owns all of the membership interests in the Agilitas Companies,<sup>107</sup> into 21.3% of the voting interests in Agilitas Energy. Pursuant to the January 24 order, AB CarVal Funds must file a notice within 10 days of consummation of the

<sup>100</sup> *Saddleback Ridge Wind, LLC*, 182 FERC ¶ 62,168 (Mar. 23, 2023).

<sup>101</sup> *Salem Harbor Power Development LP*, 183 FERC ¶ 62,005 (Apr. 4, 2023).

<sup>102</sup> *Talen Energy Supply, LLC*, 182 FERC ¶ 62,183 (Mar. 30, 2023).

<sup>103</sup> *Rhode Island State Energy Center, LP and EGCO RISEC II, LLC*, 182 FERC ¶ 62,159 (Mar. 16, 2023).

<sup>104</sup> "Cogentrix Sellers" are RISEC CPP II Holdings, LLC and Cogentrix RISEC CPOCP Holdings, LLC.

<sup>105</sup> *Madison BTM, LLC et al.*, 182 FERC ¶ 62,048 (Jan. 24, 2023).

<sup>106</sup> The "AB CarVal Funds" are CEF Master Fund IV LP, CVI CEF II Pooling Fund IV LP, and CVI CSF Master Fund II LP.

<sup>107</sup> For purposes of this proceeding, "Agilitas Companies" are: Madison BTM LLC; Madison ESS, LLC; Rumford ESS, LLC; South Portland ESS, LLC; Sanford ESS, LLC; Ocean State BTM, LLC; and AE-ESS NWS 1, LLC. Madison BTM, Madison ESS, Rumford ESS, and Ocean State BTM are each NEPOOL Participants. This transaction will not impact Agilitas' membership in the AR Sector.

transaction, which as of the date of this Report has not yet occurred. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **203 Application: ConEd / RWE (EC23-17)**

On January 20, 2023, the FERC authorized a transaction pursuant to which RWE Renewables Americas, LLC (“RWE”) will acquire 100% of the equity interests in ConEd’s<sup>108</sup> “Clean Energy Businesses” (including NEPOOL members Consolidated Edison Energy, Inc.; Consolidated Edison Development, Inc.; and Consolidated Edison Solutions, Inc. (but not Consolidated Edison Company of New York)).<sup>109</sup> On March 1, 2023, RWE filed a notice that the transaction was consummated on March 1, 2023.<sup>110</sup> Reporting on this proceeding is now concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Study Work Agreement Cancellation: CL&P / NYISO (ER23-1483)**

On March 28, 2023, CL&P submits a Notice of Termination of the Study Work Agreement with NYISO that was accepted by FERC in Docket No. ER21-2946. All work contemplated by the Agreement was completed in February 2023 and all billing and invoices have been finalized. An effective date of March 29, 2023 was requested. Comments on this filing are due on or before **April 18, 2023**. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **PSNH / National Grid D&E Agreement (ER23-1481)**

On March 28, 2023, Eversource Energy, on behalf of Public Service Company of New Hampshire (“PSNH”), filed a Design & Engineering (“D&E”) Agreement that sets forth the terms and conditions under which PSNH will perform necessary engineering, procurement and design services in connection with National Grid’s asset separation project with Great River Hydro. An effective date of March 29, 2023 was requested. Comments on this filing are due on or before **April 18, 2023**. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **LGIA: CL&P/Generate NB Fuel Cells/ISO-NE (ER23-1479)**

On March 27, 2023, as supplemented on March 28 and April 4, CL&P and ISO-NE filed a revised non-conforming Large Generation Interconnection Agreement (“LGIA”) with Generate NB Fuel Cells, LLC (“Generate NB”) to govern the interconnection of Generate NB’s 20 MW fuel cell project in New Britain, Connecticut (Stanley Black & Decker campus). The original non-conforming LGIA was accepted by FERC on July 11, 2022.<sup>111</sup> The revised LGIA includes, among others, changes reflecting the sale of the fuel cell project by Generate NB from EIP Investment. A February 23, 2023 effective date was requested. Comments on this filing are due on or before **April 17, 2023**. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **National Grid/ GRH SGIA (ER23-1152)**

On February 21, 2023, National Grid filed a non-conforming SGIA with Great River Hydro to cover the continued interconnection of GRH’s 13 MW hydro facility in the towns of Barnet, VT and Monroe, NH. The SGIA, which replaces a 2005 SGIA, was filed to supersede and replace the 2005 SGIA. A January 30, 2023

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<sup>108</sup> “ConEd” includes Consolidated Edison, Inc., its wholly-owned subsidiary Con Edison Clean Energy Businesses, Inc. (“CEB”), and CEB’s public utility subsidiaries (together, members of the Supplier Sector). RWE’s NEPOOL Related Person (Cassadaga Wind LLC) is a member of the Supplier Sector.

<sup>109</sup> *RWE Aktiengesellschaft et al.*, 182 FERC ¶ 62,042 (Jan. 20, 2023).

<sup>110</sup> In connection with the transaction, the Clean Energy Businesses joined Cassadaga Wind as members of the Supplier Sector and were each re-named as follows: RWE Clean Energy Wholesale Services, Inc. (f/k/a Consolidated Edison Energy, Inc.); RWE Clean Energy Asset Holdings, Inc. (f/k/a Consolidated Edison Development, Inc.); and RWE Clean Energy Solutions, Inc. (f/k/a Consolidated Edison Solutions, Inc.).

<sup>111</sup> *ISO New England Inc., and The Conn. Light and Power Co.*, Docket No. ER22-1862 (July 11, 2022) (unpublished letter order).

effective date was requested. Comments on this filing were due on or before March 14, 2023; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **VTransco/GMP Shared Structure Participation Agreement (ER23-1101)**

On March 21, 2023, the FERC accepted the Shared Structure Participation Agreements (“ShSPA”) between VTransco and GMP.<sup>112</sup> As previously reported, the ShSPA establishes the allocation of costs associated with the design, construction, repair, replacement, general maintenance, operation, and preventative maintenance of certain structures that VTransco and GMP share, where those facilities are used either exclusively by GMP or in common with VTransco. The purpose of the Agreement is to calculate and allocate those costs that are not recovered through a regional transmission tariff. The ShSPA was accepted effective as of February 1, 2023, as requested. Unless the March 21 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **LGIA: RI Energy / Deepwater Block Island Wind (ER23-1023)**

On March 27, 2023, the FERC accepted the LGIA between Narragansett Electric Company (“RI Energy”) and Deepwater Block Island Wind, LLC (“Deepwater Wind”).<sup>113</sup> As previously reported, the LGIA governs the interconnection of Deepwater Wind’s 30 MW off-shore wind facility that interconnects to RI Energy’s transmission facilities. The LGIA replaces the current LGIA and reflects revisions primarily related to the transition of ownership from New England Power to RI Energy. The LGIA revisions were accepted effective as of January 1, 2023, as requested. Unless the March 27 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **IA: RI Energy / Manchester Street (ER23-1007)**

