

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of August 2, 2023

The following activity, as more fully described in the attached litigation report, has occurred since the report dated June 24, 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: Brookfield IEP Complaint (IEP Exclusion of Pumped Storage ESFs) (EL23-89)	Aug 2	Brookfield seeks a FERC order directing ISO-NE to revise the Tariff to allow Pumped Storage ESFs to participate in the IEP; comment deadline Aug 22, 2023
1	206 Proceeding: ISO-NE Market Power Mitigation Rules (EL23-62)	Jun 28 Jul 5 Jul 14	ISO-NE files motion to hold proceeding in abeyance NEPOOL files comments supporting ISO-NE motion for abeyance FERC grants ISO-NE Jun 28 motion; no FERC action to be taken until after Feb 1, 2024

II. Rate, ICR, FCA, Cost Recovery Filings



* 6	Stonepeake Kestrel CIP-IROL (Schedule 17) Section 205 Cost Recovery Filing (ER23-2429)	Jul 18 Jul 20-21	Stonepeake Kestrel requests recovery of \$1.6 million in incremental medium impact CIP-IROL Costs incurred between Mar 29, 2021 and Mar 31, 2023; comment deadline Aug 8, 2023 NEPOOL, NESCOE file doc-less motions to intervene
* 6	Bucksport Generation (Schedule 17) Section 205 Cost Recovery Filing (ER23-2428)	Jul 18 Jul 20-21	Bucksport Generation requests recovery of \$277,874 in incremental medium impact CIP-IROL Costs incurred between Mar 29, 2021 and Mar 31, 2023; comment deadline Aug 8, 2023 NEPOOL, NESCOE file doc-less motions to intervene
* 7	FCA18 De-List Bids Filing (ER23-2379)	Jul 12 Jul 13-28	ISO-NE submits filing describing Permanent and Retirement De-List Bids submitted on or prior to the FCA18 Existing Capacity Retirement Deadline NEPOOL, Calpine, National Grid intervene
7	CSC CIP-IROL (Schedule 17) Section 205 Cost Recovery Filing (ER23-1826)	Jun 29 Jul 28	FERC issues deficiency letter requesting additional information CSC files deficiency letter response; comment deadline Aug 18, 2023
7	BHD Regulatory Asset-Establishment & Recovery Through Rates (ER23-1598)	Jul 5 Jul 19	Versant submits response to deficiency letter MPUC intervenes (out-of-time)
8	FCA17 Results Filing (ER23-1435)	Jul 18 Jul 25	FERC accepts FCA17 Results filing, eff. Jul 19, 2023 NEPGA intervenes (out-of-time)
8	Add'l Cost Recovery Due to Dec 24 General Threshold Energy Mitigation: Dynegy (ER23-1261)	Aug 1	FERC accepts compliance filing identifying full amount of regulatory costs (\$116,000) to be recovered
9	Mystic 8/9 COSA (ER18-1639)		
9	(-000) Public Systems' Request for Disclosure of Audit Information	Jul 5 Jul 14	Public Systems answer Mystic's and ISO-NE's Jun 9 answers Mystic answers Public System's Jul 5 answer
10	(-021) First CapEx Info. Filing Settlement Agreement	Jun 28 Jul 10, 11 Aug 1	Mystic clarifies uncontested nature of Settlement and requests expedited action; ENECOS confirm they will not contest Settlement NESCOE, National Grid support Mystic's request for expedited action FERC <u>approves Settlement Agreement</u> , subject to 30-day eTariff filing

12	30-Day Compliance Filing per <i>Order on ENECOS Mystic COSA Complaint</i> (ER23-1735)	Jul 10 Jul 20	ENECOS protest compliance filing (out-of-time) Mystic answers ENECOS' Jul 10 protest
* 12	Transmission Rate Annual (2024) Update/Informational Filing (ER20-2054)	Jul 29	PTO AC submits informational filing identifying adjustments to Regional Transmission Service charges, Local Service, and Schedule 12C Costs under Section II of the Tariff for 2023, and a Schedule 1 formula rate for Jun 1, 2022 to May 31, 2023 (a 2023 RNS Rate of \$140.94/kW-year and a Schedule 1 formula rate of \$1.75 kW-year, decreases of \$1.84/kW-year and \$0.12/kW-year, respectively); this filing will not be noticed for public comment

