

**EXECUTIVE SUMMARY**  
**Status Report of Current Regulatory and Legal Proceedings**  
**as of June 24, 2023**

The following activity, as more fully described in the attached litigation report, has occurred since the report dated May 3, 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**



1	206 Proceeding: ISO-NE Market Power Mitigation Rules (EL23-62)	May 10- Jun 6	NEPOOL, Calpine, MA AG, CT OCC, NEPGA, NESCOE, Public Systems, NRG, EPSA, MA DPU (out-of-time), MPUC, Public Citizen intervene
3	206 Proceeding: ISO-NE Tariff Schedule 25 and Section I.3.10 (EL21-94)	Jun 15	FERC terminates proceeding
4	NextEra/Avangrid/NECEC Seabrook Complaint (EL21-6) and Seabrook Declaratory Order (EL21-3)	Jun 15	FERC issues <i>Seabrook Dispute Allegheny Order</i> , modifying the discussion in, but sustaining the results of, the <i>Seabrook Dispute Order</i>

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



* 8	CSC CIP-IROL (Schedule 17) Section 205 Cost Recovery Filing (ER23-1826)	May 4 May 12-25	Cross-Sound Cable requests recovery of incremental medium impact CIP-IROL Costs incurred between Jun 1, 2021 and Dec 31, 2022 NEPOOL, National Grid, NESCOE file doc-less motions to intervene
8	BHD Regulatory Asset-Establishment & Recovery Through Rates (ER23-1598)	May 5 May 18 Jun 5	Versant answers MPUC protest MPUC answers Versant's May 5 answer FERC issues deficiency letter; Versant response due on or before <b>Jul 5, 2023</b>
9	FCA17 Results Filing (ER23-1435)	May 8 May 11 May 22 Jun 9	20 individual citizens file anti-fossil fuel comments (out-of-time) No Coal No Gas submits report its comment initiative opposing ISO-NE files <a href="#">answer</a> to individual protests No Coal No Gas answers ISO-NE's May 22 answer
9	Add'l Cost Recovery Due to Dec 24 General Threshold Energy Mitigation: Dynegy (ER23-1261)	May 5	FERC conditionally grants Dynegy's request for recovery of unrecovered costs related to downward price mitigation (and to the regulatory costs incurred in connection with the cost recovery filing), but not for upward price mitigation-related costs; compliance filing due on or before <b>Jul 5, 2023</b>
10	<b>Mystic 8/9 COSA (ER18-1639)</b>		
* 11	(-000) Public Systems' Request for Disclosure of Audit Information	May 19  Jun 9	Public Systems request that ISO-NE be directed to release additional information concerning ISO-NE's audit of performance under the Mystic COSA  <a href="#">Constellation</a> , <a href="#">ISO-NE</a> and <a href="#">CT Parties</a> answer May 19 Audit Information Request
11	(-024) Mystic Request for Rehearing of Mystic I Order on Remand	May 12  May 15 May 25  May 30	ENECOS file answer to Mystic requests rehearing of <i>Mystic I Order on Remand</i> ISO-NE files limited comments to Mystic's request Mystic files motion to lodge ISO-NE's Mystic Agreement audit controls report FERC issues notice of denial of <a href="#">rehearing</a> by operation of law and providing for further consideration

12	(-021) First CapEx Info. Filing Settlement Agreement	Jun 2 Jun 7	Settlement Judge McBarnette issues her Settlement Report Acting Chief ALJ Satten terminates settlement judge procedures, subject to final action by the Commission
13	30-Day Compliance Filing per <i>Order on ENECOS Mystic COSA Complaint</i> (ER23-1735)	May 10	ISO-NE intervenes
* 14	ISO Securities: Authorization for Future Drawdowns (ES23-41)	May 26	FERC authorizes continued ISO-NE drawdowns under its \$20 million Revolving Credit Line and \$4 million line of credit supporting the Payment Default Shortfall Fund, through <i>May 29, 2025</i>

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



15	IEP Parameter Updates (ER23-1588)	May 12 May 15 May 25 May 26	Senator Blumenthal (D-CT) files response to filing <a href="#">NEPOOL</a> and <a href="#">ISO-NE</a> files answers to protests FERC issues deficiency letter <a href="#">Consumer Advocates</a> , <a href="#">Sierra Club/CLF/UCS</a> answer <a href="#">ISO-NE</a> and <a href="#">NEPOOL</a> answers
		Jun 9	ISO-NE submits response to May 25 deficiency letter; comment deadline <b>Jun 30, 2023</b>
		Jun 12	Public Citizen intervenes
15	SATOA Revisions (ER23-739; ER23-743)	May 15 Jun 14	FERC issues a deficiency letter ISO-NE submits response to May 15 deficiency letter; comment deadline <b>Jul 5, 2023</b>
16	New England's <i>Order 2222</i> Compliance Filing (ER22-983)	May 5 May 9 May 22 May 30	MPUC answers <a href="#">ISO-NE's Mar 31 Request for Rehearing</a> ISO-NE files 60-day compliance filing NECPUC answers <a href="#">ISO-NE's Mar 31 Request for Rehearing</a> NEPOOL comments on, AEU/PowerOptions/SEIA protests, 60-day compliance filing
		Jun 14	ISO-NE answers <a href="#">AEU/PowerOptions/SEIA protest</a>

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



18	CNRIS Time-Out Rules Removal (ER23-1581)	Jun 5	FERC accepts CNRIS Time-Out Rules Removal, eff. <i>Jun 6, 2023</i>
19	Phase I/II HVDC-TF <i>Order 881</i> Compliance Filing: HVDC TOA (ER22-2467) and Sched. 20-A Common Attachment M (ER22-2468)	Jun 15	FERC conditionally accepts Phase I/II HVDC-TF <i>Order 881</i> Compliance Filing, eff. Jul 12, 2025; compliance filing due on or before <b>Nov 12, 2024</b>
19	<i>Order 881</i> Compliance Filing: New England OATT (ER22-2357)	Jun 15	FERC conditionally accepts OATT <i>Order 881</i> Compliance Filing; 60-day compliance filing due <b>Aug 14, 2023</b> ; AAR explanation filing due <b>Nov 12, 2024</b>

### V. Financial Assurance/Billing Policy Amendments



*No Activities to Report*

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



* 20	Schedule 21-VP: Real Power Loss Factor Change (ER23-2142)	Jun 15	Versant files a revised Schedule 21-VP to reflect a change in the Real Power Loss factor for Local Point-to-Point Service from 1.99 % to 1.764 %; comment deadline <b>Jul 6, 2023</b>
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* 20	Schedule 21-VP: Versant/Black Bear LSAs (ER23-2035)	Jun 1	Versant Power files 7 fully executed, non-conforming LSAs by and among Versant, ISO-NE and Black Bear
20	Schedule 21-NEP: NEP/Dichotomy Collins Hydro SGIA (ER23-888)	Jun 12	FERC accepts SGIA, eff. <i>Dec 19, 2022</i>

## VII. NEPOOL Agreement/Participants Agreement Amendments



*No Activities to Report*

## VIII. Regional Reports



* 21	Capital Projects Report - 2023 Q1 (ER23-1875)	May 12 May 22-Jun 2 May 22 Jun 23	ISO-NE files 2023 Q1 Report Eversource and National Grid intervene NEPOOL files comments supporting 2023 Q1 Report FERC accepts 2023 Q1 Report
* 21	Interconnection Study Metrics Processing Time Exceedance Report Q1 2023 (ER19-1951)	May 15	ISO-NE files required quarterly report
* 22	IMM 2022 Annual Markets Report (ZZ23-4)	Jun 5	IMM files annual report covering calendar year 2022
* 23	IMM Quarterly Markets Reports (ZZ23-4)	May 30	IMM files Winter 2022/23 Report; reviewed at Jun 6 Markets Committee meeting
* 23	ISO-NE FERC Form 3Q (2023/Q4) (not docketed)	May 26	ISO-NE submits its 2023 Q1 FERC Form 3Q
* 23	ISO-NE FERC Form 714 (2022) (not docketed)	Jun 14	ISO-NE submits its 2022 FERC Form 714

## IX. Membership Filings



* 23	Jun 2023 Membership Filing (ER23-2025)	May 31	<b>New Members:</b> Con Edison Transmission; Generate NB Fuel Cells; Jonathan Lamson; and Tomorrow Energy Corp; <b>Terminations:</b> Northern States Power; Granite Reliable Power
24	Membership - NTE CT Involuntary Termination (ER23-1689)	Jun 13	FERC accepts the involuntary termination of the Participant status of NTE Connecticut, LLC, eff. <i>Jun 22, 2023</i>

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



24	NERC Report on Evaluation of Physical Reliability Standard (CIP-014) (RD23-2)	May 11-15 May 30	Comments filed by, among others: <a href="#">ISO-NE</a> , <a href="#">Trade Associations</a> , <a href="#">WIRES</a> FERC issues notice of Joint FERC/NERC tech. conf. to be held <b>Aug 10, 2023</b> , to discuss physical security of the BPS
26	CIP Standards Development: Info. Filings on Virtualization and Cloud Computing Services Projects (RD20-2)	Jun 15	NERC files required quarterly report with further revised schedule for Project 2016-02 (projected filing of revised standards now <b>Jan 2024</b> )
27	<i>Order 896</i> : Transmission System Planning Performance Reqs. for Extreme Weather (RM22-10)	Jun 15	FERC directs NERC to develop a new or modified Reliability Standard, no later than <b>Dec 15, 2024</b> to address reliability concerns pertaining to transmission system planning for extreme heat and cold weather events that impact the Reliable Operation of the BPS
* 28	Report of Comparisons of Budgeted to Actual Costs for 2022 for NERC and the Regional Entities (RR23-2)	May 31	FERC files Report

## XI. Misc. - of Regional Interest



* 28	203 Application: Three Corners Solar/Three Corners Prime Tenant (EC23-90)	May 26	Three Corners request authorization for the disposition and consolidation of jurisdictional facilities and the lease of an existing 112 MWac solar PV generation facility in Kennebec County, Maine
28	203 Application: Energy Harbor / Vistra (EC23-74)	Jun 23	Office of the Ohio Consumers' Counsel, NOPEC, PJM IMM file comments/protests
29	203 Application: Weaver Wind / Greenbacker (EC23-68)	May 12	FERC authorizes Greenbacker acquisition of Weaver Wind, making Weaver Wind, upon consummation, a Related Person to Howard Wind, Rox Wind and Hecate Energy
29	203 Application: Talen Energy Supply Reorganization (EC23-42)	May 22	TES notifies the FERC that the authorized transaction was consummated on May 17, 2023
* 29	IA Cancellation: NEP/TransCanada (ER23-2182)	Jun 14	NEP files notice of cancellation of IA with TransCanada superseded by SGIA with Great River Hydro; comment deadline <b>Jul 5, 2023</b>
* 29	D&E Agreement Cancellation: NSTAR/Medway Grid (ER23-2117)	Jun 12	NSTAR submits notice of cancellation of D&E Agreement; comment deadline <b>Jul 3, 2023</b>
* 30	Changes to Depreciation Rates in MPD OATT Formula Rate (ER23-2085)	Jun 7	Versant files a revised Attachment J to its MPD OATT to change certain depreciation rates in the MPD OATT Formula Rate; comment deadline <b>Jun 28, 2023</b>
* 30	LGIA: National Grid/Millennium Power (ER23-2065)	Jun 2	National Grid submits LGIA with Millennium Power to provide for continued interconnection service to Millennium's Facility
* 30	FOA: Generate NB Fuel Cells/FRPC, SBD, EIP (ER23-1979)	May 26	Generate submits modified Facilities Operating Agreement for a planned 20 MW fuel cell project on SBD's New Britain, CT manufacturing campus
* 30	Revised LSAs: NEP/ISO-NE/RIE (ER23-1831; ER23-1830)	May 4	ISO-NE and NEP file revisions to TSA-NEP-86 (ER23-1831) and NEP-SA 23 (ER23-1830) to ensure that provisions related to the Contract Termination Charges remain in effect
		May 8	RIE files doc-less interventions
31	LGIA: RIE / ISO-NE/Various Entities (ER23-1748, ER23-1741, ER23-1767)	May 8 Jun 21	National Grid intervenes FERC accepts LGIAs filed in ER23-1767 and ER23-1748, each eff. <i>Jan 1, 2023</i>
31	D&E Agreement: NSTAR/Vineyard Wind (ER23-1665)	Jun 13	FERC accepts amended D&E Agreement, eff. <i>Apr 21, 2023</i>
31	NSTAR/Commonwealth Wind D&E Agreement (ER23-1607)	Jun 1	FERC accepts D&E Agreement, eff. <i>Jun 11, 2023</i>
31	NSTAR/Ocean State Power RFA Termination (ER23-1606)	May 31	FERC accepts notice of termination, eff. <i>Apr 11, 2023</i>
32	D&E Agreement: PSNH/National Grid (ER23-1481)	May 22	FERC accepts D&E Agreement, eff. <i>Mar 29, 2023</i>
32	LGIA: CL&P/Generate NB Fuel Cells/ISO-NE (ER23-1479)	May 22	FERC accepts revised LGIA, eff. <i>Feb 23, 2023</i>
32	LSAs: RI Energy/ISO-NE/BIPCO (ER23-1000; ER23-1003)	May 22	RI Division files protest (ER23-1003)
* 33	VEC-HQUS Use Rights Transfer Agreement (NJ23-12)	Jun 7	VEC files for acceptance an Agreement with HQUS for the Transfer of Use Rights on the Phase I/II HVDC Transmission Facilities