On March 27, 2023, the FERC accepted a replacement Interconnection Agreement (“IA”) between RI Energy and Manchester Street, LLC (“Manchester Street”). As previously reported, the IA governs the interconnection of Manchester Street’s 468 MW combined-cycle generating facility that interconnects to RI Energy’s transmission facilities. The IA replaces the current IA and reflects revisions primarily related to the transition of ownership from New England Power to RI Energy, but also to reflect Manchester Street corporate changes. The IA revisions were accepted effective as of January 1, 2023, as requested. Unless the March 27 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **LSAs: RI Energy/ISO-NE/BIPCO (ER23-1003; ER23-1000)**

On January 31, 2023, ISO-NE and RI Energy filed two Local Service Agreements (“LSAs”), as replacements to two current New England Power TSAs (TSA-NEP-83 and TSA-NEP-86), to allow RI Energy to fully recover the Block Island Transmission System (“BITS”) surcharge now that it is both Transmission Owner and Customer under these arrangements. On March 31, 2023, the FERC conditionally accepted the LSA replacing TSA-NEP-86 (ER23-1003), effective January 1, 2023,<sup>114</sup> and directed RI Energy, on or before May 1, 2023, to add language to the LSA to make explicit that the BITS Surcharge shall be subject to the Protocols for Schedule 21-RIE. On the same day, FERC also issued a deficiency letter asking for additional information regarding whether the LSA replacing TSA-NEP-83 (ER23-1000) is subject to the Schedule 21-RIE Protocols. The response to the deficiency letter is also due

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<sup>112</sup> Vermont Transco LLC, Docket No. ER23-1101-000 (Mar. 21, 2023) (unpublished letter order).

<sup>113</sup> The Narragansett Electric Co., Docket No. ER23-1023-000 (Mar. 27, 2023) (unpublished letter order).

<sup>114</sup> ISO New England Inc., ER23-1003-000 (Mar. 31, 2023).

on or before May 1, 2023. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

- **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. MPUC withdrew those comments on August 31, 2022 in exchange for certain understandings with Versant Power (including MPUC’s attendance, as a non-voting participant, at any NMISA working group discussions on *Order 881* implementation planning and Versant Power’s submission of informational compliance filings to keep the FERC apprised of versant’s progress in developing its AAR implementation plan). On September 6, 2022, Versant Power supplemented its compliance filing to confirm the MPUC’s understandings, as delineated in its Notice of Withdrawal. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

- **VELCO Phase II Vermont DMNRC Support Agreement Informational Filing (ER90-591)**

On March 31, 2023, Vermont Electric Power Company, Inc. (“VELCO”), on behalf of Phase II Joint Owners, submitted its annual Informational Filing pursuant to the Phase II Vermont DMNRC Support Agreement. This informational filing will not be noticed for public comment.

## XII. Misc. - Administrative & Rulemaking Proceedings<sup>115</sup>

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

As previously reported, Invenergy Transmission (“Invenergy”) filed a petition, on July 19, 2022, 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. Initial 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 13 parties and included, among others, [CSC](#), [ENGIE](#), [Invenergy](#), [Phase I/II Asset Owners and IRH](#), [Joint Consumer Advocates](#), [MISO](#), [ACORE](#), [ACPA](#), [SEIA](#), and [Neptune and Hudson](#). [Invenergy](#) answered the comments filed by [MISO](#).

On November 10, 2022, Invenergy again urged the FERC to “hold a technical conference to examine and to improve the policy and processes relating to the interconnection of interregional MHVDC systems”. In December, [ENGIE](#), [Grid United](#) and [SEIA](#) filed comments supporting Invenergy’s November 10 request. On February 6, 2023, the FERC issued a notice of Invenergy’s November 10, 2022 request, providing any person interested in commenting a March 8, 2023 comment deadline. Comments were filed by the following parties: [Advanced Energy United](#), [NRDC](#), [IRC](#), [SPP](#), [NARUC](#), [Amer. Council on Renewable Energy](#), [Assoc. Industries of MO](#), [Clean Energy Buyers Assoc.](#), [Converge Strategies](#), [ELCON](#), [Grid United](#), [IL Manufac. Assoc.](#), [MN PSC](#), [Natl. Elec. Manufac. Assoc.](#), [ND PSC](#), [Public Citizen](#), [Niskanen Center](#), [Prysmian Group](#), [P. Stockton](#), [R Street Institute](#), [Rail Electrification Council](#), [Renew Missouri Advocates](#), [SOO Green HVDC Link ProjectCo](#), and [World Resources Institute](#).

<sup>115</sup> Reporting on the following Rulemaking proceeding has been suspended since the last Report and will be continued if and when there is new activity to report: Electric Transmission Incentives Policy NOPR (RM20-10).



- **Joint FERC-DOE Supply Chain Risk Management Technical Conference (Dec 7, 2022) (AD22-12)**

On December 12, 2022, the FERC and the DOE convened a joint technical conference held its annual Commissioner-led technical conference to discuss supply chain security challenges related to the BPS, ongoing supply chain-related activities, and potential measures to secure the supply chain for the grid's hardware, software, computer, and networking equipment. Speaker materials are posted in eLibrary and [a recording of the conference](#) will be available on the FERC website for roughly one more month. On December 19, 2022, the FERC invited all those interested to file, by February 17, 2023, post-technical conference comments addressing issues raised during the technical conference. Comments were filed by [AEP](#), [APPA](#), [EEI](#), the [North American Transmission Forum](#). In addition, on February 13, 2023, the FERC posted a transcript of the December 12 technical conference in eLibrary. This matter is pending before the FERC.

- **Reliability Technical Conference (Nov 10, 2022) (AD22-10)**

On November 10, 2022, the FERC held its annual Commissioner-led technical conference to discuss policy issues related to the reliability of the BPS. The conference's two panels were: (I) "Managing the Electric Grid to Advance Reliability" (to explore the current state of grid reliability and efforts that can be undertaken to improve it); and (II) "Managing Cyber Security Threats, the CIP Reliability Standards, and Best Practices for the Bulk-Power System" (to discuss how cyber security governance encompasses the CIP Reliability Standards and compliance as well as best practices; the challenges of implementing appropriate oversight; and ways in which industry can address these challenges to improve its response to evolving vulnerabilities and threats to reduce the risk to the BPS). On November 22, 2022, the FERC invited all those interested to file post-technical conference comments to address issues raised during the technical conference identified in the Supplemental Notice of Technical Conference issued on November 3, 2022. Comments were due on or before January 23, 2023 and were filed by [EPSA](#) and [Public Power Associations](#).<sup>116</sup> A transcript of the technical conference was posted in the FERC's eLibrary on January 17, 2023. This matter is pending before the FERC.