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



* 14	Waiver Request: FCA18 Summer Qualified Capacity (Yarmouth 4) (ER23-2356)	Jul 6 Jul 14, 19	Wyman IV requests one-time Tariff waiver to allow an incremental increase in Yarmouth 4's summer Qualified Capacity NEPOOL, National Grid intervene
14	IEP Parameter Updates (ER23-1588)	Jun 30	Indicated Suppliers file comments supporting the IEP Parameter Updates
15	SATOA Revisions (ER23-739; ER23-743)	Jul 5 Jul 12 Jul 27	Elevate Renewables files comments National Grid urges FERC to reject Elevate Renewables' comments Elevate Renewables answers National Grid's motion to reject
16	New England's <i>Order 2222</i> Compliance Filing (ER22-983)	Jun 28 Jun 30	AEU/PowerOptions/SEIA files answer to ISO-NE's Jun 14 answer ISO-NE, CMP/UI, Eversource, National Grid appeal to DC Circuit <i>Order 2222 Compliance Order</i> and <i>Order 2222 Compliance Allegheny Notice</i>

IV. OATT Amendments / TOAs / Coordination Agreements



* 18	Versant Power Att. F App. D Depreciation Rate Change (ER23-2483)	Jul 26	Versant Power proposes updated depreciation rates for Versant Power's local transmission facilities in the Bangor Hydro District as set forth in Appendix D to Attachment F of the ISO-NE OATT; comment date Aug 16, 2023
* 18	CMP Att. F App. D Depreciation Rate Change (ER23-2477)	Jul 26	CMP proposes updated depreciation rates for its transmission facilities as set forth in Appendix D to Attachment F of the ISO-NE OATT; comment date Aug 16, 2023

V. Financial Assurance/Billing Policy Amendments



* 19	FAP Eligible LOC Issuer Changes (ER23-2277)	Jun 28 Jul 19	ISO-NE and NEPOOL file changes to FAP National Grid intervenes
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VI. Schedule 20/21/22/23 Changes & Agreements



19	Schedule 21-VP: Versant/Black Bear LSAs (ER23-2035)	Jul 26 Jul 28	ISO-NE and Versant clarify that discounted trans. rate will be as provided in the LSAs - \$1,151.67/MW-mo. FERC accepts 7 fully executed, non-conforming LSAs by and among Versant, ISO-NE and Black Bear, eff. Aug 1, 2023 ; refunds ordered and to be made on or before Aug 28, 2023
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VII. NEPOOL Agreement/Participants Agreement Amendments



No Activities to Report

VIII. Regional Reports



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| * 20 | LFTR Implementation Quarterly Status Reports (ER07-476) | Jul 14 | ISO-NE files its 59th quarterly report |
| * 20 | IMM Quarterly Markets Reports - 2023 Spring (ZZ23-4) | Aug 1 | IMM files Spring 2023 Report; to be reviewed at Markets Committee Summer Meeting |

IX. Membership Filings



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| * 22 | Aug 2023 Membership Filing (ER23-2514) | Jul 31 | New Member: Clover Energy LLC; comments deadline Aug 21, 2023 |
| * 22 | Membership – Manchester Methane Involuntary Termination (ER23-2390) | Jul 13 | NEPOOL and ISO-NE request the involuntary termination of the Participant status of Manchester Methane, LLC, eff. <i>Sep 11, 2023</i> ; comment deadline Aug 3, 2023 |
| * 22 | July 2023 Membership Filing (ER23-2319) | Jun 30 | New Members: Hecate Energy Albany 2; Erie Wind, LLC; and SCEF1 FUEL CELL, LLC
Terminations: Concurrent LLC; and Brookfield Energy Marketing LP
Name changes: CPV Spruce Mountain Wind, LLC (f/k/a Spruce Mountain Wind, LLC) |
| 22 | June 2023 Membership Filing (ER23-2025) | Jul 27 | FERC accepts (i) the memberships of Con Edison Transmission; Generate NB Fuel Cells; Jonathan Lamson; and Tomorrow Energy Corp; and (ii) the termination of the Participant status of Northern States Power and Granite Reliable Power |
| 23 | May 2023 Membership Filing (ER23-1768) | Jun 27 | FERC accepts (i) the memberships of Carbon Solutions Group, PPL TransLink, Inc. and Second Foundation US Trading, LLC; (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). |