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

- |      |   |                        |  |
|------|---|------------------------|--|
| * 33 | Interregional Transfer Capability<br>Transmission Planning & Cost<br>Allocation Requirements (AD23-3) | May 15                 | Comments filed by, among others: <a href="#">Advanced Energy United</a> ,<br><a href="#">Invenergy</a> , <a href="#">Vistra/NRG</a> , <a href="#">ACPA</a> , <a href="#">ACRE</a> , <a href="#">APPA</a> , <a href="#">ELCON</a> , <a href="#">NRECA</a> , <a href="#">Public<br/>Interest Orgs</a> , <a href="#">Eastern Interconnection Planning Collaborative</a> , <a href="#">US DOE</a> ;<br>reply comments due <b>Jun 28, 2023</b>  |
| 34   | Second New England Winter Gas-<br>Electric Forum (AD22-9)   | May 26<br>Jun 9-20     | FERC issues final agenda for Second NE Winter Gas-Electric Forum<br>Pre-Forum Comments and Position Statements filed by: ISO-NE ( <a href="#">Ltr</a> ,<br><a href="#">Opening Presentation</a> , <a href="#">Extreme Weather Risks</a> ), <a href="#">Constellation (Allen)</a> ,<br>Eversource ( <a href="#">Daly</a> , <a href="#">Divatia</a> ), <a href="#">NEPGA (Dolan)</a> , <a href="#">NextEra (Gardner)</a> , <a href="#">NHOCA</a> ,<br><a href="#">Vistra</a> , <a href="#">NERC/NPCC</a> , <a href="#">Excelerate</a> , <a href="#">Orsted (DiOrio)</a> , <a href="#">National Grid<br/>(Holodak)</a> , <a href="#">Enbridge</a> , <a href="#">Kinder Morgan</a> , <a href="#">Berkshire Environmental Action<br/>Team</a> , <a href="#">Repsol</a> .<br><br>Jun 20<br>Second NE Winter Gas-Electric Forum held in Portland, Maine<br>Comment deadline not yet established |
| 35   | Transmission Planning & Cost<br>Management Tech. Conf. (AD22-8)                                       | May 11-Jun 23<br>Jun 8 | <a href="#">WIRES</a> , <a href="#">AEP</a> , <a href="#">EEI</a> file reply comments<br><a href="#">CA Utilities</a> move to lodge CA PUC Final Resolution E-5252   |
| 37   | <i>Order 893</i> : Incentives for Advanced<br>Cybersecurity Investment<br>(RM22-19)                   | May 22<br>Jun 22       | NRECA requests clarification and/or rehearing of <i>Order 893</i><br>FERC issues <i>Order 893 Allegheny Notice</i> (confirming <i>Order 893</i> may be<br>deemed denied by operation of law)   |
| 39   | <i>Order 895</i> : ISO/RTO Credit<br>Information Sharing (RM22-13)                                    | Jun 15                 | FERC issues <i>Order 895</i> , amending its regulations to require ISO/RTOs<br>to have tariff provisions that permit credit-related information sharing<br>with other ISO/RTOs; <i>Order 895</i> to be eff. Aug 21, 2023   |
| 38   | <i>Order 897</i> : Extreme Weather<br>Vulnerability Assessments<br>(RM22-16; AD21-13)                 | Jun 15                 | FERC issues <i>Order 897</i> , directing transmission providers to file a one-<br>time info report describing their current/planned policies and<br>processes for conducting extreme weather vulnerability assessments   |
| 38   | NOPR: Interconnection Reforms<br>(RM22-14)  | Jun 8, 15              | R Street Institute, AES Clean Energy Development submit additional<br>comments   |
| 40   | NOPR: Transmission Siting (RM22-7)  | May 16 -17             | Comments filed by <a href="#">CLF</a> , <a href="#">AL PSC</a> , <a href="#">National Wildlife Federation Action<br/>Fund</a> , <a href="#">National Wild Life Federation and State-Affiliated Organizations</a> ,<br><a href="#">AEU</a> , <a href="#">CLF</a> , <a href="#">NESCOE</a> , <a href="#">ACPA</a> , <a href="#">ACRE</a> , <a href="#">Clean Energy Buyers<br/>Assoc.</a> , <a href="#">EDF</a> , <a href="#">EEI/WIRES</a> , <a href="#">Joint Consumer Advocates</a> , <a href="#">Public Interest<br/>Organizations</a> , <a href="#">SEIA</a> , and <a href="#">US Chamber of Commerce</a>   |

**XIII. FERC Enforcement Proceedings****Electric-Related Enforcement Actions**

- |      |                         |        |  |
|------|-------------------------|--------|--|
| * 42 | Leapfrog Power (IN23-7) | May 22 | FERC approves Stipulation and Consent Agreement that resolved OE's<br>investigation into Leapfrog's compliance with the CAISO Tariff section<br>requiring resources to make bids that they reasonably expect to be<br>able to fulfill between Feb 2019 and Aug 2019; Leapfrog must<br><b>disgorge \$46,120</b> and pay a <b>\$73,880 civil penalty</b> |
| * 42 | OhmConnect (IN23-6)     | May 22 | FERC approves Stipulation and Consent Agreement that resolved OE's<br>investigation into OhmConnect's compliance with its CAISO Tariff<br>Offer Requirement from Jan to Jun 2018; OhmConnect must <b>disgorge<br/>\$8,906</b> , pay a <b>\$141,094 civil penalty</b> , and submit at least one annual<br>compliance monitoring report                  |

* 43	Entergy Arkansas (IN23-5)	Jun 22	FERC approves Stipulation and Consent Agreement that resolved OE's investigation into whether Entergy AK, on four days in 2020, violated the MISO Tariff and the FERC's Unit Operation and Communications market behavior rules; Entergy AK must pay a <b>\$52,000 civil penalty</b> and submit at least two annual compliance monitoring reports
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**Natural Gas-Related Enforcement Actions**

43	Rover Pipeline, LLC and Energy Transfer Partners, L.P. (CPCN Show Cause Order) (IN19-4)	Jun 14	FERC issues an Order on Presiding Officer Reassignment
45	Total Gas & Power North America, Inc. et al. (IN12-17)	Jun 14	FERC issues an Order on Presiding Officer Reassignment

**XIV. Natural Gas Proceedings***No Activity to Report***XV. State Proceedings & Federal Legislative Proceedings***No Activity to Report***XVI. Federal Courts**

47	Seabrook Dispute Order (23-1094)	May 8	Initial submissions filed; FERC moves to hold case in Abeyance
		May 15	NextEra opposes Abeyance Motion
		May 18	FERC opposes NextEra motion to govern future proceedings
		May 22	FERC responds to NextEra's May 15 motion
		May 23	NextEra responds to FERC's May 22 motion
		May 25	Court grants Avangrid and NECEC Transmission intervention
		May 31	Court establishes briefing schedule
50	Northern Access Project (22-1233)	Jun 23	Court schedules oral argument for <b>Sep 18, 2023</b>

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

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

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

**DATE:** June 27, 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 June 24, 2023. If you have questions, please contact us.

### I. Complaints/Section 206 Proceedings

- **206 Proceeding: ISO Market Power Mitigation Rules (EL23-62)**

On May 5, 2023, the FERC instituted a Section 206 proceeding finding that the existing ISO-NE Tariff provisions related to the mechanics of its market power mitigation and the consideration of any proposed fuel price adjustment, may be unjust and unreasonable.<sup>2</sup> Accordingly, ISO-NE was directed, on or before July 4, 2023, 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.<sup>3</sup> The refund effective date for this proceeding will be May 12, 2023.<sup>4</sup> Interventions were due on or before May 26 and were filed by: NEPOOL, Calpine, Connecticut office of Consumer Counsel ("CT OCC"), Massachusetts ("MA") Attorney General ("MA AG"), New England Power Generators Association ("NEPGA"), New England States Committee On Electricity (NESCOE), Public Systems,<sup>5</sup> Electric Power Supply Association ("EPSA"), MA Department of Public Utilities ("MA DPU"), Maine Public Utilities Commission ("MPUC"), and Public Citizen.

- **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>6</sup> remains 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

<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> *Dynegy Marketing and Trade, LLC and ISO New England, Inc.*, 183 FERC ¶ 61,091 (May 5, 2023) ("*Dynegy Mitigation Order*").

<sup>3</sup> *Id.* at P 39.

<sup>4</sup> Notice of the 206 proceeding was published in the *Fed. Reg.* on May 12, 2023 (Vol. 88, No. 92) at pp. 30,738-30, 739.

<sup>5</sup> "Public Systems" for purposes of this proceeding are, collectively: the Connecticut Municipal Electric Energy Cooperative ("CMEEC"), Massachusetts Municipal Wholesale Electric Company ("MMWEC"), New Hampshire Electric Cooperative ("NHEC"), and Vermont Public Power Supply Authority ("VPPSA").

<sup>6</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.



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). Both of those dates have since passed.

Responses, comments and protests were filed in late January 2023 by [ISO-NE](#) (which alternatively moved to dismiss itself as a party ("[ISO-NE Jan 19 Motion](#)")), 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 ("RI Energy"), 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. In additional rounds of briefing, [RENEW](#) answered [ISO-NE's Jan 19 Motion](#); [RENEW](#), the [PTO AC](#), and [National Grid](#) filed answers to the January 23 protests/comments; ISO-NE answered RENEW's February 7 answer; and [CPV Towantic](#), [Glenvale](#), and the [MA AG](#) filed answers to the February 7 answers. There was no activity since the last Report. As noted, this matter remains 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; [mczepiel@daypitney.com](mailto:mczepiel@daypitney.com)).

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

Also still pending before the FERC is the Section 206 proceeding, instituted on July 28, 2022, in which the FERC found that the existing tariffs of certain ISO/RTOs, including the ISO-NE Tariff, appear to be unjust and unreasonable.<sup>7</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>8</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>9</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>10</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>11</sup> In the *FTR Collateral Show Cause Order*, the FERC stated that, although the record developed through the technical conference highlighted numerous different approaches to managing credit risk, "we believe that two specific practices may be particularly critical to effectively managing credit risk for FTRs: the use of a mark-to-auction

<sup>7</sup> *CAISO, ISO-NE, NYISO, and SPP*, 180 FERC ¶ 61,049 (July 28, 2022) ("*FTR Collateral Show Cause Order*").

<sup>8</sup> *Id.* at P 31.

<sup>9</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>10</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 Elec. Mkts.*, Docket No. AD20-6-000 (Dec. 16, 2019).

<sup>11</sup> See Supp. Notice of Tech. Conf., *RTO/ISO Credit Principles and Practices*, Docket No. AD21-6, et al. (Feb. 10, 2021).



mechanism and a volumetric minimum collateral requirement for FTRs.”<sup>12</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>13</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, MPUC, EPSA, PJM, SPP, Public Citizen, and Financial Marketers Coalition<sup>14</sup> (out-of-time).

**ISO-NE October 26, 2022 Response.** In its Answer in response to the *FTR Collateral Show Cause Order*, 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 Participant 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. As noted, this matter remains 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)**

On June 15, 2023, the FERC terminated this Section 206 proceeding.<sup>15</sup> As previously reported, this proceeding arose 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>16</sup> In the *Seabrook Dispute Allegheny Order*, the FERC, having determined that its findings in the *Seabrook Dispute Order*<sup>17</sup> that Seabrook must replace the breaker at Seabrook Station pursuant to the terms

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<sup>12</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>13</sup> The *Notice* was published in the *Fed. Reg.* on Aug 3, 2022 (Vol. 87, No. 148) p. 47,409.

<sup>14</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>15</sup> *NextEra Energy Seabrook, LLC et al.*, 183 FERC ¶ 61,196 (June 15, 2023) (“*Seabrook Dispute Allegheny Order*”).

<sup>16</sup> *NECEC Transmission LLC and Avangrid, Inc. v. NextEra Energy Resources, LLC et al. and ISO New England Inc.*, 176 FERC ¶ 61,148 at P 20 (Sep. 7, 2021) (“*Sep 7 Order*”).

<sup>17</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*”), *reh’g denied by operation of law*, *NextEra Energy Seabrook, LLC et al.*, 183 FERC ¶ 62,001 (Apr. 3, 2023) (“*Seabrook Dispute Allegheny Notice*”).

of its LGIA rendered the FPA section 206 investigation moot, closed the FPA section 206 investigation.<sup>18</sup> 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>19</sup> and (“Seabrook Declaratory Order Petition”) (EL21-3)<sup>20</sup>**

As previously reported, the FERC issued a single order addressing these two proceedings on February 1, 2023.<sup>21</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>22</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>23</sup> With respect to cost issues, the FERC 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>24</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>25</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>26</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>27</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>28</sup>

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<sup>18</sup> *Seabrook Dispute Allegheny Order* at P 50.

<sup>19</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>20</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>21</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*”), *reh’g denied by operation of law*, *NextEra Energy Seabrook, LLC et al.*, 183 FERC ¶ 62,001 (Apr. 3, 2023) (“*Seabrook Dispute Allegheny Notice*”).

<sup>22</sup> *Id.* at P 74.

<sup>23</sup> *Id.*

<sup>24</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>25</sup> *Id.* at P 112.

<sup>26</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>27</sup> Amended E&P Agreement, Art. VI, Docket No. ER22-2807-000 (filed Sept. 7, 2022).

<sup>28</sup> *Id.* at P 88.

**Denied By Operation of Law: NextEra Request for Rehearing, Avangrid Request for Clarification.** As previously reported, NextEra requested 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; Avangrid similarly sought clarification of the basis for FERC's jurisdiction. On April 3, 2023, the FERC issued a "Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration".<sup>29</sup> The *Seabrook Dispute Allegheny 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* within the required 30-day period. 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." The FERC also did not act on Avangrid's request for clarification which, like NextEra's request for rehearing, can be deemed denied by operation of law. The *Seabrook Dispute Order* was appealed to the DC Circuit (see Section XVI below for further developments in that appeal).

**Seabrook Dispute Allegheny Order.** On June 15, 2023, the FERC issued an order<sup>30</sup> addressing Seabrook's request for rehearing. In the *Seabrook Dispute Allegheny Order*, the FERC modified the discussion in the *Seabrook Dispute Order* and continued to reach the same result.<sup>31</sup> Specifically, the FERC continued to find that, pursuant to the terms of the Seabrook LGIA (an Agreement over which the FERC has jurisdiction), Seabrook must replace the breaker (at Avangrid's expense) because it is needed for reliable operation of Seabrook Station and required by Good Utility Practice.<sup>32</sup> The FERC also continued to find that Seabrook is not entitled to reimbursement of the potential opportunity and legal costs associated with the breaker replacement (foregone revenues associated with the breaker replacement here "reflect the ordinary cost of doing business"). The FERC read the ISO-NE Tariff to limit Avangrid's cost responsibility to the direct costs of any required upgrades (in this case, the circuit breaker replacement). Under the applicable Tariff provisions, the FERC did not find legal costs or station power costs breaker replacement costs.<sup>33</sup> As summarized in Section XVI below, NextEra petitioned the DC Circuit on April 4, 2023 for review of the *Seabrook Dispute Order*. 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>34</sup> set the TOs' Base ROE at 10.57% (reduced from 11.14%), capped the TOs' total ROE (Base ROE *plus* transmission incentive adders) at 11.74%, and required implementation effective as of October 16, 2014 (the date of *Opinion 531-A*).<sup>35</sup> However, the FERC's orders were challenged, and in *Emera Maine*,<sup>36</sup> the U.S. Court of

<sup>29</sup> *NextEra Energy Seabrook, LLC et al.*, 183 FERC ¶ 62,001 (Apr. 3, 2023) ("*Seabrook Dispute Allegheny Notice*").

<sup>30</sup> *Id.*

<sup>31</sup> *Seabrook Dispute Allegheny Order* at p 2.

<sup>32</sup> *Id.* at P 17.

<sup>33</sup> *Id.* at PP 37-39

<sup>34</sup> The TOs' 11.14% pre-existing Base ROE was established in *Opinion 489*. *Bangor Hydro-Elec. Co.*, Opinion No. 489, 117 FERC ¶ 61,129 (2006), *order on reh'g*, 122 FERC ¶ 61,265 (2008), *order granting clarif.*, 124 FERC ¶ 61,136 (2008), *aff'd sub nom.*, Conn. Dep't of Pub. Util. Control v. FERC, 593 F.3d 30 (D.C. Cir. 2010) ("*Opinion 489*").