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

***The Second New England Gas-Electric Forum (June 20, 2023 in Portland, ME).*** On February 16, 2023, the FERC issued a notice of a Second New England Winter Gas-Electric Forum to be held the week before the NPC Summer Meeting, on Tuesday, **June 20, 2023** in Portland, Maine. The purpose of this forum is to continue discussions from the September 8, 2022 forum (summarized immediately below) regarding the electricity and natural gas challenges facing the New England Region. The objective of the forum is to shift from defining electric and natural gas system challenges in the New England Region to discussing potential solutions, including both infrastructure and market-based solutions.

Registration for in-person attendance, which will be open to the public, will be required and there will be no fee for attendance. The forum will also be available on webcast. A supplemental notice will be issued with further details regarding the forum agenda, as well as any updates on timing and logistics, including registration for members of the public and the nomination process for panelists. For more information, technical or logistical questions about this forum, please contact [NewEnglandForum@ferc.gov](mailto:NewEnglandForum@ferc.gov).

***The First New England Gas-Electric Forum (September 8, 2022 in Burlington, VT).*** The purpose of the Forum was to discuss and achieve a greater understanding among stakeholders in defining the electric and natural gas system challenges in the New England Region. Topics discussed included the historical context of New England winter gas-electric challenges, concerns and considerations for upcoming winters such as reliability of gas and electric systems and fuel procurement issues, and whether additional information or modeling exercises are needed to inform the development of solutions to these challenges. On September 21, 2022, the FERC invited parties wishing to submit comments regarding the topics discussed at the Forum to do so on or before November 7, 2022. Post-Forum Comments were submitted by: [ISO-NE](#), [Acadia](#), [AEU](#), [AIM](#), [Calpine](#), [Constellation](#), [Excellerate](#),

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<sup>116</sup> "Public Power Associations" are American Public Power Association ("APPA"), the Large Public Power Council ("LPPC"), and Transmission Access Policy Study Group ("TAPS").



[FirstLight](#), [LS Power](#), [NECOS](#), [NEPGA](#), [NESCOE](#), [Public Systems](#), [Repsol](#), [TOs](#), [VELCO](#), [Vistra](#), [Potomac Economics](#), [CT DEEP](#), [AEMA](#), [APGA](#), [EPSA](#), [INGA](#), [NE LDCs](#), [NGSA](#), [New England Council](#), [NEPPA](#), [NH BIA](#), [PIOs](#), [RENEW/ACPA](#), [Berkshire Action Team](#), [Greater Concord Chamber of Comm.](#), [Mass. Alliance for Econ. Dev.](#), [Mass. Business Roundtable](#), [Mass. Coalition for Sustainable Energy](#), [Mass. United Assoc. of Journeymen](#), [Middlesex County Chamber of Commerce](#), [Public Citizen](#), [Western Mass. Economic Dev. Council](#), and Individual Citizens ([M. Axner](#), [E. Blank](#), [S. Botkin](#), [D. Heimann](#), [J. Krieger](#), [B. Little](#), [I. McDonald](#), [J. Neville](#), [W. Persons](#), [R. Spector](#)). On November 22, [National Grid](#) filed reply comments.

- **Transmission Planning and Cost Management Technical Conference (AD22-8)**

On October 6, 2022, the FERC convened a Commissioner-led technical conference regarding transmission planning and cost management for transmission facilities developed through local or regional transmission planning processes. The 5 panels throughout the day addressed: (1) the processes by which transmission providers develop local transmission planning criteria, identify local transmission needs using those criteria, and evaluate and choose local transmission facilities to address those needs; (2) whether local transmission facility costs are adequately scrutinized; (3) the processes by which transmission providers evaluate, select, and develop regional transmission facilities for reliability; (4) whether regional transmission facilities for reliability costs are adequately scrutinized; and (5) cross-cutting themes and potential best practices for both local transmission facilities and regional reliability transmission planning and cost management, in addition to innovative approaches that could be explored further, including the possibility of establishing a role for an Independent Transmission Monitor, and mechanisms to support enhanced transparency. Advance materials were submitted by representatives on behalf of: [ISO-NE](#), [CA PUC](#), [KY PSC](#), [NC Utils. Comm. Public Staff](#), [NV PUC](#), [RI PUC](#), [AEU](#), [AEP](#), [Ameren](#), [AMP/APPA](#), [Ari Peskoe](#), [L. Azar](#), [Clean Energy Buyers Assoc.](#), [Coalition of MISO Customers](#), [Harvard Electricity Law Initiative](#), [ITC Holdings](#), [LPPC](#), [IA Consumer Advocate](#), [J. Macey](#), [NESCOE](#), [Northern California Power Agency](#), [Northwest & Intermountain Power Producers Coalition](#), [OH Consumers' Counsel](#), [OH PUC](#), [Old Dominion Elec. Coop.](#), [PJM](#), [G. Poulus](#), [SPP](#), [Potomac Economics](#), [Southern California Edison](#), [Southern Environmental Law Center](#), and [TAPS/FMPA](#) and [WIRES](#).

On September 30 and October 4, the FERC issued supplemental notices that included a final agenda, including further details regarding the agenda and speakers, for this technical conference. On November 1, 2022, a transcript of the technical conference was posted in the FERC's eLibrary. On December 23, 2022, the FERC issued a notice inviting post-technical conference comments on questions listed in that notice. Those comments were due by March 23, 2023 and were filed by: [ISO-NE](#), [AEU](#), [Avangrid](#), [Cypress Creek Renewables](#), [Eversource](#), [LS Power](#), [MA AG](#), [NE Public Systems](#), [NESCOE](#), [NextEra](#), [NRDC](#), [NRG](#), [Maine PUC](#), [American Council on Renewable Energy \("ACRE"\)](#), [APPA](#), [EEI](#), [Harvard Elec. Law Inst.](#), [LPPC](#), [NASUCA](#), [NRECA](#), and [R Street Institute](#).

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

On February 17, 2022, the FERC issued a notice of inquiry ("NOI")<sup>117</sup> 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](#); [EEI](#); [ELCON](#); [Entergy](#); [IN Util. Reg.](#)

<sup>117</sup> *Implementation of Dynamic Line Ratings*, 178 FERC ¶ 61,110 (Feb. 17, 2022) ("Dynamic Line Ratings NOI").

[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, 2022<sup>118</sup> and were filed by: [AEP](#), [Clean Energy Entities](#),<sup>119</sup> [EEL](#), [Joint Consumer Advocates](#), [MISO TOs](#), and the [R Street Institute](#). This matter remains pending before the FERC.

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

A sixth meeting of the FERC-established Joint Federal-State Task Force on Electric Transmission (“Transmission Task Force” or “JFSTF”)<sup>120</sup> was held February 15, 2023 in Washington, DC.<sup>121</sup> An agenda for the February 15 meeting was posted on February 1, 2023. The one topic noticed was “Physical Security of the Transmission System”, with Jim Robb, NERC President and CEO, and Puesh Kumar, Director of DOE’s Office of Cybersecurity, Energy Security, and Emergency Response, as the principal speakers. A transcript of the February 15 meeting was posted to eLibrary on March 6, 2023.