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



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| 23 | NERC Report on Evaluation of Physical Reliability Standard (CIP-014) (RD23-2) | Jun 29, Jul 27 | FERC issues supplemental notices of Joint FERC/NERC tech. conf. to be held Aug 10, 2023 , to discuss physical security of the BPS |
| 23 | Revised Reliability Standards: EOP-011-3 and EOP-012-1 (RD23-1) | Jun 29 | FERC issues “Allegheny Order”, addressing arguments raised on reh’g, modifying the discussion in the <i>Cold Weather Standards Order</i> and continuing to reach the same result; federal court appeals, if any, due on or before Aug 28, 2023 |
| 26 | 2023 NERC/NPCC Business Plans and Budgets (RR22-4) | Jul 3 | FERC accepts Jan 3, 2023 compliance filing |

XI. Misc. - of Regional Interest



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| 26 | 203 Application: Three Corners Solar/Three Corners Prime Tenant (EC23-90) | Jul 28 | FERC authorizes disposition and consolidation of jurisdictional facilities and the lease of an existing 112 MWac solar PV generation facility in Kennebec County, Maine |
| 27 | 203 Application: Energy Harbor / Vistra (EC23-74) | Jul 10
Jul 25 | Vistra/Energy Harbor Public Utilities file answer to protests/comments
Office of the Ohio Consumers’ Counsel, NOPEC answer Jul 10 answer |

* 27	PURPA Enforcement Petition: Allco Finance Limited (EL23-84)	Jul 24	Allco petitions the FERC to initiate an enforcement action against Massachusetts Agencies (MA DPU and MA DOER); comment deadline Aug 14, 2023
		Jul 25-Aug 2	MA DOER, MA DPU, HQUS, MOPA, NEPGA, Public Citizen intervene
* 27	LGIAs: RIE/ISO-NE/RISEC & Tiverton (ER23-2494 and ER23-2491)	Jul 26	ISO-NE and RIE file two revised LGIAs to reflect RIE as the new Interconnecting TO; comment deadline Aug 16, 2023
* 28	LGIA Termination: CL&P/ISO-NE/NTE CT (ER23-2378)	Jul 11	CL&P and ISO-NE file LGIA notice of termination
* 28	Engineering & Test Agreement: CL&P/BPUS (ER23-2335)	Jul 5 Jul 10	CL&P files Engineering and Test Agreement with BPUS BPUS intervenes
28	Changes to Depreciation Rates in MPD OATT Formula Rate (ER23-2085)	Jun 28 Jul 13 Jul 18	Maine PUC files comments Versant answers Maine PUC comments Maine PUC answers Versant's Jul 13 comments
29	LGIA: National Grid/Millennium Power (ER23-2065)	Jul 31	FERC accepts LGIA, eff. <i>May 3, 2023</i>
29	Revised LSAs: NEP/ISO-NE/RIE (ER23-1831; ER23-1830)	Jun 30	FERC accepts the revised LSAs, eff. <i>May 5, 2023</i>
29	FOA: Generate NB Fuel Cells/FRPC, SBD, EIP (ER23-1979)	Jul 24	FERC accepts FOA, eff. <i>May 27, 2023</i>
29	LGIA: RIE/ISO-NE/Various Entities (ER23-1741)	Jul 5	FERC accepts LGIA filed in ER23-1741, eff. <i>Jan 1, 2023</i>
30	LSAs: RI Energy/ISO-NE/BIPCO (ER23-1000; ER23-1003)	Jun 27	ISO-NE and RIE file joint motion to hold proceedings in abeyance
31	VEC-HQUS Use Rights Transfer Agreement (NJ23-12)	Jun 30	VEC files amended Agreement with HQUS for the Transfer of Use Rights on the Phase I/II HVDC Transmission Facilities