<sup>35</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>36</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

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>37</sup> and third (EL14-86)<sup>38</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>39</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>40</sup> also went to hearing before an Administrative Law Judge (“ALJ”), Judge Glazer, who issued his initial decision on March 27, 2017.<sup>41</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>42</sup> Parties in this proceeding filed briefs on exception to the FERC, which has not yet issued an opinion on the *Base ROE IV Initial Decision*.

**October 16, 2018 Order Proposing Methodology for Addressing ROE Issues Remanded in Emera Maine and Directing Briefs.** On October 16, 2018, the FERC, addressing the issues that were remanded in *Emera Maine*, proposed a new methodology for determining whether an existing ROE remains just and reasonable.<sup>43</sup> The FERC indicated its intention that the methodology be its policy going forward, including in

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(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>37</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>38</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>39</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>40</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>41</sup> *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 162 FERC ¶ 63,026 (Mar. 27, 2018) (“Base ROE Complaint IV Initial Decision”).

<sup>42</sup> *Id.* at P 2.; Finding of Fact (B).

<sup>43</sup> *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (Oct. 18, 2018) (“Order Directing Briefs” or “Coakley”).

the four currently pending New England proceedings (*see, however, Opinion 569-A*<sup>44</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>45</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>46</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 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>47</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,

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<sup>44</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>45</sup> *Id.* at P 19.

<sup>46</sup> *Id.* at P 59.

<sup>47</sup> For purposes of the motion seeking clarification, “Customers” are CT PURA, MA AG and EMCOS.

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>48</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

- **CSC CIP-IROL (Schedule 17) Section 205 Cost Recovery Filing (ER23-1826)**

On May 4, 2023, Cross-Sound Cable (“CSC”) requested FERC acceptance of its revised rate schedule to allow recovery eligible medium-impact Interconnection Reliability Operating Limits (IROL) critical infrastructure protection (CIP) costs (IROL-CIP Costs) under Schedule 17 of the ISO-NE Tariff, effective July 4, 2023. CSC seeks to recover \$723,601 of incremental medium impact CIP-IROL Costs incurred between June 1, 2021 and December 31, 2022. Comments on CSC’s request were due on May 25; none were filed. Doc-less interventions were filed by NEPOOL, National Grid and NESCOE. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **BHD Regulatory Asset - Establishment & Recovery Through Rates (ER23-1598)**

On April 7, 2023, Versant Power requested authorization to (i) establish a regulatory asset for the Bangor Hydro District (“BHD”) totaling \$15,622,081 in capitalized regulatory overhead costs (identified in a recent FERC audit as incorrectly allocated as construction costs) as of January 1, 2024, and amortize this asset over a period of 16 years on a straight-line basis beginning January 1, 2024, subject to FERC approval; and (ii) recover as an expense in transmission rates under the ISO-NE OATT a return of the unamortized balance of the regulatory asset effective January 1, 2026 and continuing for 16 years. Comments on Versant’s request were due on or before April 28, 2023. On May 3, the MPUC moved to intervene out-of-time and protest. In its protest, the MPUC requested that Versant be required to refund retail customers for the improper collection of “Allocation of Overhead Costs to Construction Work in Progress” and to provide additional detail regarding the amounts included. On May 5, 2023, Versant answered the MPUC protest.

***Deficiency Letter.*** On June 5, 2023, the FERC issued a deficiency letter directing Versant to provide additional information related to inputs to Filing Exhibits 1 and 2, which support the amount of the proposed regulatory asset. Specifically, Versant was directed to provide “all records that Versant provided to Commission audit staff in Docket No. FA20-9-000 related to the proposed regulatory asset and explain how these records support the instant filing”. Versant’s responses to the Deficiency Letter will constitute and must be filed as an amendment to its filing (re-setting the filing date and deadline for FERC action). Versant’s response, which is due on or before **July 5, 2023**, will be publicly noticed upon receipt.

<sup>48</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).



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

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

The results of the seventeenth FCA (“FCA17”) held March 6, 2023 for the June 1, 2026 - May 31, 2027 Capacity Commitment Period (“CCP”) remain pending before the FERC. In its March 21, 2023 filing, 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>49</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.

ISO-NE asked the FERC to accept the FCA17 rates and results, effective July 19, 2023. Comments on this filing were due on or before May 5, 2023. NEPOOL, Calpine, Constellation, Dominion, National Grid, NESCOE, EPSA, No Coal No Gas, and Public Citizen filed doc-less interventions. No Coal No Gas submitted comments on May 3. Individual comments were filed by numerous members of the public (generally critical of process that permits continued assignment of Capacity Supply Obligations (“CSOs”) to fossil-fueled resources). On May 11, No Coal No Gas submitted a report on its comment initiative opposing the FCA17 Results Filing (identifying the 424 individuals and 5 organizations that submitted comments in ER23-1435; 163 comments directly, 289 indirectly). Subsequently, on May 22, 2023, ISO-NE filed an answer to the individual comments protesting the result of the FCA17 and urged the FERC to reject the protests as challenges to the FCM market design, and thereby outside the scope of this proceeding. No Coal No Gas answered ISO-NE’s May 22 answer on June 9, 2023. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; [rgarza@daypitney.com](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 May 5, 2023, the FERC granted in part, and denied in part, the March 6, 2023 request by Dynegy Marketing and Trade, LLC (“Dynegy”), pursuant to § 15 of Appendix A to Market Rule 1, for recovery of \$903,400 in unrecovered costs (upward price mitigation and downward price mitigation) incurred because Dynegy’s Resources were subject to General Threshold Energy Mitigation on December 24, 2022 during Winter Storm Elliott.<sup>50</sup> Specifically, the FERC granted Dynegy recovery of its costs related to *downward* price mitigation and to the regulatory costs incurred in connection with the cost recovery filing, subject to a

<sup>49</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.

<sup>50</sup> *Dynegy Mitigation Order (see note 2 supra)*.

compliance filing detailing the actual regulatory costs within 60 days. However, the FERC, while sympathetic to the arguments made by Dynegy and NEPGA related, denied *upward* price mitigation-related cost recovery, concluding that interpreting the Tariff to allow recovery of costs due to upward mitigation would read out the requirement that the section 205 cost recovery filing state why “actual costs exceeded Reference Levels.”<sup>51</sup> As summarized in Section I above, the FERC found in the *Dynegy Mitigation Order* that ISO-NE’s existing Tariff provisions related to the mechanics of its market power mitigation and the consideration of any proposed fuel price adjustment, may be unjust and unreasonable, and initiated a section 206 proceeding (Docket No. EL23-62), directing ISO-NE to show cause as to why its Tariff is remains just and reasonable and not unduly discriminatory or preferential or propose revisions to its Tariff.

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>52</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 (“COSA”) to reflect Mystic’s current upstream ownership.<sup>53</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>54</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 recovery costs associated with lump sum payments to employees who retire in 2021 and 2022.<sup>55</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 (ER18-1639)**

**Mystic I Remand.** As previously reported, the DC Circuit issued a decision on August 23, 2022<sup>56</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;

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<sup>51</sup> *Id.* at P 31.

<sup>52</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>53</sup> *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,081 (May 2, 2022) (“May 2, 2022 Order”).

<sup>54</sup> *Constellation Mystic Power, LLC*, 181 FERC ¶ 61,099 (Nov. 2, 2022).

<sup>55</sup> *Vermont Transco LLC*, Docket No. ER21-2627 (Sep. 22, 2021) (unpublished letter order).

<sup>56</sup> *Constellation Mystic Power, LLC v. FERC*, 45 F.4th 1028 (D.C. Cir. 2022) (“Mystic I Remand Order”).

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*.

**Public Systems' Request for Disclosure of Audit Information.** On May 19, 2023, Public Systems<sup>57</sup> requested that the FERC direct ISO-NE to release additional information concerning ISO-NE's audit of performance under Mystic COSA ("Audit Information Request"). Public Systems assert that ISO-NE has released almost no information concerning the audits or the bases for their conclusions that Mystic's performance is consistent with its obligations under the COSA. Answers to Public Systems' Audit Information Request were filed by **Mystic** (opposing the Audit Information Request), **ISO-NE** (which proposed, in addition to the summary of COSA-related audits that ISO-NE posted shortly after Public Systems filed the Request, to make available redacted versions of the FSA audit reports, prepare a narrative of its meetings with Mystic and CLNG regarding the fuel supply plan, and make a member of Levitan & Associates' audit team available to answer questions on three occasions over the remainder of the COSA's term) and **CT Parties** (urging the FERC to grant the Audit Information Request).

**(-024) Mystic Request for Rehearing of Mystic I Order on Remand.** On April 27, 2023, Mystic requested rehearing and/or clarification of the March 28, 2023 *Mystic I Order on Remand*.<sup>58</sup> Mystic asserted that (a) the FERC should have considered and rejected NESCOE's arguments about "trueing up" and challenging the Revenue Credit; (b) the Tank Congestion Charge and the calculation of the Forward Sales Margin credited to Mystic and its ratepayers should not be included in the true-up process; and (c) if the FERC does not grant rehearing on (a) or (b), in the alternative, it should clarify that the scope of review during the true-up for Revenue Credits and the Forward Sale Margin Shared with Mystic is not a prudence review and does not require disclosure of granular, unmasked transaction data. On May 12, ENECOS answered Mystic and urged the FERC to require that Mystic submit full data on its Revenue Credit and sliding-scale revenue sharing calculations in the Information Exchange and Challenge procedure under Schedule 3A to the COSA. On May 15, ISO-NE filed limited comments to provide the FERC with further information and to note that should the Commission allow interested parties to review Mystic's revenue credits during the true-up process, the review should be facilitated by Mystic. ISO-NE stated that the data involved in the calculation of Mystic's revenue credits are confidential under ISO-NE's Information Policy but Mystic is provided with the necessary data to calculate the revenue credits. On May 25, 2023, Mystic moved to lodge ISO-NE's May 25, 2023 Audit Controls Memorandum to provide the FERC with a more complete description of the various controls and audits that apply to the Mystic COSA.

**Request for Rehearing Denied by Operation of Law.** On May 30, 2023, the FERC issued a "Notice of Denial of Rehearings by Operation of Law and Providing for Further Consideration".<sup>59</sup> The Notice confirmed that the 60-day period during which a petition for review of the *Mystic I Order on Remand* can be filed with an appropriate federal court was triggered when the FERC did not act on Mystic's request for clarification and/or rehearing of the *Mystic I Order on Remand*. The Notice also indicated that the FERC may address, as is its right, the 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."

<sup>57</sup> "Public Systems" for these purposes are: MMWEC, CMEEC, NHEC, VPPSA, the Eastern New England Consumer-Owned Systems ("ENECOS"), and Energy New England, LLC ("ENE").

<sup>58</sup> *Constellation Mystic Power, LLC*, 182 FERC ¶ 61,200 (Mar. 28, 2023) ("*Mystic I Order on Remand*"), *reh'g denied by operation of law*, 183 FERC ¶ 62,115 (May 30, 2023). In the *Mystic I Order on Remand*, the FERC (1) found the initial allocation of 91% of Everett's fixed operating costs to Mystic remains just and reasonable and required that the revenue sharing mechanism be reinstated in the COSA; (2) held its ruling on the clawback issue in abeyance pending resolution in the settlement proceeding; (3) found that the existing language of the COSA mitigates the incentive to unduly delay capital projects; and (4) clarified 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 (see -023).

<sup>59</sup> *Constellation Mystic Power, LLC*, 183 FERC ¶ 62,115 (May 30, 2023) ("*Mystic I Order on Remand Allegheny Notice*").

**(-023) 30-Day Compliance Filing (Revised COSA).** As directed in the *Mystic I Order on Remand*, Mystic filed, on April 27, 2023, an amended COSA to reinstate the previous revenue sharing mechanism. An effective date of June 1, 2022 was requested. Comments on the 30-Day Compliance Filing were due on or before May 18, 2023; none were filed. The 30-Day Compliance Filing is pending before the FERC.

**(-022) First CapEx Info. Filing Settlement Agreement Interim Rate Implementation.** As previously reported, on March 27, 2023, Acting Chief ALJ Satten granted Mystic's 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>60</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>61</sup> and set for hearing in the April 28, 2023 *Mystic First CapEx Info. Filing Order* ("Settlement Agreement").<sup>62</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 and filed by ENECOS, CT PURA, FERC Trial Staff, MA AG, NESCOE, and National Grid. Reply comments were filed on April 14, 2023 by Mystic and State Settling Parties.<sup>63</sup> Since the last Report, Settlement Judge McBarnette issued her Settlement Report,<sup>64</sup> and Acting Chief ALJ Satten terminated settlement judge procedures, subject to final action by the Commission. The Settlement Agreement is pending before the Commission.

**(-018) Second CapEx Info Filing.** Still pending is Mystic's September 15, 2022 "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. 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

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<sup>60</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>61</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>62</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).

<sup>63</sup> The "State Settling Parties" are, collectively, the Connecticut Department of Energy and Environmental Protection ("CT DEEP"), the Connecticut Public Utilities Regulatory Authority ("CT PURA"), and CT OCC (the "CT Parties"); the Attorney General of the Commonwealth of Massachusetts ("MA AG"); and the New England States Committee on Electricity ("NESCOE").

<sup>64</sup> *Constellation Mystic Power, LLC*, 183 FERC ¶ 63,026 (June 2, 2023). The Settlement Report included the Mar. 15 Settlement, Initial Comments, and all pleadings, orders, and other documents of record in this proceeding.

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.** Also still pending is Mystic's December 20, 2021 filing in response to the requirements of the *Mystic ROE Allegheny Order*.<sup>65</sup> 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>66</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.

**30-Day Compliance Filing per Order on ENECOS Mystic COSA Complaint (ER23-1735).** On April 27, 2023, Mystic filed, as directed by the FERC's March 28, 2023 *Order on ENECOS Mystic COSA Complaint*,<sup>67</sup> changes to the Mystic COSA to include pipeline-related crediting as an explicit provision in the COSA. Mystic also provided additional information/COSA changes to (i) describe the crediting process; (ii) 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; (iii) address how and whether the pipeline-related crediting procedure interacts or should interact with the true-up procedure already included in the COSA and revise the true-up as necessary; and (iv) differentiate in the COSA the Pipeline Transportation Costs as Fixed O&M/Return on Investment Costs from the Pipeline Transportation Agreement Costs. Comments on the 30-day compliance filing were due on or before May 18, 2023; none were filed. Doc-less motions to intervene were filed by ISO-NE and Monitoring Analytics, LLC. This 30-day compliance filing is pending before the FERC.