Comments on the topics/questions related to the FERC’s October 6, 2022 technical conference on Transmission Planning and Cost Management, also posted in this docket, were due on or before March 23, 2023. See AD22-8 above for a more information.

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

**ISO/RTO Reports.** On April 21, 2022, the FERC issued an order<sup>122</sup> directing each independent system operator (“ISO”) and regional transmission organization (“RTO”), including ISO-NE, to submit on or before October 18, 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. The *Order Directing Reports* followed a series of staff-

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<sup>118</sup> The *Dynamic Line Ratings NOI* was published in the Fed. Reg. on Feb. 24, 2022 (Vol. 87, No. 37) pp. 10,349-10,354.

<sup>119</sup> The “Clean Energy Entities” are the Working for Advanced Transmission Technologies Coalition (“WATT”), ACPA, AEU, and SEIA.

<sup>120</sup> *Joint Federal-State Task Force on Electric Transmission*, 175 FERC ¶ 61,224 (June 18, 2021). 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 interconnection, that provides benefits from a federal and state perspective.” New England is represented by Commissioners Riley Allen (VT PUC) and Marissa Gillett (Chair, CT PURA). See *Order on Nominations, Joint Federal-State Task Force on Elec. Trans.*, 180 FERC ¶ 61,030 (July 15, 2022).

<sup>121</sup> Summaries of the first – fifth meetings of the Transmission Task Force can be found in previous Reports.

<sup>122</sup> *Modernizing Wholesale Electricity Market Design*, 179 FERC ¶ 61,029 (Apr. 21, 2022) (“*Order Directing Reports*”).

led technical conferences, convened in 2021 and summarized in previous Reports, addressing ISO/RTO resource adequacy<sup>123</sup> and energy and ancillary services markets.<sup>124</sup>

**ISO-NE Report.** On October 18, 2022, [ISO-NE](#) (as well as the other ISO/RTOs) filed its report in response to the *Order Directing Reports*. Comments in response to the RTO/ISO reports were due, following an EEI request, on or before January 18, 2023. Comments were filed by, among others: [Advanced Energy United](#), [API](#), [Constellation](#), [New England Public Systems](#),<sup>125</sup> [Shell](#), [Clean Energy Assocs](#), [Clean Energy Buyers Association](#), [EEI](#), [EPSA](#), [Public Interest Orgs](#), [R Street Institute](#).

The FERC is reviewing the RTO/ISO reports and comments related thereto to determine whether further action is appropriate.

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

On July 28, 2022, the FERC issued a NOPR<sup>126</sup> 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 (“Duty of Candor Requirements”). 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 Duty of Candor Requirements.

On September 1, 2022, Joint Associations<sup>127</sup> requested an additional month to submit comments.<sup>128</sup> On September 14, 2022, the FERC granted that request. Accordingly, initial comments were due November 11, 2022 and over 30 sets of comments were filed, including by: [ISO-NE](#), [ISO-NE IMM](#), [ISO-NE EMM](#), [PJM IMM](#), [ABA](#), [AGA](#),

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<sup>123</sup> 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: [AEU](#), [Calpine](#), [Cogentrix](#), [Dominion](#), [Exelon](#), [FirstLight](#), [LS Power](#), [NESCOE](#), [NEPGA](#), [NRG](#), [PSEG](#), [Shell](#), [Vistra](#), [CT DEEP](#), [EEI](#), [EPSA](#), and [NRECA/APPA](#). Reply comments were filed by [ACPA](#), [AEP](#), [EPSA](#), [Exelon](#), [Joint Consumer Advocates](#), [LS Power](#), [Old Dominion Electric Cooperative](#) (“ODEC”), [P3](#), [Public Interest Organizations](#) (“PIOs”), and the [Retail Electric Supply Association](#) (“RESA”). Following the May 25 conference, comments were filed by: [AEU](#), [Calpine](#), [CT Parties](#), [Dominion](#), [Eversource](#), [MMWEC](#), [NESCOE](#), [NEPGA](#), [NextEra](#), [NRG](#), [Public Interest Orgs](#), [Vistra](#), [AEMA](#), [EPSA](#), [RENEW](#).

<sup>124</sup> 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](#), [EEI](#), [Energy Trading Institute](#), [EPRI](#), [EPSA](#), [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](#).

<sup>125</sup> “New England Public Systems” are CMMEC, MMWEC, NHEC, and VPPSA.

<sup>126</sup> *Duty of Candor*, 180 FERC ¶ 61,052 (July 28, 2022) (“*Duty of Candor NOPR*”).

<sup>127</sup> “Joint Associations” included the following trade associations on behalf of their respective members: the American Gas Association (“AGA”), American Public Gas Association (“APGA”), Interstate Natural Gas Association of America (“INGA”), Edison Electric Institute (“EEI”), Electric Power Supply Association (“EPSA”), Energy Trading Institute (“ETI”), Natural Gas Supply Association (“NGA”), and Process Gas Consumers Group (“PGCG”).

<sup>128</sup> The *Duty of Candor NOPR* was published in the *Fed. Reg.* on Aug. 12, 2022 (Vol. 87, No. 155) pp. 49,784-49,793.

[APGA](#), [APPA](#), [EEL](#), [Energy Trade Associations](#), [INGA](#), [NGSA](#), [Nodal Exchange](#), [NRECA](#), [State Agencies](#), [US Chamber of Commerce](#), [DE Riverkeeper Network](#), [New Civil Liberties Alliance](#), and [Nodal Exchange](#). The [US Chamber of Commerce](#) filed reply comments on December 12, 2022. There was no activity in the proceeding since the last Report. This matter is pending before the FERC.

- **NOPR: Advanced Cybersecurity Investment (RM22-19)**

On September 22, 2022, the FERC issued a NOPR<sup>129</sup> proposing to provide incentive-based rate treatments for the transmission of electric energy in interstate commerce and the sale of electric energy at wholesale in interstate commerce by utilities for the purpose of benefitting consumers by encouraging investments by utilities in advanced cybersecurity technology and participation by utilities in cybersecurity threat information sharing programs, as directed by the Infrastructure Investment and Jobs Act of 2021 (“Infrastructure and Jobs Act”). This NOPR also terminated the NOPR proceeding in Docket RM21-3 (*Dec 2020 Cybersecurity Incentives NOPR*)<sup>130</sup> described in previous Reports.

Initial comments on the *Advanced Cybersecurity Investment NOPR* were due on or before November 7, 2022 and reply comments were due November 21, 2022.<sup>131</sup> Nearly 30 sets of initial comments were filed, including by: [Avangrid](#), [APPA](#), [EEL](#), [EPSA](#), [INGA](#), [Joint Consumer Advocates](#), [Microsoft](#), [MISO TOs](#), [PJM TOs](#), [NERC](#), [NRECA](#), [TAPS](#), and the [Operational Technology Cybersecurity Coalition](#). Reply comments were filed by [DOE](#), [EEL](#), [ELCON](#), [CA PUC](#), [AEP](#), and [Anterix](#). This matter is pending before the FERC.