XII. Misc. - Administrative & Rulemaking Proceedings



31	Interregional Transfer Capability Transmission Planning & Cost Allocation Requirements (AD23-3)	Jun 28	Reply comments filed by, among others: June 28, 2023 and were filed by, among others: AEP , AEU , Clean Energy Buyers Assoc. , EEI , EPSA , ITC , MISO , NRDC , Vistra/NRG
32	Second New England Winter Gas-Electric Forum (AD22-9)	Jul 10 Jul 21	FERC issues notice inviting post-forum comments; comments due by Aug 24, 2023 FERC posts Forum's final transcript to eLibrary
32	Transmission Planning & Cost Management Tech. Conf. (AD22-8)	Jul 19	CA PUC supports inclusion of CA PUC Final Resolution E-5252 in this proceeding's record
33	Joint Federal-State Task Force on Electric Transmission (AD21-15)	Jun 29 Jul 16	NARUC nominates state commissioners for the Aug 2023 to July 2024 term, including Commissioner Riley Allen (VT PUC) and Chair Marissa Gillett (CT PURA) from the NECPUC region JFSTF holds seventh meeting
35	Order 893: Incentives for Advanced Cybersecurity Investment (RM22-19)	Jul 27	FERC issues <i>Order 893-A</i> granting clarifications requested by NRECA, and thus denying reh'g of <i>Order 893</i>
36	Order 2023: Interconnection Reforms (RM22-14)	Jul 28	FERC issues <i>Order 2023</i>
40	Order 898: Accounting and Reporting Treatment of Certain Renewable Energy Assets (RM21-11)	Jun 29	FERC issues <i>Order 898</i> , eff. Jan 1, 2025

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

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| * 40 | NRG Energy (IN23-3) | Jul 20 | FERC approves Stipulation and Consent Agreement that resolves OE's investigation into NRG's compliance with the PJM Tariff Parameter Limited Schedule requirements at its Fisk Facility in Chicago for the 2018-2020 delivery years; NRG must disgorge \$32,658 , pay a \$37,342 civil penalty , and submit at least one annual compliance monitoring report |
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Natural Gas-Related Enforcement Actions

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| * 41 | Pacific Summit Energy LLC (IN23-9) | Jun 30 | FERC approves Stipulation and Consent Agreement that resolved OE's investigation into whether Pacific Summit engaged in a related-positions fraudulent scheme involving physical trading at Transco Zone 6 for the purpose of benefiting related financial positions during the Oct 2017 Bidweek (Sep 25-29, 2017), in violation of section 4A of the NGA and the FERC's Anti-Manipulation Rule; Pacific Summit must disgorge \$154,623 and pay a \$360,000 civil penalty |
| 42 | BP (IN13-15) | Jul 7 | FERC approves Stipulation and Consent Agreement that resolves OE's investigation into BP's violations of the FERC's Anti-Manipulation Rules; BP will not seek return of \$250,295 in disgorgement already paid and will ultimately pay a civil penalty of \$10.75 million . |
| 42 | Total Gas & Power North America, Inc. et al. (IN12-17) | Jul 18 | ALJ Patricia M. French substituted in as Presiding Judge |

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

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| * 45 | Order 2222 Compliance Orders
(23-1167 et al.) (consolidated) | Jun 30
Jul 3
Jul 19 | Petitions for review docketed
Cases consolidated
Versant intervenes
FERC moves to hold case in abeyance
Court grants abeyance; parties directed to file motions to govern future proceedings by Oct 10, 2023 |
| 46 | Seabrook Dispute Order (23-1094) | Jul 21
Jul 28 | FERC files Certified Index to the Record
NextEra files Petitioners' Brief |
| 46 | 2nd Revised Narragansett LSA Orders
(22-1161, 22-1108) (consolidated) | Jul 28 | Court denies petitions for review |
| 47 | Mystic II (ROE & True-Up)
(21-1198 et al.) (consolidated) | Jul 24
Jul 27 | Constellation proposes continued abeyance for an additional 90 days
Court orders cases to remain in abeyance; parties directed to file motions to govern future proceedings by Oct 25, 2023 |
| 49 | Northern Access Project (22-1233) | | Oral argument scheduled for Sep 18, 2023 |
| 49 | Algonquin Atlantic Bridge Project
Orders (22-1146, 22-1147) (consol.) | Jul 21 | Court dismisses petitions as moot |

M E M O R A N D U M

TO: NEPOOL Participants Committee Members and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: August 3, 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"),¹ state regulatory commissions, and the Federal Courts and legislatures through August 2, 2023. If you have questions, please contact us.