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)**

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 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>68</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

<sup>65</sup> An "Allegheny Order" is a merits rehearing order issued on or after the 31st day after receipt of a rehearing request, reflecting the FERC's authority to "modify or set aside, in whole or in part," its order until it files the record on appeal with a reviewing federal court. An Allegheny Order will use "modifying the discussion" if the FERC is providing a further explanation, but is not changing the outcome, of the underlying order; or "set aside" if the FERC is changing the outcome of the underlying order. Aggrieved parties have 60 days after a deemed denial to file a review petition, even if FERC has announced its intention to issue a further merits order.

<sup>66</sup> *Constellation Mystic Power, LLC*, 182 FERC ¶ 61,181 (Mar. 20, 2023).

<sup>67</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", which denied in part, and accepted in part, ENECOS' Complaint against Mystic and ISO-NE challenging the pass-through of firm pipeline transportation costs under the 2nd Amended and Restated Mystic COSA).

<sup>68</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").

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. Subsequently, on April 14, Eversource answered RENEW’s March 31 answer. There was no activity since the last Report. 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)).

- **ISO Securities: Authorization for Future Drawdowns (ES23-41)**

On May 26, 2023, the FERC authorized continued ISO-NE drawdowns under its \$20 million Revolving Credit Line and \$4 million line of credit supporting the Payment Default Shortfall Fund,<sup>69</sup> each of which are with TD Bank and are for a term of three years ending June 30, 2024.<sup>70</sup> The authorization is effective from May 30, 2023 through May 29, 2023 (the maximum allowable period under FERC regulations, though the authorization for new credit lines will have to be requested again next year). Unless the *2023 Order* is

<sup>69</sup> *ISO New England Inc.*, 183 FERC ¶ 62,113 (May 26, 2022) (“*2023 Order*”) (continuing authorization through May 29, 2025).

<sup>70</sup> See *ISO New England Inc.*, 139 FERC ¶ 62,248 (June 22, 2012) (initially authorizing borrowings through June 30, 2014); *ISO New England Inc.*, 147 FERC ¶ 62,091 (May 6, 2014) (continuing authorization through June 30, 2015); *ISO New England Inc.*, 151 FERC ¶ 62,185 (June 15, 2015) (continuing authorization through June 30, 2017); *ISO New England Inc.*, 159 FERC ¶ 62,143 (May 9, 2017) (continuing authorization through June 30, 2019); *ISO New England Inc.*, 163 FERC ¶ 62,144 (June 1, 2018) (continuing authorization through May 31, 2020); *ISO New England Inc.*, 172 FERC ¶ 62,017 (July 13, 2020) (“*2020 Order*”) (continuing authorization through July 12, 2022); *ISO New England Inc.*, 175 FERC ¶ 62,084 (May 12, 2021) (“*2021 Order*”) (continuing authorization through May 31, 2023).



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)).

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

- **IEP Parameter Updates (ER23-1588)**

On April 7, 2023, ISO-NE and NEPOOL filed proposed revisions to Appendix K to Market Rule 1 to update certain parameters within the Inventoried Energy Program (“IEP Parameter Updates”). Specifically, the IEP Parameter Updates (i) move from a fixed rate to an indexed rate, which provides for automatic adjustments to account for changes in gas markets prior to each winter period, (ii) include modifications to natural gas contracting requirements to align the IEP more closely with common industry and commercial practices and the nature of firm pipeline service available in New England; and (iii) included changes to provide clarity and improve the administration of the IEP. A June 6, 2023 effective date was requested. The IEP Parameter Updates were supported by the Participants Committee at its April 6, 2023 meeting. Comments on the IEP Parameter Updates were due by April 28, 2023. Comments supporting the Updates were filed by [Indicated Suppliers](#).<sup>71</sup> [Consumer Advocates](#)<sup>72</sup> and [Sierra Club/CLF/UCS](#) protested the Updates (challenging the costs and basis for the IEP as updated). Doc-less motions to intervene only were filed by Calpine, Constellation, Eversource, National Grid, Public Systems,<sup>73</sup> the MA DPU, and Public Citizen (following the Deficiency Letter response). On May 12, Senator Blumenthal (D-CT) filed a response to the IEP Parameter Updates encouraging the FERC to thoroughly review the justification and indexing formulas when assessing if the proposal is just and reasonable. On May 15, both [NEPOOL](#) and [ISO-NE](#) filed answers to the protests, noting that the costs and basis for updates are reasonable and were supported by NEPOOL Participants through the stakeholder process. On May 26, [Consumer Advocates](#) and [Sierra Club/CLF/UCS](#) filed answers to ISO-NE and NEPOOL’s May 15 answers.

**Deficiency Letter; Response (-001).** On May 25, 2023, the FERC issued a deficiency letter requesting ISO-NE provide “any quantitative studies, liquidity analysis, work papers, and any other information used to support the choice of financial product and July 17 to July 31 measurement period.” ISO-NE filed its response to the Deficiency Letter on June 9, 2023, re-setting the filing date and deadline for FERC action. Comments on the Deficiency Letter response are due on or before **June 30, 2023**.

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: Advanced Energy United (“[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

<sup>71</sup> “Indicated Suppliers” are CPV Towantic LLC, Eastern Generation LLC, JERA Americas Inc., and Vistra Corp.

<sup>72</sup> “Consumer Advocates” are the MA AG, CT OCC, NH OCA, and the Maine OPA.

<sup>73</sup> “Public Systems” for purposes of this proceeding are CMEEC, MMWEC, NHEC, and VPPSA.

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.

**Deficiency Letter; Response (-001).** On May 15, 2023, FERC staff issued a deficiency letter requiring additional information to be submitted on or before June 14, 2023. ISO-NE filed its response to the Deficiency Letter in this proceeding on June 14, 2023, re-setting the filing date and deadline for FERC action. Comments on the Deficiency Letter response are due on or before **July 5, 2023**.

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>74</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>75</sup> ("*Order 2222 Compliance Order*").<sup>76</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 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 DECR compliance filing (ER22-983-003) were due on or before April 21, 2023; none were filed. The March 31 informational filing was not noticed for public comment. The DECR compliance filing is pending before the FERC.
- **60-Day Compliance Filing (-004).** In a 60-day compliance filing, 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

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<sup>74</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>75</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>76</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 182 FERC ¶ 61,137 (Mar. 1, 2023).

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.

The 60-day compliance changes were filed on May 9, 2023, except for the requirement related to the submission of metering data, which is the subject of an ISO-NE rehearing request. Comments on the 60-day compliance filing were due on May 30, 2023 and were filed by NEPOOL (supplementing the record) and jointly by AEU/PowerOptions/SEIA (who jointly protested what they assert is a failure to make any adjustments to facilitate participation by DERs located behind a customer meter, and failing to justify the metering and telemetry provisions as directed by the FERC). On June 14, 2023, ISO-NE answered the May 30 protest of AEU *et al.* The 60-day compliance changes are pending before the FERC.

- **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>77</sup> requested rehearing and/or clarification of the *Order 2222 Compliance Order*. **ISO-NE** urged the FERC to reconsider allowing DECRs to participate in FCA18 and designating the DER Aggregator as the entity responsible for transmitting DERA metering data. **New England Public Utilities** urged 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. On April 14, 2023, **MA AG** answered New England Public Utilities’ request for rehearing and clarification and requested that the FERC address the recovery of costs necessary to implement Behind-the-Meter DER submetering and the allocation of costs to DER aggregators and program participants. On April 17, **AEU** answered ISO-NE’s request for rehearing (urging the FERC to not reconsider its decision designating the DER Aggregator as the entity responsible for transmitting DERA metering data); ISO-NE answered the AEU answer on May 2, 2023. Answers to ISO-NE’s March 31 request for rehearing were filed by May 5 by the **MPUC** (urging the FERC to consider ISO-NE’s request to allow PTOs and distribution utilities to meter and transmit DERA data) and May 22 by NECPUC (who also supported ISO-NE’s request regarding the entity responsible for transmitting DERA metering data to ISO-NE).

<sup>77</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”).

**Order 2222 Compliance Allegheny Notice.** On May 1, 2023, the FERC issued a “Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration”.<sup>78</sup> That Notice confirmed that the 60-day period during which a petition for review of the *Order 2222 Compliance Order* can be filed with an appropriate federal court was triggered when the FERC did not act on the requests for rehearing and/or clarification of the *Order 2222 Compliance Order*. The Notice also indicated that the FERC would address, as is its right, the rehearing request in a future order, and may modify or set aside its order, in whole or in part, “in such manner as it shall deem proper.”

If you have any questions concerning this 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)).

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

- **Order 676-J Compliance Filings Part II (ER23-1771; ER23-1774; ER23-1782; ER23-1785)**

On May 1, 2023, in accordance with Order 676-J,<sup>79</sup> the following second *Order 676-J* compliance filings to incorporate, or seek waiver of, the remainder of the WEQ Version 003.3 Standards, were submitted:

- ♦ Order 676-J Compliance Filing Part II (ISO-NE and NEPOOL-Tariff Schedule 24) (ER23-1771);
- ♦ Order 676-J Compliance Filing Part II (CSC-Schedule 18-Attachment Z) (ER23-1774);
- ♦ Order 676-J Compliance Filing Part II (Versant-MPD OATT) (ER23-1782); and
- ♦ Order 676-J Compliance Filing Part II (TOs'-Schedules 20A-Common and 21-Common) (ER23-1785).

Comments on the compliance filings were due on or before **May 22, 2023**; none were filed. These compliance filings are pending before the FERC. If there are questions on any of these filings, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

- **CNRIS Time-Out Rules Removal (ER23-1581)**

On June 5, 2023, the FERC accepted revisions to the OATT to remove the Capacity Network Resource Interconnection Service (“CNRIS”) time-out rules from Section 4.4 of Schedules 22 and 25 and from Section 1.5.5 of Schedule 23 for Queue Positions that have not timed-out (in whole or part) by FCA17.<sup>80</sup> As previously reported, the time-out rules will not apply to Interconnection Requests for CNRIS deemed valid after May 31, 2020 (because these resources have not yet timed out). Resources that did not acquire a CSO in FCA17 (or in earlier FCAs) timed-out and will need to submit a new Interconnection Request to re-establish CNRIS, but, going forward for FCAs 18 and after, Interconnection Requests for CNRIS will no longer time-out if they do not acquire a CSO in the FCA. The CNRIS changes were accepted effective as of June 6, 2023. Unless the June 5 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)).

<sup>78</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 183 FERC ¶ 62,050 (May 1, 2023) (“*Order 2222 Compliance Allegheny Notice*”).

<sup>79</sup> *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-J, 175 FERC ¶ 61,139 (May 20, 2021) (“*Order 676-J*”).

<sup>80</sup> *ISO New England Inc.*, 183 FERC ¶ 61,160 (June 5, 2023) (“*CNRIS Order*”).

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

On June 15, 2023, the FERC conditionally accepted<sup>81</sup> the two-part Phase I/II HVDC-TF *Order 881* (Managing Transmission Line Ratings) compliance filing filed by: ISO-NE, the Asset Owners,<sup>82</sup> and the Schedule 20A Service Providers.<sup>83</sup> As previously reported, the compliance 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”). The Phase I/II HVDC-TF *Order 881* Compliance Filing was accepted effective as of **July 12, 2025**, subject to a compliance filing, due on or before **November 12, 2024**, that explains the timelines for calculating or submitting ambient-adjusted ratings (“AARs”). Challenges, if any, to the *Phase I/II HVDC-TF Order 881 Compliance Order* are due on or before **July 17, 2023**. 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)**

Also on June 15, 2023, the FERC conditionally accepted the proposed revisions to the OATT in response to the requirements of *Order 881*<sup>84</sup> (“OATT *Order 881* Compliance Changes”). As previously reported, the Filing Parties<sup>85</sup> 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 OATT *Order 881* Compliance Changes were accepted effective as of **July 12, 2025**, subject to two compliance filings – one due on or before **August 14, 2023** (60-day compliance filing); the other, **November 12, 2024** (the AAR explanation filing). The 60-day compliance filing must (i) revise the Tariff to specify that transmission service at ISO-NE’s seams use AARs as the basis for evaluation for near-term transmission service requests (or explain why ISO-NE should not be required to do so); (ii) revise the Tariff to include the examples listed in the FERC’s *pro forma* Attachment M (or explain why ISO-NE should not be required to do so); (iii) remove proposed revisions to Schedule 18 excepting the Cross-Sound Cable from the requirements of *Order 881* (or explain why such changes should not be required); and (iv) revise the Tariff to require ISO-NE in a database that it maintains (rather than dividing responsibility between ISO-NE and transmission owners) to host all transmission line ratings, ratings methodologies, and exceptions or alternate ratings (or explain why they should not be required to do so). The AAR explanation filing must explain the timelines for calculating or submitting AARs. Challenges, if any, to the *OATT Order 881 Compliance Order* are due on or before **July 17, 2023**. 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

<sup>81</sup> *ISO New England Inc.*, 183 FERC ¶ 61,179 (June 15, 2023) (“Phase I/II HVDC-TF *Order 881* Compliance Order”).

<sup>82</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”).

<sup>83</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>84</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*”).

<sup>85</sup> As previously reported, the “Filing Parties” were ISO-NE, NEPOOL, the PTO AC, and CSC.



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

- **Schedule 21-VP: Real Power Loss Factor Charge (ER23-2142)**

On June 15, 2023, Versant Power filed a revised Schedule 21-VP to reflect a change in the Real Power Loss factor for Local Point-to-Point Service from 1.99 % to 1.764 %, as reflected in a recently-completed study of real power losses on its transmission and distribution systems included with this filing. The study found that, for the study period, real power losses on Versant Power's BHD transmission system were 1.764%, and Versant proposes to change that factor set forth in Section 11.2 accordingly. Versant requested that the revised Schedule 21-VP reflecting this change be accepted for filing effective *September 1, 2023*. Comments on the revised Schedule 21-VP are due on or before **July 6, 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: Versant/Black Bear LSAs (ER23-2035)**

On June 1, 2023, Versant Power filed seven fully executed, non-conforming Local Service Agreements ("LSAs") by and among Versant Power, ISO-NE and Black Bear Hydro Partners, LLC or Black Bear SO, LLC (together with Black Bear Hydro Partners, "Black Bear"). The service agreements are based on the Form of Local Service Agreement contained in Schedule 21-Common under the ISO-NE OATT, but are being filed because they are non-conforming insofar as they reflect different rates from those set forth in Schedule 21-VP. Versant requested that the LSAs be accepted for filing effective January 1, 2021 (the day after the prior LSAs expired, though filed within 40 days of full execution). Comments on the LSAs were due on or before June 22; 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).

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

On June 12, 2023, the FERC accepted a non-conforming Small Generation Interconnection Agreement ("SGIA") between NEP and 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.<sup>86</sup> The SGIA was accepted effective as of *December 19, 2022*, as requested. Unless the June 12 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).