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

On June 16, 2022, as corrected on July 12, 2022, the FERC issued a notice<sup>132</sup> proposing to require transmission providers to submit one-time informational reports describing their current or planned policies and processes for conducting extreme weather vulnerability assessments<sup>133</sup> (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 weather risks). Initial comments were due August 30, 2022<sup>134</sup> and were filed by over 13 parties, including among others, [Eversource](#), [NRDC](#), [NERC](#), [MISO](#), [PJM](#), and [EPSA](#). This matter is pending before the FERC.

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

On June 16, 2022, the FERC issued a notice of proposed rulemaking (“NOPR”),<sup>135</sup> more than 400 pages long, that proposed reforms to the *pro forma* Large Generator Interconnection Procedures (“LGIP”), *pro forma* Small Generator Interconnection Procedures (“SGIP”), *pro forma* Large Generator Interconnection Agreement

<sup>129</sup> *Incentives for Advanced Cybersecurity Investment; Cybersecurity Incentives*, 180 FERC ¶ 61,189 (Sep. 22, 2022) (“*Advanced Cybersecurity Investment NOPR*”).

<sup>130</sup> *Cybersecurity Incentives*, 173 FERC ¶ 61,240 (Dec. 17, 2020) (“*Dec 2020 Cybersecurity Incentives NOPR*”). As described in previous Reports, the *Dec 2020 Cybersecurity Incentives NOPR* proposed 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 Bulk Power System.

<sup>131</sup> The *Advanced Cybersecurity Investment NOPR* was published in the *Fed. Reg.* on Oct. 6, 2022 (Vol. 87, No. 193) pp. 60,567-60,580.

<sup>132</sup> *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*”).

<sup>133</sup> “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”.

<sup>134</sup> 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.

<sup>135</sup> *Improvements to Generator Interconnection Procedures and Agreements*, 179 FERC ¶ 61,194 (June 16, 2022) (“*Interconnection Reforms NOPR*”).

("LGIA"), and *pro forma* SGIA to address interconnection queue backlogs, improve certainty, and prevent undue discrimination for new technologies.

As previously reported, the proposed reforms fall into three main categories: (1) reforms to implement a first-ready, first-served cluster study process;<sup>136</sup> (2) reforms to increase the speed of interconnection queue processing;<sup>137</sup> and (3) reforms to incorporate technological advancements to the interconnection process.<sup>138</sup> Within each of these categories, the FERC proposes a wide array of reforms, and requested comment.

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<sup>136</sup> To implement the **first-ready, first-served cluster study process**, the FERC proposed 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;<sup>136</sup>
- ◆ Implement a commercial readiness framework whereby interconnection customers must show demonstrable milestones towards commercial readiness in order to enter the cluster, such as an executed term sheet, reasonable evidence the project was selected in a resource plan, or a provisional LGIA; and
- ◆ Impose withdrawal penalties when the interconnection customer withdraws from the interconnection queue.

<sup>137</sup> 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.

<sup>138</sup> 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.

**Initial Comments.** Initial comments were due October 13, 2022<sup>139</sup> and over 130 sets of comments were filed, including: [NEPOOL](#), [ISO-NE](#), [NESCOE](#), [AEU](#), [Anbaric](#), [Avangrid](#), [Cypress Creek Renewables](#), [Dominion](#), [EDF Renewables](#), [ENGIE](#), [Envir. Defense Fund](#), [Longroad](#), [National Grid](#), [NextEra](#), [PPL](#), [RWE](#), [Shell](#), [VELCO](#), [Vistra](#), [ACPA](#), [ACRE](#), [APPA](#), [US DOE](#), [EEI](#), [ELCON](#), [EPRI](#), [EPSA](#), [IRC](#), [NARUC](#), [NERC](#), [NRECA](#), [PIOs](#), [R Street Institute](#), [SEIA](#), [State Agencies](#), and [WIRES](#).

**Reply Comments.** Following a request by EEI for a 30-day extension of time to submit reply comments, supported by AEU, ACPA, ACRE, and SEI, and granted by the FERC on October 28, 2022, reply comments were due December 14, 2022. More than 50 sets of reply comments were filed, including by [ACPA](#), [ACORE](#), [AEU](#), [APPA/LPPC](#), [Avangrid](#), [Dominion](#), [EDF](#), [EEI](#), [Enel](#), [ENGIE](#), [Invenergy](#), the [IRC](#), [Longroad Energy](#), [NERC](#), [NESCOE](#), [NextEra](#), [Orsted](#), [SEIA](#), [Shell](#), [Sierra Club](#), [UCS](#), [WIRES](#). Since the last Report, Elevate Renewables F7, LLC (“Elevate”) submitted comments out-of-time.

The *Interconnection Reforms NOPR* is pending before the FERC. 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 you have any questions concerning the *Interconnection Reforms NOPR*, please contact Margaret Czepiel (202-218-3906; [mczepiel@daypitney.com](mailto:mczepiel@daypitney.com)) or Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

On July 28, 2022, the FERC issued a NOPR<sup>140</sup> proposing to revise its regulations to permit ISO/RTOs to share among themselves<sup>141</sup> credit-related information regarding market participants.<sup>142</sup> 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 sought comment on whether ISO/RTOs’ credit-related information sharing discretion should be limited in any specific ways or to any specific circumstances.

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<sup>139</sup> The *Interconnection Reforms NOPR* was published in the *Fed. Reg.* on July 5, 2022 (Vol. 87, No. 127) pp. 39,934-40,032.

<sup>140</sup> *Credit-Related Information Sharing in Organized Wholesale Electric Markets*, 180 FERC ¶ 61,048 (July 28, 2022) (“*ISO/RTO Credit-Related Info Sharing NOPR*”).

<sup>141</sup> 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 (“CFTC”).

<sup>142</sup> 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.



**Initial Comments.** Initial comments were due October 7, 2022<sup>143</sup> and were filed by, among others: [NEPOOL](#), [Dominion](#), [EEI](#), [Energy Trading Institute](#), [EPSA](#), and the [IRC](#).

**Reply Comments.** Reply comments were due November 7, 2022 and were filed by the [IRC](#) and a [couple of persons](#) from Augusta University.

- **NOPR: Transmission Siting (RM22-7)**

On December 15, 2022, the FERC issued a NOPR<sup>144</sup> proposing to revise its regulations governing applications for permits to site electric transmission facilities under section 216 of the FPA, as amended by the Infrastructure and Jobs Act. The *Transmission Siting NOPR* is intended to ensure consistency with the Infrastructure and Jobs Act's amendments to FPA section 216, to modernize certain regulatory requirements, and to incorporate other updates and clarifications to provide for the efficient and timely review of permit applications. Following a NARUC request for an extension of time, granted by the FERC on March 3, 2023, comments on the *Transmission Siting NOPR* are due on or before **May 17, 2023**.

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

Following its ANOPR process,<sup>145</sup> the FERC issued on April 21, 2022 a NOPR<sup>146</sup> 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.