I. Complaints/Section 206 Proceedings

- **Brookfield IEP Complaint (IEP Exclusion of Pumped Storage ESFs) (EL23-89)**

On August 2, 2023, Brookfield Renewable Trading and Marketing LP ("Brookfield") filed a complaint pursuant to Section 206 of the FPA regarding the exclusion of pumped storage hydroelectric facilities that are Electric Storage Facilities ("ESFs") from the Inventoried Energy Program ("IEP"). Consistent with its proposed amendment to the IEP that was supported by the Participants Committee at the November 2, 2022 meeting, but ultimately rejected by the FERC in its April 24, 2023 order in the IEP Remand Proceeding, Brookfield asked the FERC to direct ISO-NE to revise the Tariff, effective August 2, 2023, to allow Pumped Storage ESFs to participate in the IEP. Brookfield asked that the FERC act on its Complaint expeditiously, noting that ISO-NE has informed Brookfield that any order from the FERC directing ISO-NE to include Pumped Storage ESFs in the IEP cannot be implemented for Winter 2023/24 unless it is received on or before September 22, 2023. Comments on the Brookfield IEP Complaint are due on or before **August 22, 2023**. If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

As previously reported, the FERC instituted a Section 206 proceeding, on May 5, 2023, 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.² Accordingly, ISO-NE was directed, on or before July 5, 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 discriminatory.³ The refund effective date for this proceeding will be May 12, 2023.⁴ 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

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

² *Dynegy Marketing and Trade, LLC and ISO New England, Inc.*, 183 FERC ¶ 61,091 (May 5, 2023) ("*Dynegy Mitigation Order*").

³ *Id.* at P 39.

⁴ 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.

England States Committee On Electricity (NESCOE”), Public Systems,⁵ Electric Power Supply Association (“EPSA”), MA Department of Public Utilities (“MA DPU”), Maine Public Utilities Commission (“MPUC”), and Public Citizen.

Being Held In Abeyance. On June 28, 2023, ISO-NE filed a motion requesting that the FERC hold this proceeding in abeyance to allow potential ISO-NE Tariff design changes to be vetted through the Participant Processes, with a filing expected on or before February 1, 2024. On July 5, NEPOOL submitted limited comments supporting ISO-NE’s motion. On July 14, 2023, the FERC granted ISO-NE’s motion, stating that it would not take any action on this 206 proceeding before **February 1, 2024**.

If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **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,⁶ 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 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) or Margaret Czepiel (202-218-3906; mzczepiel@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.⁷ 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

⁵ “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”).

⁶ 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.

⁷ *CAISO, ISO-NE, NYISO, and SPP*, 180 FERC ¶ 61,049 (July 28, 2022) (“*FTR Collateral Show Cause Order*”).

Tariff has in fact become unjust and unreasonable or unduly discriminatory or preferential.⁸ 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,⁹ 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,¹⁰ and a two-day technical conference in February 2021 that discussed principles and best practices for credit risk management in organized wholesale electric markets.¹¹ In the *FTR Collateral Show Cause Order*, the FERC stated that, although the record developed through the technical conference highlighted numerous different approaches to managing credit risk, "we believe that two specific practices may be particularly critical to effectively managing credit risk for FTRs: the use of a mark-to-auction mechanism and a volumetric minimum collateral requirement for FTRs."¹² 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, 2022.¹³ 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 Coalition¹⁴ (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.

⁸ *Id.* at P 31.

⁹ 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.

¹⁰ 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).

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

¹² 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.

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

¹⁴ "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."