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

- **RTO/ISO Common Performance Metrics (AD19-16)**

On April 24, 2023, ISO-NE submitted its FERC Form-922 (RTO/ISO Common Performance Metrics) for the 2019-2022 period. Form 922 helps the FERC track the performance of the RTO/ISOs via information responses related to 29 metrics organized into 3 groups: (1) Administrative and Descriptive Metrics; (2) Energy Market Metrics; and, where applicable, (3) Capacity Market Metrics. ISO-NE's submittal was not noticed for public comment and no comments on the report were submitted. Reporting on this matter is now concluded.

<sup>86</sup> *New England Power Co.*, Docket No. ER23-888-001 (June 12, 2023) (unpublished letter order).



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

The following refund reports filed in response to *Opinions No. 531-A*<sup>87</sup> and *531-B*<sup>88</sup> remain pending:

- ♦ The TOs' November 2, 2015 regional refund report;
- ♦ The TOs'<sup>89</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 - 2023 Q1 (ER23-1875)**

On May 12, 2023, ISO-NE filed its Capital Projects Report and Unamortized Cost Schedule covering the first quarter ("Q1") of calendar year 2023 (the "Report"). ISO-NE is required to file the Report under Section 205 of the FPA pursuant to Section IV.B.6.2 of the Tariff. Report highlights included the following new projects: (i) Web to Cloud Migration (\$2.76 million); (ii) Inventoried Energy Program (\$877,900); (iii) 2023 Issue Resolution Project (\$875,200); (iv) Process Information Modeler (\$855,200); (v) Replacement of Regulation Clearing Price Monitor (\$545,800); (vi) Settlement Technology Improvements Project (\$542,500); (vii) Integrated Market Simulator Phase III (\$258,600); and (viii) Financial Assurance Management Infrastructure Conversion (\$258,500). ISO-NE reported significant change for (i) nGEM Software Development Phase III (a decrease of \$500,000 for a total project cost of \$1 million); (2) Forecast Enhancements (a decrease of \$130,000 for a total project cost of \$1.57 million); and (3) Forward Capacity Tracking System Infrastructure Conversion Part III (a decrease of \$100,000 for a total project cost of \$3 million). Comments on this filing are due on or before June 6, 2023. NEPOOL intervened and filed comments supporting the 2023 Q1 Report. Doc-less interventions were filed by Eversource and National Grid. The FERC accepted the Q1 Report on June 23, 2023,<sup>90</sup> effective April 1, 2023, as requested. Unless the June 23 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; [pnbelval@daypitney.com](mailto:pnbelval@daypitney.com)).

- **Interconnection Study Metrics Processing Time Exceedance Report Q1 2023 (ER19-1951)**

On May 15, 2023, ISO-NE filed, as required,<sup>91</sup> public and confidential<sup>92</sup> versions of its Interconnection Study Metrics Processing Time Exceedance Report (the "Exceedance Report") for the First Quarter of 2023 ("2023 Q1"). ISO-NE reported that four of the six of the 2023 Q1 *Interconnection Feasibility Study ("IFS") reports* delivered to Interconnection Customers were delivered later than the best efforts completion timeline.<sup>93</sup> In addition, 12 IFS Reports that are not yet completed have exceeded the 90-day completion expectation. The average mean time from ISO-NE's receipt of the executed IFS Agreement to delivery of the completed IFS report to the Interconnection Customer was 130 days (roughly 60 days sooner than in 2022 Q4). Each of the three *System Impact Study ("SIS")*

<sup>87</sup> *Martha Coakley, Mass. Att'y Gen.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) ("*Opinion 531-A*").

<sup>88</sup> *Martha Coakley, Mass. Att'y Gen.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) ("*Opinion 531-B*").

<sup>89</sup> TOs filing local refund reports include: CMP, National Grid, UI, Versant Power (f/k/a Emera Maine), NHT, VTransco, Eversource, and NSTAR.

<sup>90</sup> *ISO New England Inc.*, Docket No. ER23-1875-000 (June 23, 2023) (unpublished letter order).

<sup>91</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>92</sup> ISO-NE requested that the information contained in Section 3 of the un-redacted version of the Exceedance Report, which contains detailed information regarding ongoing Interconnection Studies and if released could harm or prejudice the competitive position of the Interconnection Customer, be treated as confidential under FERC regulations.

<sup>93</sup> 90 days from the Interconnection Customer's execution of the study agreement.

**reports** delivered to Interconnection Customers were delivered later than the best efforts completion timeline of 270 days. In addition, 19 SIS Reports 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 784 days (an increase of 340 days from 2022 Q4). In Q1 2023, no Facility Study reports were delivered to an Interconnection Customer and one Facility Study in process has exceeded the 90-day completion expectations for a 20% level of cost estimate. Section 4 of the Report identified steps ISO-NE has identified to remedy issues and prevent future delays, including modifications to the standard scope of Feasibility Studies, mitigating the impact of backlogs, clustering, moving to earlier in the process certain Interconnection Customer data reviews, changes to TO cost estimate development, and efforts to secure new resources to work on interconnection-related tasks. This report was not noticed for public comment.

- **IMM 2022 Annual Markets Report (ZZ23-4)**

On June 5, 2023, the IMM filed its 2022 Annual Markets Report, which covers the 2022 calendar year period.<sup>94</sup> The report addresses the development, operation, and performance of the New England Markets and presents an assessment of each market based on market data, performance criteria, and independent studies, providing the information required under Section 17.2.4 of Appendix A to Market Rule 1. On the basis of its review of market outcomes and related information, the IMM concluded, as it has for many years in a row, that the New England Market operated competitively in 2022. The IMM reported that Day-Ahead and Real-Time Energy prices reflected changes in underlying primary fuel prices, electricity demand and the region's supply mix. The region saw record high energy prices in 2022 -- the annual average day-ahead price of \$86/MWh was almost 90% higher than 2021, and was the highest since the inception of Standard Market Design in 2003. Energy prices continued to be driven by the market price of natural gas, which at \$9.32/MMBtu was more than double 2021's price, and was the highest average price since 2008.

While there were no major reliability issues in 2022, New England experienced its second capacity scarcity condition in five years (due to lower imported energy and generator outages at the tail end of Winter Storm Elliott).

and there were no periods in the Energy Market when a shortage of energy and reserves resulted in very high energy prices or reserve scarcity pricing. The IMM reported that gas and energy prices rebounded from the record low levels seen in 2020. Electricity demand increased year-over-year due to colder weather and increased economic activity. The IMM forecasts that weather-normalized demand will begin to increase from 2022 because of the diminishing impacts of energy efficiency and solar generation and the growth in electrification of transportation and heating. Wholesale costs were at their highest level since 2018 and considerably higher than 2020, driven by higher energy costs. For the eighth consecutive year, the forward capacity auction procured surplus capacity. Other highlights included:

- ▶ 2022 total wholesale costs (\$16.7 billion) were \$5.5 billion higher than 2021, driven by higher energy costs; with the exception of capacity costs (down \$0.22 billion), each component of the wholesale cost of electricity again increased in 2022.
- ▶ 2022 Energy costs, 70% of wholesale costs (up from 55% in 2012), totaled \$11.7 billion, up 92% from 2021 (Day-Ahead LMPs averaged \$85.56/MWh; Real-Time LMPs, \$115.23/MW).
- ▶ Capacity costs (\$2 billion) decreased 10%. When compared against 2021 capacity costs, lower auction clearing prices more than offset supplemental payments under the Mystic COSA (\$166 million in 2022) that began in summer 2022.
- ▶ The trend of decreasing load may have reached an inflection point. In 2022, Energy Efficiency ("EE") reduced weather-normalized annual average load by an estimated 2,538 MW (by 16%), which was a

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<sup>94</sup> Please note that Annual Markets Reports filings are not noticed for public comment by the FERC.

2% decrease (40 MW) compared to 2021. BTM solar generation reduced weather-normalized load by 426 MW (by approx. 3%) which was a 15% increase (57 MW) compared to 2021, and is expected to continue this upward trend in future years.

- In 2022, net interchange (or net imports) averaged 1,914 MWs per hour, an 11% (or 231 MW) decrease compared to 2021, and the lowest amount over the past five years. Net imports met just 14% of New England's electric demand, compared to up to 19% during the 2018-2020 period.

In light of its review, the IMM, on pp. 13-17 of the Report, made a number of recommendations for Market Rule changes and identified areas for additional analysis in 2023. These recommendations will be discussed in more detail at a future Participants Committee meeting.

- **IMM Quarterly Markets Reports: Winter 2023 (ZZ23-4)**

On May 30, 2023, the IMM filed with the FERC its Winter 2023 report of "market data regularly collected by [the IMM] in the course of carrying out its functions under ... Appendix A and analysis of such market data," as required pursuant to Section 12.2.2 of Appendix A to Market Rule 1. These filings are not noticed for public comment by the FERC. The Winter 2023 Report was discussed with the Markets Committee at the June 6, 2023 Markets Committee meeting.

- **ISO-NE FERC Form 3Q (2023/Q1) (not docketed)**

On May 26, 2023, ISO-NE submitted its 2023/Q1 FERC Form 3Q (quarterly financial report of electric utilities, licensees, and natural gas companies). FERC Form 3-Q is a quarterly regulatory requirement which supplements the annual FERC Form 1 financial reporting requirement. These filings are not noticed for comment.

- **ISO-NE 2022 FERC Form 714 (not docketed)**

On June 14, 2023, ISO-NE submitted its Annual Electric Balancing Authority Area and Planning Area Report for calendar year 2022. Through its Form 714 filing, ISO-NE reports, among other things, generation in the New England Control Area, actual and scheduled inter-balancing authority area power transfers, and net energy for load, summer-winter generation peaks and system lambda. The FERC uses the data to obtain a broad picture of interconnected balancing authority area operations including comprehensive information of balancing authority area generation, actual and scheduled inter-balancing authority area power transfers, and load; and to prepare status reports on the electric utility industry including review of inter-balancing authority area bulk power trade information. Planning area data will be used to monitor forecasted demands by electric utility entities with fundamental demand responsibility, and to develop hourly demand characteristics. These filings are not noticed for public comment.

## IX. Membership Filings

- **June 2023 Membership Filing (ER23-2025)**

On May 31, 2023, NEPOOL requested that the FERC accept: (i) the memberships of Con Edison Transmission Inc. [Related Person to Consolidated Edison Company of New York, Inc. (Supplier Sector)]; Generate NB Fuel Cells, LLC (Related Person to Generate Colchester Fuel Cells, LLC (AR Sector, RG Sub-Sector); Jonathan Lamson (Governance Only End User); and Tomorrow Energy Corp (Supplier Sector); and (ii) termination of the Participant status of: Northern States Power Company (Supplier Sector); and Granite Reliable Power, LLC [Related Person to NextEra Energy Resources (Generation Sector)]. Comments on the June membership filing were due on or before June 21, 2023; none were filed. The June membership filing is pending before the FERC.

- **May 2023 Membership Filing (ER23-1768)**

On April 28, 2023, NEPOOL requested that the FERC accept: (i) the memberships of Carbon Solutions Group (GIS-Only Participant); PPL TransLink Inc. [Related Person to RI Energy (Transmission Sector)]; and

Second Foundation US Trading, LLC (Supplier Sector); (ii) the termination of the Participant status of EnPowered USA LLC; Invenia Technical Computing Corp.; Uniper Global Commodities NA LLC; and WATTIFI INC.; and (iii) the name changes of 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.); RWE Clean Energy Solutions, Inc. (f/k/a Consolidated Edison Solutions, Inc.); and SYSO Inc. (f/k/a SYSO LLC). Comments on the May membership filing were due on or before May 19, 2023; none were filed. The May membership filing is pending before the FERC.

- **Involuntary Termination of Membership of NTE Connecticut, LLC (ER23-1689)**

On June 13, 2023, the FERC accepted the termination of (i) the NEPOOL Participant status of NTE Connecticut, LLC (“NTE CT”) and (ii) the Market Participant Service Agreement between ISO-NE and NTE CT, each as a result of the failure by NTE CT to pay when and as due the amounts invoiced to it under the Billing Policy.<sup>95</sup> The involuntary termination of NTE CT’s NEPOOL and Market Participant status become effective as of June 22, 2023, as requested.

## 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)).

- **NERC Report on Evaluation of Physical Reliability Standard (CIP-014) (RD23-2)**

As directed by the FERC’s December 15, 2022 order,<sup>96</sup> NERC, on April 14, 2023, provided an updated evaluation of CIP-014 (its “Physical Security Reliability Standard”). NERC concluded that CIP-014 applicability criteria is meeting its objective to “appropriately focus[] limited industry resources on risks to the reliable operation of the BPS associated with physical security incidents at the most critical facilities” and the objective is broad enough to capture the subset of applicable facilities that TOs should identify as “critical” pursuant to the risks assessment mandated by Requirement R1. NERC did not find evidence that an expansion of the applicability criteria would identify additional substations that would qualify as “critical” substations under the CIP-014 Requirement R1 risk assessment, declined to recommend expansion of the CIP-014 applicability criteria, but committed to continued evaluation of the adequacy of the applicability criteria in meeting the objective of CIP-014. Comments on NERC’s report were due on or before May 15, 2023 and were filed by, among others: [ISO-NE](#), [Trade Associations](#), and [WIRES](#).

**Notice of Joint Technical Conference.** On May 30, 2023, the FERC issued a notice that FERC and NERC staff will convene an in-person technical conference on **August 10, 2023** at NERC’s headquarters in Atlanta, GA. The purpose of this conference is to discuss physical security of the Bulk-Power System (“BPS”), including the adequacy of existing physical security controls, challenges, and solutions. The conference will be open for the public to attend, and there is no fee for attendance. Supplemental notice(s) will be issued prior to the technical conference with further details regarding the agenda and organization. Information on this technical conference will also be posted on the Calendar of Events on the FERC’s website ([www.ferc.gov](http://www.ferc.gov)) prior to the event.

- **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>97</sup> As previously reported, the changes to the *Cold Weather Standards*, which address certain key

<sup>95</sup> *ISO New England Inc. and New England Power Pool*, Docket No ER23-1689-000 (June 13, 2023) (unpublished letter order).

<sup>96</sup> *N. Amer. Elec. Rel. Corp.*, 181 FERC ¶ 61,230 (Dec. 15, 2022).

<sup>97</sup> *N. Amer. Elec. Rel. Corp.*, 182 FERC ¶ 61,094 (Feb. 16, 2023), *reh’g denied by operation of law* (“*Cold Weather Standards Order*”).

recommendations from the *Feb 2021 Cold Weather Outages Joint Report*,<sup>98</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>99</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 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>100</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>101</sup>
- ♦ to increase the length of R2’s continuous operations requirement (one hour being too short);<sup>102</sup>
- ♦ to include in R7 deadlines for implementation completion of corrective action plans, as recommended in the *November 2021 Report*;<sup>103</sup>
- ♦ to shorten the implementation plan for existing generating units, staggering the implementation for existing unit(s) in a generator owner’s fleet;<sup>104</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>105</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

<sup>98</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>99</sup> *Id.* at P 4.