<sup>143</sup> 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.

<sup>144</sup> *Applications for Permits to Site Interstate Electric Transmission Facilities*, 181 FERC ¶ 61,205 (Dec. 15, 2022) ("*Transmission Siting NOPR*").

<sup>145</sup> 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](#), [AEU](#), [Anbaric](#), [Avangrid](#), [BP](#), [CPV](#), [Dominion](#), [EDF](#), [EDP](#), [Enel](#), [EPSA](#), [Eversource](#), [Exelon](#), [LS Power](#), [MA AG](#), [MMWEC](#), [National Grid](#), [NECOS](#), [NESCOE](#), [NextEra](#), [NRDC](#), [Orsted](#), [Shell](#), [UCS](#), [VELCO](#), [Vistra](#), [Potomac Economics](#), [ACORE](#), [ACPA/ESA](#), [APPA](#), [EEI](#), [ELCON](#), [Industrial Customer Orgs](#), [LPPC](#), [MA DOER](#), [NARUC](#), [NASUCA](#), [NASEO](#), [NERC](#), [NRECA](#), [SEIA](#), [State Agencies](#), [TAPS](#), [WIRES](#), [Harvard Electric Law Initiative](#), [NYU Institute for Policy Integrity](#), [New England for Offshore Wind Coalition](#), and the [R Street Institute](#). ANOPR reply comments and post-technical conference comments were filed by over 100 parties, including: by: [CT AG](#), [Acadia Center/CLF](#), [CT AG](#), [Dominion](#), [Enel](#), [Eversource](#), [LS Power](#), [MA AG](#), [MMWEC](#), [NESCOE](#), [NextEra](#), [Shell](#), [UCS](#), [Vistra](#), [ACPA/ESA](#), [AEU](#), [APPA](#), [EEI](#), [ELCON](#), [Environmental and Renewable Energy Advocates](#), [EPSA](#), [Harvard ELI](#), [NRECA](#), [Potomac Economics](#), and [SEIA](#). Supplemental reply comments were filed by [WIRES](#), a group of [former military leaders and former Department of Defense officials](#), and [ACPA/AEU/SEIA](#).

<sup>146</sup> *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 179 FERC ¶ 61,028 (Apr. 21, 2022) ("*Transmission 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 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.

**Comments.** Following a number of requests for extensions of time, comments on the *Transmission NOPR* were due August 17, 2022.<sup>147</sup> Nearly 200 sets of comments were filed, including comments by [NEPOOL](#), [ISO-NE](#), [Acadia/CLF](#), [Anbaric](#), [AEU](#), [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 were due **September 19, 2022**. Nearly 100 sets of reply comments were filed, including by: [ISO-NE](#), [AEU](#), [Anbaric](#), [Avangrid](#), [CT DEEP](#), [Cypress Creek](#), [Dominion](#), [ENGIE](#), [Eversource](#), [Invenergy](#), [LS Power](#), [MA AG](#), [NECOS](#), [NESCOE](#), [NextEra](#), [Shell](#), [Transource](#), [UCS](#), [ACPA](#), [ACRE](#), [APPA](#), [EEI](#), [Industrial Customer Organizations](#), [LPPA](#), [NRECA](#), [Public Interest Organizations](#), [R Street](#), and [SEIA](#). On November 28, 2022, the New Jersey BPU moved to lodge its recently issued [Board Order](#) selecting transmission projects to be built pursuant to PJM’s State Agreement Approach (“SAA”) for the purpose of supporting New Jersey’s offshore wind (“OSW”) goals, the Brattle Group’s [SAA Evaluation Report](#), and [PJM’s SAA Economic Analysis Report](#), which it stated demonstrates that competitive transmission solicitations can provide significant value to consumers. In December 2022, the [Harvard Electricity Law Initiative](#), and [P. Alaama](#) submitted further comments.

LS Power and NRG filed comments in this proceeding, as well as in (Transmission Planning and Cost Management Joint Federal-State Task Force on Electric Transmission) (AD22-8) and JFSTF proceeding (AD21-15). They asserted that the FERC “cannot sufficiently address the transmission planning issues raised in its *Transmission NOPR* without addressing the intertwined cost management issues raised in AD22-8-000 and during the October 6, 2022 Technical Conference in AD22-8.

This matter remains pending before the FERC. If you have any questions concerning the *Transmission NOPR*, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)) or Margaret Czepiel (202-218-3906; [mczepiel@daypitney.com](mailto:mczepiel@daypitney.com)).

<sup>147</sup> A July 27, 2022, request by the Georgia Public Service Commission (“GA PUC”) for an additional 30 days of time to submit comments and reply comments was denied on Aug. 9, 2022.

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

On July 28, 2022, the FERC issued a NOPR<sup>148</sup> 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* were due November 17, 2022.<sup>149</sup> Comments were filed by: [Dominion](#), [ACPA/SEIA](#), [EEI](#), [Liquid Energy Pipeline Assoc.](#), [RESA](#), [PG&E/SDG&E](#), [C. Pechman](#). There was no activity in this proceeding since the last Report. This matter remains pending before the FERC.

### XIII. FERC Enforcement Proceedings

#### Electric-Related Enforcement Actions

- **No activity to report**

#### Natural Gas-Related Enforcement Actions

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

**Procedural Schedule Suspended.** As previously reported, 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, ALJ Joel DeJesus, who will be the presiding judge for hearings in this matter,<sup>150</sup> 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 order<sup>151</sup> 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,<sup>152</sup> 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;<sup>153</sup> (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

<sup>148</sup> *Accounting and Reporting Treatment of Certain Renewable Energy Assets*, 180 FERC ¶ 61,050 (July 28, 2022) ("*Renewable Energy Assets USofA and Reporting NOPR*").

<sup>149</sup> The *Renewable Energy Assets USofA and Reporting NOPR* was published in the *Fed. Reg.* on Oct. 3, 2022 (Vol. 87, No. 190) pp. 59,870-59,963.

<sup>150</sup> See *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 178 FERC ¶ 61,028 (Jan. 20, 2022) ("*Rover/ETP Hearings Order*"). The hearings will be 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.

<sup>151</sup> *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 177 FERC ¶ 61,182 (Dec. 16, 2021) ("*Rover/ETP Tuscarawas River HDD Show Cause Order*").

<sup>152</sup> *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*").

<sup>153</sup> 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.

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." The FERC denied Respondents' request for rehearing of the FERC's January 21, 2022 designation notice.<sup>154</sup> This matter is pending before the FERC.