If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@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,¹⁵ 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*).¹⁶ However, the FERC's orders were challenged, and in *Emera Maine*,¹⁷ the U.S. Court of Appeals for the D.C. Circuit ("DC Circuit") vacated the FERC's prior orders, and remanded the case for further proceedings consistent with its order. The FERC's determinations in *Opinion 531* are thus no longer precedential, though the FERC remains free to re-adopt those determinations on remand as long as it provides a reasoned basis for doing so.
- **Base ROE Complaints II & III (EL13-33 and EL14-86) (consolidated).** The second (EL13-33)¹⁸ and third (EL14-86)¹⁹ 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.²⁰ 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 proceeding²¹ also went to hearing before an Administrative Law Judge ("ALJ"), Judge Glazer, who issued his initial decision on March

¹⁵ 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*").

¹⁶ *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*").

¹⁷ *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*"). *Emera Maine* vacated the FERC's prior orders in the Base ROE Complaint I proceeding, and remanded the case for further proceedings consistent with its order. The Court agreed with both the TOs (that the FERC did not meet the Section 206 obligation to first find the existing rate unlawful before setting the new rate) and "Customers" (that the 10.57% ROE was not based on reasoned decision-making, and was a departure from past precedent of setting the ROE at the midpoint of the zone of reasonableness).

¹⁸ 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%.

¹⁹ 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.

²⁰ *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*").

²¹ The 4th ROE Complaint asked the FERC to reduce the TOs' current 10.57% return on equity ("Base ROE") to 8.93% and to determine that the upper end of the zone of reasonableness (which sets the incentives cap) is no higher than 11.24%. The FERC established hearing and settlement judge procedures (and set a refund effective date of April 29, 2016) for the 4th ROE Complaint on September 20, 2016. Settlement procedures did not lead to a settlement, were terminated, and hearings were held subsequently held December 11-15,

27, 2017.²² 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.²³ 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.²⁴ The FERC indicated its intention that the methodology be its policy going forward, including in the four currently pending New England proceedings (see, however, *Opinion 569-A*²⁵ (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.²⁶

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

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

The FERC provided preliminary analysis of how it would apply the proposed methodology in the Base ROE I Complaint, suggesting that it would affirm its holding that an 11.14% Base ROE is unjust and

2017. The September 26, 2016 order was challenged on rehearing, but rehearing of that order was denied on January 16, 2018. *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 156 FERC ¶ 61,198 (Sep. 20, 2016) (“*Base ROE Complaint IV Order*”), *reh’g denied*, 162 FERC ¶ 61,035 (Jan. 18, 2018) (together, the “*Base ROE Complaint IV Orders*”). The *Base ROE Complaint IV Orders*, as described in Section XVI below, have been appealed to, and are pending before, the DC Circuit.

²² *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 162 FERC ¶ 63,026 (Mar. 27, 2018) (“*Base ROE Complaint IV Initial Decision*”).

²³ *Id.* at P 2.; Finding of Fact (B).

²⁴ *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (Oct. 18, 2018) (“*Order Directing Briefs*” or “*Coakley*”).

²⁵ *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*.

²⁶ *Id.* at P 19.

unreasonable. The FERC suggested that it would adopt a 10.41% Base ROE and cap any preexisting incentive-based total ROE at 13.08%.²⁷ 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 Customers²⁸ for an extension of time to submit briefs, the latest date for filing initial and reply briefs was extended to January 11 and March 8, 2019, respectively. On January 11, initial briefs were filed by EMCOS, Complainant-Aligned Parties, TOs, Edison Electric Institute (“EEI”), Louisiana PSC, Southern California Edison, and AEP. As part of their initial briefs, each of the Louisiana PSC, SEC and AEP also moved to intervene out-of-time. Those interventions were opposed by the TOs on January 24, 2019. The Louisiana PSC answered the TOs’ January 24 motion on February 12. Reply briefs were due March 8, 2019 and were submitted by the TOs, Complainant-Aligned Parties, EMCOS, and FERC Trial Staff.

TOs Request to Re-Open Record and file Supplemental Paper Hearing Brief. On December 26, 2019, the TOs filed a Supplemental Brief that addresses the consequences of the November 21 *MISO ROE Order*²⁹ and requested that the FERC re-open the record to permit that additional testimony on the impacts of the *MISO ROE Order*’s changes. On January 21, 2020, EMCOS and CAPs opposed the TOs’ request and brief.