<sup>100</sup> *Id.* at P 6.

<sup>101</sup> *Id.* at P 7.

<sup>102</sup> *Id.* at P 8.

<sup>103</sup> *Id.* at P 9.

<sup>104</sup> *Id.* at P 10.

<sup>105</sup> *Id.* at P 11.

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>106</sup>

***Request for Rehearing Denied by Operation of Law.*** 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.” On April 20, 2023, the FERC issued a “Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration”.<sup>107</sup> That Notice confirmed that the 60-day period during which a petition for review of the *Cold Weather Standards Order* can be filed with an appropriate federal court was triggered when the FERC did not act on the requests for rehearing and/or clarification of the *Cold Weather Standards 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.”

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

On November 17, 2022, to address FERC concerns regarding the reliability impacts of inverter-based resources (“IBRs”)<sup>108</sup> on the Bulk-Power System (“BPS”), the FERC issued an order<sup>109</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 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](#). The FERC accepted the Work Plan, and its associated implementation timeline (as amended), in an order issued May 18, 2023.<sup>110</sup>

- **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

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<sup>106</sup> *Id.* at P 5.

<sup>107</sup> *N. Am. Elec. Rel. Corp.*, 183 FERC ¶ 62,034 (Apr. 20, 2023) (“*Cold Weather Standards Allegheny Notice*”).

<sup>108</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>109</sup> *Registration of Inverter-based Resources*, 181 FERC 61,124 (Nov. 17, 2022) (“*IBR Registration Order*”).

<sup>110</sup> *N. Am. Elec. Rel. Corp.*, 183 FERC ¶ 61,116 (May 18, 2023) (“*IBR Work Plan Order*”).



development project (Project 2016-02 – Modifications to CIP Standards (“Project 2016-02”))<sup>111</sup> on June 15, 2023. Project 2016-02 focuses on modifications to the CIP Reliability Standards to incorporate applicable protections for virtualized environments. In the June 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 October 2023, NERC Board of Trustees Adoption in December 2023 and filing of the revised standards with the FERC in January 2024.

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

On November 17, 2022, the FERC issued a notice<sup>112</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>113</sup> and were filed by nearly 20 parties, including, among others, [ISO-NE](#), the [IRC](#), [SPP](#), [CAISO](#), [Advanced Energy United](#), [ACPA/SEIA](#), [EEL](#), 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.

- **Order 896: Transmission System Planning Performance Requirements for Extreme Weather (RM22-10)**

On June 15, 2023, the FERC issued a final rule<sup>114</sup> directing NERC to develop a new or modified Reliability Standard no later than **December 15, 2024**<sup>115</sup> to address reliability concerns pertaining to transmission system planning for extreme heat and cold weather events that impact the Reliable Operation of the BPS. Specifically, FERC directed NERC to develop a new or modified Reliability Standard that requires the following: (i) development of benchmark planning cases based on prior extreme heat and cold weather events and/or future meteorological projections; (ii) planning for extreme heat and cold events using steady state and transient stability analyses that cover a range of extreme weather scenarios, including the expected resource mix’s availability during extreme weather conditions and the broad area impacts of extreme weather; and (iii) corrective action plans that include mitigation activities for specified instances where performance requirements during extreme heat and cold events are not met. *Order 896* will become effective September 21, 2023.

- **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>116</sup> the FERC issued *Order 887*.<sup>117</sup> *Order 887* directs NERC to develop and submit, on or before **July 10, 2024**<sup>118</sup> for FERC approval, new or

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<sup>111</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>112</sup> *Reliability Standards to Address Inverter-Based Resources*, 181 FERC ¶ 61,125 (Nov. 17, 2022) (“*IBR NOPR*”).

<sup>113</sup> The *IBR NOPR* was published in the *Fed. Reg.* on Dec. 6, 2022 (Vol. 87, No. 233) pp. 74,541-74,563.

<sup>114</sup> *Transmission System Planning Performance Requirements for Extreme Weather*, Order No. 896, 183 FERC ¶ 61,191 (June 15, 2023) (“*Order 896*”).

<sup>115</sup> *Order 896* was published in the *Fed. Reg.* on June 23, 2023 (Vol. 88, No. 120) pp. 41,262-41,287.

<sup>116</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>117</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>118</sup> *Order 887* was published in the *Fed. Reg.* on Feb. 9, 2023 (Vol. 88, No. 27) pp. 8,354-8,368.

modified Reliability Standards that require internal network security monitoring (“INSM”)<sup>119</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.

- **Report of Comparisons of 2022 Budgeted to Actual Costs for NERC and the Regional Entities (RR23-2)**

On May 31, 2023, NERC filed its annual comparisons of actual to budgeted costs for 2022 for NERC and the six Regional Entities operating in 2022,<sup>120</sup> including NPCC. The Report includes comparisons of actual funding received and costs incurred, with explanations of significant actual cost-to-budget variances, audited financial statements, and tables showing metrics concerning NERC and Regional Entity administrative costs in their 2020 budgets and actual results. Comments on this filing were due on or before June 21, 2023; none were filed. This matter is pending before the FERC.

- **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>121</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 remains pending before the FERC.

## XI. Misc. - of Regional Interest

- **203 Application: Three Corners Solar/Three Corners Prime Tenant (EC23-90)**

On May 26, 2023, Three Corners Solar, LLC (“Lessor”) and Three Corners Prime Tenant, LLC (“Lessee”) requested FERC authorization for the disposition and consolidation of jurisdictional facilities and the lease of an existing generation facility that will result from the commencement of a master lease agreement between Lessor and Lessee (“Lease”) pursuant to which Lessee will lease, operate, and control an approximately 112 MWac solar photovoltaic (“PV”) electric generation facility owned by Lessor in Kennebec County, Maine (the “Transaction”). Comments on this 203 application were due on or before June 16, 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).

- **203 Application: Energy Harbor / Vistra (EC23-74)**

On April 17, 2023, Energy Harbor Corp., on behalf of Energy Harbor, LLC and Energy Harbor Nuclear Generation LLC (collectively, the “Energy Harbor Public Utilities”), and Vistra Corp. (“Vistra”), requested FERC authorization for a proposed transaction pursuant to which the Energy Harbor Public Utilities and certain Vistra

<sup>119</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>120</sup> Midwest Rel. Org. (“MRO”), Northeast Power Coordinating Council, Inc. (“NPCC”), ReliabilityFirst Corp. (“ReliabilityFirst”), SERC Rel. Corp. (“SERC”), Texas Rel. Entity, Inc. (“Texas RE”), and Western Elec. Coordinating Council (“WECC”).

<sup>121</sup> *N. Am. Elec. Rel. Corp.*, 181 FERC ¶ 61,095 (Nov. 2, 2022) (“2023 Budgets Order”).

subsidiaries that are public utilities will become indirectly owned by a newly-formed subsidiary holding company of Vistra – Vistra Vision. Comments on this 203 application were due on or before June 23, 2023. Protests and comments were filed by Northeast Ohio Public Energy Council (“NOPEC”), Office of the Ohio Consumers’ Counsel, and Monitoring Analytics, LLC (the PJM Independent Market Monitor). Public Citizen filed a doc-less intervention. Another round of pleadings can be expected to be filed. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

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

On May 12, 2023, the FERC issued an order authorizing the 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, LLC and Weaver Wind Maine Master Tenant, LLC (“Weaver Wind”) (upon consummation, making Weaver Wind a Related Person to Howard Wind and Hecate Energy).<sup>122</sup> Pursuant to the May 12 order, Jade Energy 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>123</sup> In a May 22, 2023 notice, TES notified the FERC that the authorized transaction was consummated on May 17, 2023. Reporting on this matter 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).

- **IA Cancellation: NEP/TransCanada (ER23-2182)**

On June 14, 2023, the New England Power Company (“NEP”) submitted a Notice of Cancellation of the Interconnection Agreement (“IA”) between NEP and TransCanada Hydro Northeast Inc. (“TransCanada”) that has been superseded by a new SGIA between NEP and Great River Hydro, TransCanada’s successor in interest. NEP requested an August 14, 2023 effective date for the Notice of Cancellation. Comments on this filing are due on or before July 5, 2023. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **D&E Agreement Cancellation: NSTAR/Medway Grid (ER23-2117)**

On June 12, 2023, NSTAR filed a notice of cancellation of the Engineering, Design and Procurement Agreement (“D&E Agreement”) with Medway Grid, LLC (“Medway Grid”). The D&E Agreement set forth the terms and conditions under which NSTAR was to undertake certain design and engineering activities on the Interconnection Facilities for Medway Grid’s proposed Large Generation Facility prior to the execution of an LGIA. Specifically, the Agreement addressed Qualified Transmission Upgrades (“QTUs”) identified by ISO-NE in its FCA15 Post-Auction Overlapping Impact Restudy (“Restudy”) for QP844. However, ISO-NE has subsequently performed a review of the Restudy results and has determined that the QTUs are not required for the interconnection of Medway Grid’s facility. NSTAR, accordingly, filed a Notice of Termination to reflect the termination of the Agreement. All billing, refunds, and invoices have been finalized and no further work is being done under the Agreement. NSTAR requested a Jun 13, 2023 effective date. Comments on this filing are due on or before **July 3**,

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<sup>122</sup> *Weaver Wind, LLC and Weaver Wind Maine Master Tenant, LLC*, 183 FERC ¶ 62,077 (May 12, 2023).

<sup>123</sup> *Talen Energy Supply, LLC*, 182 FERC ¶ 62,183 (Mar. 30, 2023).

**2023.** If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Changes to Depreciation Rates in MPD OATT Formula Rate (ER23-2085)**

On June 7, 2023, Versant Power filed a revised Attachment J to its OATT for Maine Public District (the "MPD OATT") to (i) revise its Transmission Plant depreciation rates to reflect a recent depreciation study; and (ii) harmonize the General Plant depreciation rates set forth the MPD OATT with those recently approved by the MPUC for distribution ratemaking purposes. Versant requested a June 1, 2024 effective date (which is the first date of the next rate year under the MPD OATT formula rate), but action on the filing by August 7, 2023. Comments on this filing are due on or before **June 28, 2023**. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **LGIA: National Grid/Millennium Power (ER23-2065)**

On June 2, 2023, National Grid filed an LGIA (designated as IA-NEP-59) with Millennium Power to provide for continued interconnection service to Millennium's facility. The Millennium LGIA follows the terms of the ISO-NE *pro forma* LGIA with only minor revisions primarily to reflect that it is a two-party agreement. National Grid requested a May 3, 2023 effective date (as agreed to by the parties). Comments on this filing were due on or before June 23, 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).

- **NEP/ISO-NE/RIE Revised LSAs (ER23-1831; ER23-1830)**

On May 4, 2023, ISO-NE and NEP submitted (i) a fourth LSA among themselves and The Narragansett Electric Company d/b/a Rhode Island Energy ("RIE") ("TSA-NEP-86") and (ii) an eighth revised Service Agreement No. 23 with RIE ("SA 23") to eliminate provisions of those LSAs that are no longer applicable due to PPL Corporation's ("PPL") acquisition of RIE's ownership interests, and subsequent operational control of RIE's transmission facilities. The LSAs, as revised, will function solely to ensure that certain provisions related to the Contract Termination Charges ("CTCs") defined and set forth in the settlement agreements entered into by NEP, RIE, and certain other parties in order to accommodate the introduction of retail competition programs in Rhode Island remain in effect until such time as the CTCs are fully recovered. Comments were due on May 25, 2023; none were filed. RIE filed a doc-less intervention. This matter is pending before the FERC. If you have any remaining questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Facilities Operating Agreement: Generate NB Fuel Cell/Farmington River Power Co, Stanley Black & Decker, EIP Investment (ER23-1979)**

On May 26, 2023, Generate NB Fuel Cells, LLC ("Generate") submitted a modified Facilities Operating Agreement ("FOA"), by and among the Farmington River Power Company ("FRPC"), Stanley Black & Decker, Inc. ("SBD"), and EIP Investment, LLC ("EIP") for a planned 20 MW fuel cell project on SBD's manufacturing campus located in New Britain (the "Project"). The FOA was assigned, in part, to Generate pursuant to a Partial Bill of Sale, Assignment and Assumption Agreement dated October 20, 2022 between Generate and EIP ("Assignment Agreement"). The FOA, as modified by the Assignment Agreement, sets forth the terms and conditions under which Generate may use, operate, modify, or augment transmission and interconnection facilities owned by FRPC in order to safely, efficiently, and reliably transmit electricity from the Project to the transmission grid and authorizes Generate to construct additional facilities and modify existing facilities as needed to connect Generate NB Fuel Cells' planned fuel cell installation to the grid. An effective date of May 27, 2023 was requested. Comments on this filing were due on or before June 16, 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).

- **LGIA: RIE/ISO-NE/Various Entities (ER23-1767, ER23-1748, ER23-1741)**

On April 28, 2023, ISO-NE and Rhode Island Energy (“RIE”) filed three revised LGIAs to reflect RIE as the new Interconnecting Transmission Owner pursuant to a FERC-approved transaction. A January 1, 2023 effective date was requested for each of the following LGIAs:

- **ER23-1767:** First Revised LGIA (as supplemented May 31 and June 15, 2023) that governs the interconnection of Manchester Street, LLC’s 516 MW facility located in Providence, RI.
- **ER23-1748:** First Revised LGIA (as supplemented June 8, 2023) that governs the interconnection of Ocean State Power LLC’s 656.157 MW facility located in Burrillville, RI.
- **ER23-1741:** Second Revised LGIA that governs the interconnection of Rhode Island LFG Genco, LLC’s 38 MW facility located in Johnston, RI.

Comments on these filings are due on or before May 19, 2023; none were filed. National Grid filed a doc-less intervention in each proceeding. Since the last Report, the FERC accepted, on June 21, 2023, the LGIAs filed in ER23-1767 and ER23-1748, effective as of January 1, 2023, as requested.<sup>124</sup> The LGIA filed in ER23-1741 remains pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **D&E Agreement: NSTAR/Vineyard Wind (ER23-1665)**

On June 13, 2023, the FERC accepted an amendment to the previously-approved Design & Engineering (“D&E”) Agreement between NSTAR and Vineyard Wind LLC for civil and below-grade and above-grade electrical substation work at NSTAR’s Bourne 345 kV substation.<sup>125</sup> The amendment extended the term of the Agreement for additional work and changes the scope of work of the D&E Agreement (i) to address the risks and impacts to milestone revisions; (ii) to address the impact of higher rating of certain Direct Assigned Facilities; and (iii) to conduct harmonic study and data collection. The D&E Agreement was accepted effective April 21, 2023, as requested. Unless the June 13 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).