- **BP (IN13-15)**

On December 17, 2020, the FERC issued *Opinion 549-A*,<sup>155</sup> a 159-page decision addressing arguments raised on rehearing requested of *Opinion 549*.<sup>156</sup> *Opinion 549-A* modifies the discussion in *Opinion 549*, but reaches the same the result (ultimately requiring BP to pay a **\$20.16 million civil penalty (roughly \$24.4 million with accrued interest) and disgorge \$207,169**). Of note, *Opinion 549-A* denied BP's motion to dismiss this enforcement action as time barred (by the five-year statute of limitations set forth in 28 U.S.C. § 2462), finding BP waived any statute of limitations defense by failing to raise it earlier in this proceeding.<sup>157</sup> *Opinion 549-A* revised Ordering Paragraph (C) to direct the disgorged profits to non-profits that disburse the Low Income Home Energy Assistance Program of Texas funds, rather than to the Texas Department of Housing.<sup>158</sup>

On December 29, 2020, BP filed a notice that it intends to appeal *Opinion 549-A* to the Fifth Circuit Court of Appeals and paid the civil penalty amount on December 28, 2020, under protest and with full reservation of rights pending the outcome of judicial review of that Opinion. On January 19, BP filed a notice that it disgorged \$250,295 (\$207,169 principal plus interest), divided equally (\$83,431.67) among the following 3 entities identified in the "2016 Comprehensive Energy Assistance Program Subrecipient List": Dallas County Dept. of Health and Human Services (serving Dallas); El Paso Community Action, Project Bravo (Serving El Paso); and Panhandle Community Services (serving Armstrong and numerous other counties), again under protest and with full reservation of rights pending the outcome of judicial review of *Opinion 549/549-A*.

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

On April 28, 2016, the FERC issued a show cause order<sup>159</sup> in which it directed Total Gas & Power North America, Inc. ("TGPNA") and its West Desk traders and supervisors, Therese Tran f/k/a Nguyen ("Tran") and Aaron Hall (collectively, "Respondents") to show cause why Respondents should not be found to have violated NGA Section 4A and the FERC's Anti-Manipulation Rule through a scheme to manipulate the price of natural gas at four locations in the southwest United States between June 2009 and June 2012.<sup>160</sup>

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<sup>154</sup> *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.

<sup>155</sup> *BP America Inc. et al.*, Opinion No. 549-A, 173 FERC ¶ 61,239 (Dec. 17, 2020) ("*BP Penalties Allegheny Order*").

<sup>156</sup> *BP America Inc.*, Opinion No. 549, 156 FERC ¶ 61,031 (July 11, 2016) ("*BP Penalties Order*") (affirming Judge Cintron's Aug. 13, 2015 Initial Decision finding that BP America Inc., BP Corporation North America Inc., BP America Production Company, and BP Energy Company (collectively, "BP") violated Section 1c.1 of the FERC's regulations ("Anti-Manipulation Rule") and NGA Section 4A (*BP America Inc. et al.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) ("*BP Initial Decision*").

<sup>157</sup> *BP Penalties Allegheny Order* at P 1.

<sup>158</sup> *Id.* at P 319.

<sup>159</sup> *Total Gas & Power North America, Inc.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) ("*TGPNA Show Cause Order*").

<sup>160</sup> The allegations giving rise to the Total Show Cause Order were laid out in a September 21, 2015 FERC Staff Notice of Alleged Violations which summarized OE's case against the Respondents. Staff determined that the Respondents violated NGA section 4A and the Commission's Anti-Manipulation Rule by devising and executing a scheme to manipulate the price of natural gas in the southwest United States between June 2009 and June 2012. Specifically, Staff alleged that the scheme involved making largely uneconomic trades for

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.<sup>161</sup> On July 27, 2021, Chief Judge Cintron designated Judge Suzanne Krolkowski as the Presiding ALJ and established an extended Track III Schedule for the proceeding.

Discovery in this case closed on December 2, 2022. On December 16, 2022, Respondents filed for a preliminary injunction in the US District Court for the Southern District of Texas. In order to allow for briefing and a decision on that motion, the FERC placed this proceeding in abeyance for 90 days, and directed that the hearing scheduled to begin on January 23, 2023, commence no earlier than **April 24, 2023**.<sup>162</sup>

#### XIV. Natural Gas Proceedings

For further information on any of the natural gas proceedings, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto:jfagan@daypitney.com)).

##### New England Pipeline Proceedings

The following New England pipeline projects are currently under construction or before the FERC:

- **Iroquois ExC Project (CP20-48)**
  - 125,000 Dth/d of incremental firm transportation service to ConEd and KeySpan by building and operating new natural gas compression and cooling facilities at the sites of four existing Iroquois compressor stations in Connecticut (Brookfield and Milford) and New York (Athens and Dover).
  - Three-year construction project; service request by November 1, 2023.
  - 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.<sup>163</sup> 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

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physical natural gas during bid-week designed to move indexed market prices in a way that benefited the company's related positions. Staff alleged that the West Desk implemented the bid-week scheme on at least 38 occasions during the period of interest, and that Tran and Hall each implemented the scheme and supervised and directed other traders in implementing the scheme.

<sup>161</sup> *Total Gas & Power North America, Inc. et al.*, 176 FERC ¶ 61,026 (July 15, 2021).

<sup>162</sup> *Total Gas & Power North America, Inc., Total, S.A., Total Gas & Power, Ltd., Aaron Hall, and Therese Tran f/k/a Nguyen*, 181 FERC ¶ 61,252 (Dec. 21, 2022).

<sup>163</sup> *Iroquois Gas Transmission Sys., L.P.*, 178 FERC ¶ 61,200 (2022) (*Iroquois Certificate Order*).

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 4<sup>th</sup> quarter 2023 in-service date.

## XV. State Proceedings & Federal Legislative Proceedings

- **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,<sup>164</sup> and that effectively halted construction of the NECEC Project,<sup>165</sup> 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).

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

<sup>164</sup> 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?"

<sup>165</sup> 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.



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

**Underlying FERC Proceeding:** ER22-707<sup>166</sup>

**Petitioner:** Green Development

**Status:** Briefing Completed; Oral Argument Held March 20, 2023; Decision Pending

Oral argument in this case was held before Judges Henderson, Pillard and Katsas on March 20, 2023. This matter, which as previously reported was initiated on June 15, 2022 by a Green Development petition challenging the FERC's 2<sup>nd</sup> Revised Narragansett LSA Orders,<sup>167</sup> is pending before the Court.

- **Mystic II (ROE & True-Up)**

**(21-1198; 21-1222, 21-1223, 21-1224, 22-1001, 22-1008, 22-1026) (consolidated)**

**Underlying FERC Proceeding:** EL18-1639-010, -011,<sup>168</sup> -013<sup>169</sup> -017<sup>170</sup>

**Petitioners:** Mystic, CT Parties,<sup>171</sup> MA AG, ENECOS

**Status:** Being Held in Abeyance; Motions to Govern Future Proceedings Due Apr 24, 2023

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 issued an opinion in *MISO Transmission Owners v. FERC*, 16-1325 ("*MISO TOs*"). 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

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<sup>166</sup> *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*".

<sup>167</sup> The 2<sup>nd</sup> 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.

<sup>168</sup> *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).

<sup>169</sup> *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).

<sup>170</sup> *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*).