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

II. Rate, ICR, FCA, Cost Recovery Filings

- **Stonepeake Kestrel CIP-IROL (Schedule 17) Section 205 Cost Recovery Filing (ER23-2429)**

On July 18, 2023, Stonepeake Kestrel Energy Marketing LLC (“Stonepeake Kestrel”) requested FERC acceptance of its revised rate schedule to allow recovery of 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 *September 16, 2023*. Stonepeake Kestrel seeks to recover **\$1,605,854** in incremental medium impact CIP-IROL Costs incurred between March 29, 2021 and March 31, 2023. Comments on Stonepeake Kestrel’s request are due on or before **August 8, 2023**. Thus far, doc-less interventions have been filed by NEPOOL and NESCOE. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Bucksport Generation (Schedule 17) Section 205 Cost Recovery Filing (ER23-2428)**

Also on July 18, 2023, Bucksport Generation LLC (“Bucksport Generation”) requested FERC acceptance of its revised rate schedule to allow recovery of eligible medium-impact IROL-CIP Costs under Schedule 17 of the ISO-

²⁷ *Id.* at P 59.

²⁸ For purposes of the motion seeking clarification, “Customers” are CT PURA, MA AG and EMCOS.

²⁹ *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).

NE Tariff, effective September 16, 2023. Bucksport Generation seeks to recover **\$277,874** in incremental medium impact CIP-IROL Costs incurred between March 29, 2021 and March 31, 2023. Comments on Bucksport Generation's request are due on or before **August 8, 2023**. Thus far, doc-less interventions have been filed by NEPOOL and NESCOE. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FCA18 De-List Bids Filing (ER23-2379)**

Pursuant to Market Rule 1 § 13.8.1(a), ISO-NE submitted on July 12, 2023 a filing describing the Permanent De-List Bids and Retirement De-List Bids that were submitted on or prior to the April 6, 2023 FCA18 Existing Capacity Retirement Deadline. ISO-NE reported that it received 14 Retirement De-List Bids. The bids were for resources located in the Connecticut, Northeastern Massachusetts, RI, Southeastern Massachusetts, and Western/Central MA Load Zones, with 870.718 MWs of aggregate capacity. 10 of the Bids (totaling 15.916 MWs) were for resources under 20 MW or that did not meet the affiliation requirements that would have required Internal Market Monitor ("IMM") review. The IMM's determination regarding the remaining bids is described in the version of the filing that was filed confidentially as required under §13.8.1(a) of Market Rule 1. Comments on the FCA18 De-List Bids Filing were due on or before August 2; none were filed. Doc-less interventions were filed by NEPOOL, Calpine and National Grid. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **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 of eligible medium-impact IROL-CIP Costs under Schedule 17 of the ISO-NE Tariff, effective July 4, 2023. CSC seeks to recover **\$723,601** of 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.

Deficiency Letter and Deficiency Letter Response. On June 29, 2023, the FERC issued a deficiency letter requesting additional information/clarification from CSC. CSC filed its response on July 28, 2023. Comments on CSC's deficiency letter response are due on or before **August 18, 2023**.

If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; 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 and Deficiency Letter Response. 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 filed its response on July 5, 2023 (which re-set the filing date and deadline for FERC action which, barring further developments, must happen on or before September 4,

2023). Comments on Versant's deficiency letter response were due on or before July 26, 2023; none were filed. On July 19, the Maine Office of the Public Advocate ("MOPA") filed a motion to intervene (out-of-time). This matter is again pending before the FERC.

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

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

On July 18, 2023, the FERC accepted the results of the seventeenth FCA ("FCA17") for the June 1, 2026 - May 31, 2027 Capacity Commitment Period ("CCP").³⁰ In accepting the FCA17 results, the FERC found that ISO-NE conducted FCA17 in accordance with its Tariff. The FERC found the protests of No Coal No Gas, other organizations and pro se commenters raised issues "outside the scope of this proceeding because they do not bear on the sole question ... namely, whether ISO-NE conducted [FCA17] in accordance with its own Tariff rules."³¹ The FERC accepted the FCA17 rates and results, effective *July 19, 2023*, as requested. Unless the *FCA17 Results Order* is challenged, with any challenges due on or before August 17, 2023, this proceeding will be concluded. If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

As previously reported, the FERC, on May 5, 2023, 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 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.³² 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 compliance filing detailing the actual regulatory costs (which was submitted on June 22, 2023 and accepted on August 1, 2023).³³ 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."³⁴

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.