- **D&E Agreement: NSTAR/Commonwealth Wind (ER23-1607)**

On June 1, 2023, NSTAR the FERC accepted a D&E Agreement setting forth the terms and conditions under which NSTAR will perform necessary engineering and design services for the interconnection of Commonwealth Wind, LLC’s large generating facility to the Administered Transmission System.<sup>126</sup> The D&E Agreement was accepted effective as of June 11, 2023. Unless the June 1 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).

- **RFA Termination: NSTAR/Ocean State Power (ER23-1606)**

On May 31, 2023, the FERC accepted NSTAR’s notice of termination of the Related Facilities Agreement (“RFA”) between Eversource Energy, on behalf of NSTAR, and Ocean State Wind.<sup>127</sup> The notice of termination was accepted effective April 11, 2023, as requested. Unless the May 31 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).

<sup>124</sup> *ISO New England Inc.*, Docket No. ER23-1767-000 (June 21, 2023) (unpublished letter order); *ISO New England Inc.*, Docket No. ER23-1748-000 (June 21, 2023) (unpublished letter order).

<sup>125</sup> *NSTAR Electric Co.*, Docket No. ER23-1665-000 (June 13, 2023) (unpublished letter order).

<sup>126</sup> *NSTAR Electric Co.*, Docket No. ER23-1607-000 (June 1, 2023) (unpublished letter order).

<sup>127</sup> *NSTAR Electric Co.*, Docket No. ER23-1606-000 (May 31, 2023) (unpublished letter order). As previously reported, NSTAR determined that, pursuant to capital project upgrades on its own system for its own purposes, the Related Facilities were no longer necessary.



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

On May 22, 2023, the FERC accepted the Notice of Termination of the previously-accepted Study Work Agreement between CL&P and NYISO.<sup>128</sup> The Notice was accepted effective as of March 29, 2023, as requested. Unless the May 22 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).

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

On May 22, 2023, the FERC accepted the 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, effective March 29, 2023.<sup>129</sup> Unless the May 22 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: CL&P/Generate NB Fuel Cells/ISO-NE (ER23-1479)**

On May 22, 2023, the FERC accepted CL&P and ISO-NE's 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), effective February 23, 2023.<sup>130</sup> The original non-conforming LGIA was accepted by FERC on July 11, 2022.<sup>131</sup> The revised LGIA includes, among others, changes reflecting the sale of the fuel cell project by EIP Investment to Generate NB. Unless the May 22 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>132</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. That compliance filing was submitted on May 1, 2023 as directed. Also on March 31, 2023, 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 was also filed, as directed, on May 1, 2023. Comments on both May 1 filings were due on or before **May 22, 2023**. On May 22, RI Division of Public Utilities and Carriers ("RI Division") filed a protest requesting that the FERC reject RIE's May 1 compliance filing and direct it to amend the TSA to incorporate the formula rate protocols contained in ISO-NE OATT Attachment F, Appendix C (ER23-1003). No comments on RIE's May 1 deficiency letter response were filed (ER23-1000-001). Both LSAs are pending before the FERC. If you have any questions, 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

<sup>128</sup> *The Conn. Light and Power Co.*, Docket No. ER23-1483-000 (May 22, 2023) (unpublished letter order).

<sup>129</sup> *Public Service Co. of NH*, Docket No. ER23-1481 (May 22, 2023) (unpublished letter order).

<sup>130</sup> *ISO New England Inc., and The Conn. Light and Power Co.*, Docket No. ER23-1479 (May 22, 2023) (unpublished letter order).

<sup>131</sup> *ISO New England Inc., and The Conn. Light and Power Co.*, Docket No. ER22-1862 (July 11, 2022) (unpublished letter order).

<sup>132</sup> *ISO New England Inc.*, Docket No. ER23-1003-000 (Mar. 31, 2023) (unpublished letter order).



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 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)).

- **VEC-HQUS Use Rights Transfer Agreement (NJ23-12)**

On June 7, 2023, VEC filed for acceptance an Agreement for the Transfer of Use Rights on the Phase I/II HVDC Transmission Facilities ("Transfer Agreement") between itself and HQUS. An effective date of May 27, 2023 was requested. Comments on this filing are due on or before **June 28, 2023**. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

## XII. Misc. - Administrative & Rulemaking Proceedings<sup>133</sup>

- **Interregional Transfer Capability Transmission Planning & Cost Allocation Requirements (AD23-3)**

On December 5-6, 2022, the FERC held a workshop to discuss whether and how the FERC could establish a minimum requirement for Interregional Transfer Capability for public utility transmission providers in transmission planning and cost allocation processes. Specifically, topics included: how to determine the need for and benefit of setting a minimum requirement for Interregional Transfer Capability; what to consider in establishing a potential Interregional Transfer Capability requirement, including who would be responsible for determining a minimum Interregional Transfer Capability requirement and what would be the objective and drivers of such a requirement; what process could be used in establishing a minimum Interregional Transfer Capability requirement to determine key data inputs, modeling techniques, and relevant metrics; and how costs for transmission facilities intended to increase Interregional Transfer Capability should be allocated and how to ensure a minimum amount of Interregional Transfer Capability is achieved and maintained. On February 28, 2023, the FERC invited all those interested to file post-workshop comments to address issues raised during the workshop and the questions listed in the workshop's Supplemental Notices issued on November 30 and December 2, 2022. Comments were due on or before May 15, 2023. Post-workshop comments were filed by, among others: [Advanced Energy United](#), [Invenergy](#), [Vistra/NRG](#), [ACPA](#), [ACRE](#), [APPA](#), [ELCON](#), [NRECA](#), [Public Interest Orgs](#), [Eastern Interconnection Planning Collaborative](#), and the [US DOE](#). Reply comments are due on or before **June 28, 2023**.

- **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](#).

<sup>133</sup> Reporting on the following Administrative proceeding has been suspended since the last Report and will be continued if and when there is new activity to report: Reliability Technical Conference (Nov 10, 2022) (AD22-10).

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](#). This matter is pending before the FERC.

- **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.

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

***The Second New England Gas-Electric Forum (June 20, 2023 in Portland, ME).*** As will be further discussed and summarized at the 2023 Summer Meeting, the FERC held on June 20, 2023, in Portland Maine, a second New England Winter Gas-Electric Forum to discuss possible solutions to the electricity and natural gas challenges facing the New England region. Pre-Forum Comments and Position Statements were filed by: ISO-NE ([Ltr. Opening Presentation](#), [Extreme Weather Risks](#)), [Constellation \(Allen\)](#), Eversource ([Daly](#), [Divatia](#)), [NEPGA \(Dolan\)](#), [NextEra \(Gardner\)](#), [NHOCA](#), [Vistra](#), [NERC/NPCC](#), [Excelerate](#), [Orsted \(DiOrio\)](#), [National Grid \(Holodak\)](#), [Enbridge](#), [Kinder Morgan](#), [Berkshire Environmental Action Team](#), and [Repsol](#). The FERC will invite parties wishing to submit comments regarding the topics discussed at the Second Forum to do so. A deadline for submitting those comments has not yet been established.

***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](#), [Excelerate](#), [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](#). Since the last Report, [WIRES](#), [AEP](#), and [EEI](#) filed reply comments. On June 8, 2023, [CA Utilities](#)<sup>134</sup> moved to lodge CA PUC Final Resolution E-5252 (which proposed a new Ca PUC jurisdictional transmission review program called the Transmission Project Review Process). This matter is pending before the FERC.

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

A seventh meeting<sup>135</sup> of the FERC-established Joint Federal-State Task Force on Electric Transmission ("Transmission Task Force" or "JFSTF")<sup>136</sup> will be held Sunday, July 18, 2023 in Austin, TX. The FERC will issue the agenda no later than July 2, 2023.

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<sup>134</sup> "CA Utilities" are Pacific Gas and Electric Co. ("PG&E"), Southern California Edison Co. ("SCE"), and San Diego Gas & Elec. Co. ("SDG&E").

<sup>135</sup> Summaries of the first – sixth meetings of the Transmission Task Force can be found in previous Reports.

<sup>136</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).

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

**ISO/RTO Reports.** On April 21, 2022, the FERC issued an order<sup>137</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-led technical conferences, convened in 2021 and summarized in previous Reports, addressing ISO/RTO resource adequacy<sup>138</sup> and energy and ancillary services markets.<sup>139</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: [AEU](#), [API](#), [Constellation](#), [New England Public Systems](#),<sup>140</sup> [Shell](#), [Clean Energy Assocs](#), [Clean Energy Buyers Association](#), [EEI](#), [EPSA](#), [Public Interest Orgs](#), and [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>141</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

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<sup>137</sup> *Modernizing Wholesale Electricity Market Design*, 179 FERC ¶ 61,029 (Apr. 21, 2022) (“*Order Directing Reports*”).

<sup>138</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>139</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>140</sup> “New England Public Systems” are CMMEC, MMWEC, NHEC, and VPPSA.

<sup>141</sup> *Duty of Candor*, 180 FERC ¶ 61,052 (July 28, 2022) (“*Duty of Candor NOPR*”).

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>142</sup> requested an additional month to submit comments.<sup>143</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](#), [APGA](#), [APPA](#), [EEI](#), [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.

- **Order 893: Incentives for Advanced Cybersecurity Investment (RM22-19)**

On April 21, 2023, the FERC issued *Order 893*,<sup>144</sup> which revises the FERC's regulations to encourage 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. *Order 893* (1) identifies the utilities permitted to request incentive-based rate treatment for cybersecurity investments; (2) establishes the criteria that the FERC will use to determine whether a cybersecurity investment is eligible to receive an incentive-based rate treatment; (3) discusses the approaches that a utility may use to demonstrate that a cybersecurity investment satisfies the eligibility criteria; (4) explains the type of incentive-based rate treatment available for qualifying cybersecurity investments; (5) sets limits on the duration of the incentive-based rate treatment; (6) describes what utilities must include in their applications for incentive-based rate treatment for cybersecurity investments; and (7) establishes the annual reporting requirements for utilities that receive incentive-based rate treatment for their cybersecurity investments. *Order 893* will become effective July 3, 2023.<sup>145</sup>

**Denied By Operation of Law: NRECA Request for Clarification and/or Rehearing.** On May 22, 2023, the National Rural Electric Cooperative ("NRECA") requested clarification and/or rehearing of *Order 893*. Specifically, NRECA asked that the FERC clarify (i) the period during which a utility will be eligible for the "early compliance" cybersecurity incentive and the revised regulations and (ii) its statements concerning the right of utilities that make sales of energy, capacity, or ancillary services at market-based rates to also make sales at cost-based rates that include incentive-based rate treatment for eligible cybersecurity investments. On June 22, 2023, the FERC issued a "Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration".<sup>146</sup> The *Order 896 Allegheny Notice* confirmed that the 60-day period during which a petition for review of *Order 896* can be filed with an appropriate federal court was triggered when the FERC did not act on NRECA's request for rehearing of *Order 896* within the required 30-day period. 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."

<sup>142</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>143</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.

<sup>144</sup> *Incentives for Advanced Cybersecurity Investment*, Order No. 893, 183 FERC ¶ 61,033 (Apr. 21, 2023) ("*Order 893*"), *reh'g denied by operation of law*, 183 FERC ¶ 62,154 (June 22, 2023).

<sup>145</sup> *Order 893* was published in the *Fed. Reg.* on May 3, 2023 (Vol. 88, No. 85) pp. 28,348-28,125.

<sup>146</sup> *Incentives for Advanced Cybersecurity Investment*, 183 FERC ¶ 62,154 (June 22, 2023) ("*Order 893 Allegheny Notice*").



- **Order 897: Extreme Weather Vulnerability Assessments (RM22-16; AD21-13)**

On June 15, 2023, the FERC adopted a reporting requirement<sup>147</sup> that directs transmission providers to file a one-time informational report describing their current or planned policies and processes for conducting extreme weather vulnerability assessments<sup>148</sup> (whether and how transmission providers 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). Each transmission provider must file the one-time informational report required by *Order 897* on or before [120 days after date of publication in the *Federal Register*].<sup>149</sup>

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

On June 16, 2022, the FERC issued a notice of proposed rulemaking (“NOPR”),<sup>150</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 (“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>151</sup> (2) reforms to increase the speed of interconnection queue

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<sup>147</sup> *One-Time Informational Reports on Extreme Weather Vulnerability Assessments; Climate Change, Extreme Weather, and Elec. Sys. Rel.*, Order No. 897, 183 FERC ¶ 61,192 (June 15, 2023) (“*Order 897*”).

<sup>148</sup> The FERC defines an extreme weather vulnerability assessment as any analysis that identifies 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>149</sup> *Order 897* has not, as of the date of this Report, been published in the *Federal Register*.

<sup>150</sup> *Improvements to Generator Interconnection Procedures and Agreements*, 179 FERC ¶ 61,194 (June 16, 2022) (“*Interconnection Reforms NOPR*”).

<sup>151</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>151</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.



processing,<sup>152</sup> and (3) reforms to incorporate technological advancements to the interconnection process.<sup>153</sup> Within each of these categories, the FERC proposes a wide array of reforms, and requested comment.

**Initial Comments.** Initial comments were due October 13, 2022<sup>154</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](#), [Elevate Renewables F7](#), [Enel](#), [ENGIE](#), [Invenenergy](#), the [IRC](#), [Longroad Energy](#), [NERC](#), [NESCOE](#), [NextEra](#), [Orsted](#), [SEIA](#), [Shell](#), [Sierra Club](#), [UCS](#), [WIRES](#). Since the last Report, additional comments were submitted by R Street Institute and AES Clean Energy Development.

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)).

- **Order 895: ISO/RTO Credit Information Sharing (RM22-13)**

On June 15, 2023, the FERC amended its regulations to require ISO/RTOs to have tariff provisions that permit credit-related information sharing with other ISO/RTOs to ensure that credit practices in those markets

<sup>152</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>153</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.

<sup>154</sup> The *Interconnection Reforms NOPR* was published in the *Fed. Reg.* on July 5, 2022 (Vol. 87, No. 127) pp. 39,934-40,032.

result in jurisdictional rates that are just and reasonable.<sup>155</sup> *Order 895* will not permit 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 stated that the ability of ISO/RTOs to share credit-related information among themselves will improve their ability to accurately assess market participants' credit exposure and risks related to their activities across organized wholesale electric markets and should also enable ISOs/RTOs to respond to credit events more quickly and effectively, minimizing the overall credit-related risks of unexpected defaults by market participants in organized wholesale electric markets. *Order 895* will become effective August 21, 2023.<sup>156</sup>

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

On December 15, 2022, the FERC issued a NOPR<sup>157</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**. Comments were filed by [CLE](#), [AL PSC](#), [National Wildlife Federation Action Fund](#), [National Wild Life Federation and State-Affiliated Organizations](#), [AEU](#), [CLF \(May 16\)](#), [NESCOE](#), [ACPA](#), [ACRE](#), [Clean Energy Buyers Assoc.](#), [EDF](#), [EEI/WIRES](#), [Joint Consumer Advocates](#), [Public Interest Organizations](#), [SEIA](#), and [US Chamber of Commerce](#).