<sup>171</sup> In this appeal, "CT Parties" are the CT PURA CT PURA, Connecticut Department of Energy and Environmental Protection ("CT DEEP"), and the CT OCC.

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*.

As previously reported, the Court has since decided *MISO TOs*. However, the parties continue to agree that this case should remain in abeyance pending further proceedings related to *MISO TOs*, now on remand at the FERC. Accordingly, on January 24, 2023, Mystic, without opposition, asked the Court for an order keeping these proceedings in abeyance and directing that motions to govern future proceedings be filed in late April, 2023. On February 3, 2023, the Court issued an order that these cases remain in abeyance and that the parties file motions to govern future proceedings by **April 24, 2023**.

- **CASPR (20-1333, 21-1031) (consolidated)\*\***  
Underlying FERC Proceeding: ER18-619<sup>172</sup>  
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: ER15-414<sup>173</sup>  
Petitioners: TOs' (CMP et al.)  
**Status: Being Held in Abeyance**

On August 28, 2020, the TOs<sup>174</sup> petitioned the DC Circuit Court of Appeals for review of the FERC's October 6, 2017 order rejecting the TOs' filing that sought to reinstate their transmission rates to those in place prior to the FERC's orders later vacated by the DC Circuit's *Emera Maine*<sup>175</sup> decision. On September 22, 2020, the FERC submitted an unopposed motion to hold this proceeding in abeyance for four months to allow for the Commission to "a future order on petitioners' request for rehearing of the order challenged in this appeal, and the rate proceeding in which the challenged order was issued remains ongoing before the Commission." On October 2, 2020, the Court granted the FERC's motion, and directed the parties to file motions to govern future proceedings in this case by February 2, 2021. On January 25, 2021, the FERC requested that the Court continue to hold this petition for review in abeyance for an additional three months, with parties to file motions to govern future proceedings at the end of that period. The FERC requested continued abeyance because of its intention to issue a future order on petitioners' request for rehearing of the order challenged in this appeal, and the rate proceeding in which the challenged order was issued remains ongoing before the FERC. Petitioners consented to the requested abeyance. On February 11, 2021, the Court issued an order that that this case remain in abeyance pending further order of the court. On April 21, 2021, the FERC filed an unopposed motion for continued

<sup>172</sup> *ISO New England Inc.*, 162 FERC ¶ 61,205 (Mar. 9, 2018) ("*CASPR Order*").

<sup>173</sup> *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) ("*Order Rejecting Filing*").

<sup>174</sup> The "TOs" are CMP; Eversource Energy Service Co., on behalf of its affiliates CL&P, NSTAR and PSNH; National Grid; New Hampshire Transmission; UI; Unitil and Fitchburg; VTransco; and Versant Power.

<sup>175</sup> *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*").

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 April 4, 2023.

#### Other Federal Court Activity of Interest

- **Northern Access Project (22-1233)**

Underlying FERC Proceeding: **CP15-115**<sup>176</sup>

Petitioners: Sierra Club

**Status: Briefing Complete; Oral Argument Not Yet Scheduled**

On September 6, 2022, the Sierra Club petitioned the DC Circuit for review of *Northern Access Project Add'l Extension Order*. On October 11, 2022, Sierra Club filed a Docketing Statement, a Statement of Issues, and the underlying decision from which the appeal arises. Also on October 11, the FERC moved to hold this proceeding in abeyance. Sierra Club opposed that motion on October 21, 2022. Having issued its further order on rehearing on October 14, 2022,<sup>177</sup> the FERC, on November 4, 2022, withdrew its 's motion to hold this proceeding in abeyance and asked the Court to issue a scheduling order in this proceeding. The Court issued that schedule on November 9, 2022. The Certified Index to the Record was submitted on November 16, 2022 and Petitioner's (Sierra Club's) Brief on December 16, 2022. Respondent's (FERC's) Brief was filed on February 14, 2023; Brief for Respondent-Intervenors and an amicus brief by the Natural Gas Association of America were filed on February 21, 2023. Since the last Report, briefing in this case was completed, with Petitioner's (Sierra Club's) Reply Brief filed on March 14, 2023; a Joint Deferred Appendix filed on March 21, 2023; and Final Briefs filed on April 4, 2023 by Sierra Club, the FERC, INGA (Amicus for FERC) and Empire Pipeline and National Fuel Gas Supply (Intervenor for Respondent FERC). The date of oral argument and the composition of the merits panel will be provided at a later date.

- **Order 872 (20-72788,\* 21-70113; 20-73375, 21-70113) (consol.) (9<sup>th</sup> Cir.)**

Underlying FERC Proceeding: **RM19-15**<sup>178</sup>

Petitioners: SEIA et al.

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

On September 17, 2020, SEIA petitioned the 9<sup>th</sup> Circuit Court of Appeals for review of *Order 872*.<sup>179</sup> Briefing is complete and oral argument was held March 8, 2022 before Judges Nguyen, Miller and Bumatay. This matter remains pending before the Court.

<sup>176</sup> *National Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 179 FERC ¶ 61,226 (June 29, 2022) ("*Northern Access Project Add'l Extension Order*").

<sup>177</sup> *Corpus Christi Liquefaction Stage III, LLC*, 181 FERC ¶ 61,033 (Oct. 14, 2022).

<sup>178</sup> *Transcontinental Gas Pipe Line Co., LLC*, 159 FERC ¶ 62,181 (Feb. 3, 2017); *Transcontinental Gas Pipe Line Co., LLC*, 161 FERC ¶ 61,250 (Dec. 6, 2017).

<sup>179</sup> *Order 872* approved pricing and eligibility revisions to the FERC's long-standing regulations implementing sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), including: state flexibility in setting QF rates; a decrease (to 5 MW) to the threshold for a rebuttable presumption of access to nondiscriminatory, competitive markets; updates to the "One-Mile Rule"; clarifications to when a QF establishes its entitlement to a purchase obligation; and provision for certification challenges.

- **Algonquin Atlantic Bridge Project Orders (21-1115\*, 21-1138, 21-1153, 21-1155 consol.) and (22-1146, 22-1147 consol.)**  
**Underlying FERC Proceeding: CP16-9-012<sup>180</sup>**  
**Petitioners: LS Power, Algonquin, INGA**  
**Status: Cases 22-1146/47 Deconsolidated, Briefing Completed and Oral Argument Set for Apr 20, 2023; 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 directed briefing in the consolidated cases. As previously reported, the FERC filed its Respondent Brief on January 12, 2023 and Algonquin and INGA filed a Joint Brief of Intervenors on January 26, 2023. Petitioners filed their Joint Reply Brief on February 16, 2023. Since the last Report, the Deferred Joint Appendix was filed on March 2, 2023 and Final Briefs were filed on March 9, 2023. Briefing in 22-1146/47 is now complete. Oral argument has been scheduled for April 20, 2023 before Judges Srinivasan, Millett and Tatel.

<sup>180</sup> *Briefing Order; April 19 Notice of Denial of Rehearings by Operation of Law.*

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