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

Following its ANOPR process,<sup>158</sup> the FERC issued on April 21, 2022 a NOPR<sup>159</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;

<sup>155</sup> *Credit-Related Info. Sharing in Organized Wholesale Elec. Mkts*, Order No. 895, 183 FERC ¶ 61,193 (June 15, 2023) ("*Order 895*").

<sup>156</sup> *Order 895* was published in the Fed. Reg. on June 22, 2023 (Vol. 88, No. 119) pp. 40,696-28,125.

<sup>157</sup> *Applications for Permits to Site Interstate Electric Transmission Facilities*, 181 FERC ¶ 61,205 (Dec. 15, 2022) ("*Transmission Siting NOPR*").

<sup>158</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>159</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*").

- (iii) seek the agreement of relevant state entities within the transmission planning region regarding the cost allocation method or methods that will apply to transmission facilities selected in the regional transmission plan for purposes of cost allocation through long-term regional transmission planning;
- (iv) adopt enhanced transparency requirements for local transmission planning processes and improve coordination between regional and local transmission planning with the aim of identifying potential opportunities to “right-size” replacement transmission facilities; and
- (v) revise their existing interregional transmission coordination procedures to reflect the long-term regional transmission planning reforms proposed in this NOPR.

In addition, the *Transmission NOPR* would not permit public utility transmission providers to take advantage of the construction-work-in-progress (“CWIP”) incentive for regional transmission facilities selected for purposes of cost allocation through long-term regional transmission planning and would permit the exercise of federal rights of first refusal (“ROFR”) for transmission facilities selected in a regional transmission plan for purposes of cost allocation, conditioned on the incumbent transmission provider with the federal ROFR for such regional transmission facilities establishing joint ownership of the transmission facilities. While the ANOPR sought comment on reforms related to cost allocation for interconnection-related network upgrades, interconnection 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>160</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).

<sup>160</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.

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)).

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

On July 28, 2022, the FERC issued a NOPR<sup>161</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>162</sup> Comments were filed by: [Dominion](#), [ACPA/SEIA](#), [EEL](#), [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

- **Leapfrog Power (IN23-7)**

On May 22, 2023, the FERC approved a Stipulation and Consent Agreement with Leapfrog Power, Inc. (“Leapfrog”)<sup>163</sup> that resolved OE’s investigation into whether Leapfrog complied with its obligation to offer, in the CAISO Energy Market, bids for energy from resources that are reasonably expected to be available and capable of performing at the specified bid levels. Specifically, OE concluded that Leapfrog violated § 37.3.1.1 of the CAISO Tariff (“Offer Requirement”) during the February to August 2019 period during which a substantial majority of Leapfrog’s bids (which exceeded the registered metered load of all of its customers) could not reasonably have been expected to be fulfilled.<sup>164</sup> Under the Settlement, in which Leapfrog neither admits nor denies the alleged violations, Leapfrog agreed to **disgorge \$46,120** and to **pay a civil penalty of \$73,880** to the United States Treasury. CAISO was directed to distribute the disgorgement *pro rata* to network load. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **OhmConnect (IN23-6)**

Also on May 22, 2023, the FERC approved a similar Stipulation and Consent Agreement with OhmConnect, Inc. (“OhmConnect”)<sup>165</sup> that resolved OE’s investigation into whether OhmConnect complied with its Offer Requirement under the CAISO Tariff. Specifically, OE concluded that OhmConnect violated its Offer Requirement during the January to June 2018 period during which a substantial majority of OhmConnect’s bids exceeded the registered metered load of the individual customers whose potential

<sup>161</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>162</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>163</sup> *Leapfrog Power, Inc.*, 183 FERC ¶ 61,137 (May 22, 2023).

<sup>164</sup> *Id.* at P 9.

<sup>165</sup> *OhmConnect, Inc.*, 183 FERC ¶ 61,136 (May 22, 2023).

demand response was aggregated into OhmConnect's bids.<sup>166</sup> Under the Settlement, in which OhmConnect neither admits nor denies the alleged violations, OhmConnect agreed to **disgorge \$8,906** and to **pay a civil penalty of \$141,094** to the United States Treasury. OhmConnect also agreed to submit annual compliance monitoring reports for at least one year. CAISO was again directed to distribute the disgorgement *pro rata* to network load. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **Entergy Arkansas (IN23-5)**

On June 22, 2023, the FERC approved a Stipulation and Consent Agreement with Entergy Arkansas, LLC ("Entergy AK")<sup>167</sup> that resolved OE's investigation into whether Entergy AK, on four days in 2020, violated Section 40.2.5.e of the MISO Energy and Operating Reserve Markets Tariff and the FERC's Unit Operation and Communications market behavior rules<sup>168</sup> when it submitted erroneous offers for its Hot Springs generation facility ("Hot Springs"). On those days, Hot Springs' Real-Time offers incorrectly communicated that it was in a control mode that would respond to MISO's dispatch instructions. However, during certain hours, Hot Springs did not follow MISO's dispatch instructions or raised Hot Springs' Economic Minimums or lowered Economic Maximums in order to "block" or "pin" the unit (i.e., to restrict MISO's ability to dispatch the unit). Entergy AK did not financially benefit from blocking or pinning the Hot Springs facility through the Real-Time offers at issue. Under the Settlement, in which Entergy AK neither admits nor denies the alleged violations, Entergy AK agreed to **pay a civil penalty of \$52,000** to the United States Treasury and to submit two annual compliance monitoring reports, with the requirement of a third report at OE's option. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

#### **Natural Gas-Related Enforcement Actions**

- **Rover Pipeline, LLC and Energy Transfer Partners, L.P. (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 ("Northern District") 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>169</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.

On June 14, 2023, the Commission issued an Order on Presiding Officer Reassignment,<sup>170</sup> which (i) directed the Chief ALJ to reassign this proceeding to another ALJ not previously involved in the proceeding (i.e., designate a new presiding officer) once the *June 14 Order* takes effect; (ii) held that the *June 14 Order* will take effect once the Northern District clarifies or lifts its stay for the limited purpose of allowing the *June 14 Order* to take effect or the stay is lifted or dissolved such that hearing procedures may resume; and (iii) stated that this proceeding otherwise remains suspended until the Northern District's stay is lifted or dissolved such that hearing procedures may resume.

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<sup>166</sup> *Id.* at P 5.

<sup>167</sup> *Entergy Arkansas, LLC*, 183 FERC ¶ 61,207 (June 22, 2023).

<sup>168</sup> 18 C.F.R. § 35.41(a) and (b).

<sup>169</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>170</sup> *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 183 FERC ¶ 61,190 (June 14, 2023) ("*June 14 Order*").



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

On December 16, 2021, the FERC issued a show cause order<sup>171</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>172</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>173</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 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>174</sup> This matter is pending before the FERC.

- **BP (IN13-15)**

On December 17, 2020, the FERC issued *Opinion 549-A*,<sup>175</sup> a 159-page decision addressing arguments raised on rehearing requested of *Opinion 549*.<sup>176</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>177</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>178</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

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<sup>171</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>172</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>173</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.

<sup>174</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>175</sup> *BP America Inc. et al.*, Opinion No. 549-A, 173 FERC ¶ 61,239 (Dec. 17, 2020) (“*BP Penalties Allegheny Order*”).

<sup>176</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>177</sup> *BP Penalties Allegheny Order* at P 1.

<sup>178</sup> *Id.* at P 319.



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>179</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>180</sup>

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

**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>181</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 (“Southern District”). In order to allow for briefing and a decision on that motion, the FERC placed this proceeding in abeyance.<sup>182</sup>

On June 14, 2023, the Commission issued an Order on Presiding Officer Reassignment,<sup>183</sup> which (i) directed the Chief ALJ to reassign this proceeding to another ALJ not previously involved in the proceeding (i.e., designate a new presiding officer) once the *TGPNA Presiding Officer Reassignment Order* takes effect; (ii) held that the *TGPNA Presiding Officer Reassignment Order* will take effect once the Southern District clarifies or lifts its stay for the limited purpose of allowing the *TGPNA Presiding Officer Reassignment Order* to take effect or the stay is lifted or dissolved such that hearing procedures may resume; (iii) stated that this proceeding otherwise remains suspended

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<sup>179</sup> *Total Gas & Power North America, Inc.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) (“*TGPNA Show Cause Order*”).

<sup>180</sup> The allegations giving rise to the Total Show Cause Order were laid out in a September 21, 2015 FERC Staff Notice of Alleged Violations which summarized OE’s case against the Respondents. Staff determined that the Respondents violated NGA section 4A and the Commission’s Anti-Manipulation Rule by devising and executing a scheme to manipulate the price of natural gas in the southwest United States between June 2009 and June 2012. Specifically, Staff alleged that the scheme involved making largely uneconomic trades for physical natural gas during bid-week designed to move indexed market prices in a way that benefited the company’s related positions. Staff alleged that the West Desk implemented the bid-week scheme on at least 38 occasions during the period of interest, and that Tran and Hall each implemented the scheme and supervised and directed other traders in implementing the scheme.

<sup>181</sup> *Total Gas & Power North America, Inc. et al.*, 176 FERC ¶ 61,026 (July 15, 2021).

<sup>182</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>183</sup> *Total Gas & Power North America, Inc., Total, S.A., Total Gas & Power, Ltd., Aaron Hall, and Therese Tran f/k/a Nguyen*, 183 FERC ¶ 61,189 (June 14, 2023) (“*TGPNA Presiding Officer Reassignment Order*”).

until the Southern District's stay is lifted or dissolved such that hearing procedures may resume; and (iv) provided procedural guidance to the new presiding officer.

#### 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>184</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 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>185</sup> and that effectively halted construction of the NECEC Project,<sup>186</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

<sup>184</sup> *Iroquois Gas Transmission Sys., L.P.*, 178 FERC ¶ 61,200 (2022) (*Iroquois Certificate Order*).

<sup>185</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>186</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.

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).

On April 20, 2023, after a week-long trial, a jury ruled 9-0 that developers had completed enough work in good faith before the passage of the ballot question to have a constitutional right to proceed with construction. Based on that verdict, a state judge is expected to conclude that the referendum was unconstitutional. The decision will almost certainly be appealed to the Maine Supreme Judicial Court for a final say.

## 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)).

- **Seabrook Dispute Order (23-1094)**

**Underlying FERC Proceeding: EL21-6, EL 23-3**

**Petitioner: NextEra Energy Resources, LLC and NextEra Energy Seabrook, LLC**

**Status: Initial Submissions (other than Certified Index to the Record) Filed; Briefing Scheduled**

On April 4, 2023, NextEra Energy Resources, LLC and NextEra Energy Seabrook, LLC (collectively, “NextEra”) petitioned the DC Circuit Court of Appeals for review of the FERC’s orders. The Court ordered NextEra to file, by May 8, 2023, a Docketing Statement, a Statement of Intent to Utilize Deferred Joint Appendix, a Statement of Issues, and the Underlying Decision from which the appeal arose. Appearances and other procedural motions, if any, were also due on or before May 8. A Certified Index to the Record and Dispositive Motions, if any, were due on or before May 22, 2023. On April 14, 2023, NECEC Transmission LLC and Avangrid, Inc. (collectively, “Avangrid”) filed a motion for leave to intervene in support of the FERC.

Since the last Report, the initial submissions were filed. On May 8, the FERC moved to hold this proceeding in abeyance and suspend the filing of the Certified Index to the Record to allow for its *Seabrook Dispute Allegheny Order* to be taken into consideration (“Abeyance Motion”), which NextEra opposed. After additional back and forth on the Abeyance Motion (and issuance of the *Seabrook Dispute Allegheny Order*), the Court ordered the following briefing schedule: Certified Index to the Record (July 21, 2023); Petitioners’ Brief (July 28, 2023); Respondent’s Brief (September 28, 2023); Intervenor’s for Respondent’s Joint Brief (October 12, 2023); Petitioners’ Reply Brief (October 26, 2023); Joint Appendix (October 30, 2023); and Final Briefs (November 3, 2023). The parties will be informed later of the date of oral argument and the composition of the merits panel. The next expected submission will be the Certified Index to the Record.

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

Underlying FERC Proceeding: ER22-707<sup>187</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>188</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>189</sup> -013<sup>190</sup> -017<sup>191</sup>

Petitioners: Mystic, CT Parties,<sup>192</sup> MA AG, ENECOS

**Status: Being Held in Abeyance; Motions to Govern Future Proceedings Due July 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>187</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>188</sup> The 2<sup>nd</sup> Revised Narragansett LSA is a Local Service Agreement 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>189</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>190</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>191</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>192</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. On April 24, 2023, Constellation reported that all parties agree and asked the Court that this case should remain in abeyance for an additional 90 days pending FERC action on remand in the *MISO TOs* case. On April 26, 2023, the Court issued an order that these cases remain in abeyance and that the parties file motions to govern future proceedings by July 24, 2023.

- **CASPR (20-1333, 21-1031) (consolidated)\*\***  
Underlying FERC Proceeding: ER18-619<sup>193</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 the Court granted a few days later the request 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.

- **Opinion 531-A Compliance Filing Undo (20-1329)**  
Underlying FERC Proceeding: ER15-414<sup>194</sup>  
Petitioners: TOs' (CMP et al.)  
**Status: Being Held in Abeyance**

On August 28, 2020, the TOs<sup>195</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>196</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>193</sup> *ISO New England Inc.*, 162 FERC ¶ 61,205 (Mar. 9, 2018) ("*CASPR Order*").

<sup>194</sup> *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) ("*Order Rejecting Filing*").

<sup>195</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>196</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>197</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*. Briefing is complete. On June 23, 2023, the Court scheduled oral argument for **September 18, 2023**. The composition of the merits panel will be provided on or about August 18, 2023.

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

Underlying FERC Proceeding: RM19-15<sup>198</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>199</sup> Briefing was completed and oral argument held March 8, 2022 before Judges Nguyen, Miller and Bumatay. This matter remains pending before the Court.

- **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>200</sup>

Petitioners: LS Power, Algonquin, INGA

**Status: Cases 22-1146/47 Deconsolidated, Briefing Completed and Oral Held 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,

<sup>197</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>198</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>199</sup> *Order 872* approved pricing and eligibility revisions to the FERC's long-standing regulations implementing sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), including: state flexibility in setting QF rates; a decrease (to 5 MW) to the threshold for a rebuttable presumption of access to nondiscriminatory, competitive markets; updates to the "One-Mile Rule"; clarifications to when a QF establishes its entitlement to a purchase obligation; and provision for certification challenges.

<sup>200</sup> *Briefing Order; April 19 Notice of Denial of Rehearings by Operation of Law*.



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 was completed and oral argument held April 20, 2023 before Judges Srinivasan, Millett and Tatel. This matter is pending before the Court.

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