The *Dynegy Mitigation Order* was not challenged and is final and unappealable. With Dynegy's June 22 compliance filing accepted, this proceeding is now concluded. If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

³⁰ *ISO New England Inc.*, 184 FERC ¶ 61,041 (July 25, 2023) ("*FCA17 Results Order*").

³¹ *Id.* at P 11.

³² *Dynegy Mitigation Order* (see note 2 *supra*).

³³ In its June 22 compliance filing, Dynegy stated that its actual regulatory costs incurred in connection with the Cost Recovery Filing totaled **\$116,100**. The June 22 compliance filing was accepted in *Dynegy Marketing and Trade, LLC*, Docket No. ER23-1261-001 (Aug. 1, 2023) (unpublished letter order).

³⁴ *Id.* at P 31.

- **Mystic COS Agreement Updates to Reflect Constellation Spin Transaction³⁵ (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.³⁶ 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, 2022,³⁷ 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) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

Mystic I Remand. As previously reported, the DC Circuit issued a decision on August 23, 2022³⁸ that, among other things: (i) granted State Petitioners' petitions for review on the cost allocation issue; (ii) vacated the clawback portions excluding Everett costs and the challenged delay provision of the orders under review; and (iii) remanded the cases to the FERC to address NESCOE's request for clarification about revenue credits and for clarification of the apparent contradictions in the FERC's *December 2020 Rehearing Order*.

Public Systems' Request for Disclosure of Audit Information. On May 19, 2023, Public Systems³⁹ 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 asserted 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 Constellation **Mystic** Power LLC ("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). Public Systems answered the Mystic and ISO-NE answers on July 5, 2023. Mystic answered Public Systems' July 5 answer on July 14, 2023. The Audit Information Request is pending before the FERC.

(-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*.⁴⁰ Mystic asserted that (a) the

³⁵ 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.

³⁶ *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,081 (May 2, 2022) ("*May 2, 2022 Order*").

³⁷ *Constellation Mystic Power, LLC*, 181 FERC ¶ 61,099 (Nov. 2, 2022).

³⁸ *Constellation Mystic Power, LLC v. FERC*, 45 F.4th 1028 (D.C. Cir. 2022) ("*Mystic I Remand Order*").

³⁹ "Public Systems" for these purposes are: MMWEC, CMEEC, NHEC, VPPSA, the Eastern New England Consumer-Owned Systems ("ENECOS"), and Energy New England, LLC ("ENE").

⁴⁰ *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

FERC should have considered and rejected NESCOE's arguments about "truing 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".⁴¹ 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."

(-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 (see -021).⁴²

(-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. Filing⁴³ and set for hearing in the April 28, 2023 *Mystic First CapEx Info. Filing Order* ("Settlement Agreement").⁴⁴ The Settling Parties asked that the FERC act on the Settlement Agreement as soon as possible, but no later than September 1, 2023. Initial

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).

⁴¹ *Constellation Mystic Power, LLC*, 183 FERC ¶ 62,115 (May 30, 2023) ("*Mystic I Order on Remand Allegheny Notice*").

⁴² *Constellation Mystic Power, LLC*, 182 FERC ¶ 63,026 (Mar. 27, 2023) (Chief ALJ order granting motion to implement settlement rate on an interim basis).

⁴³ 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.

⁴⁴ *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).

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.⁴⁵ Settlement Judge McBarnette issued her Settlement Report on June 2, 2023,⁴⁶ and Acting Chief ALJ Satten terminated settlement judge procedures on June 5, 2023, subject to final action by the Commission. Since the last Report, Mystic clarified the uncontested nature of Settlement and requested expedited action. ENECOS confirmed they will not contest Settlement, and joined in Mystic's request for expedited Commission action. On July 10 and 11, NESCOE and National Grid, respectively, supported Mystic's request for expedited action. The FERC conditionally approved the Settlement Agreement on August 1, 2023,⁴⁷ subject to a compliance filing on or before **August 31, 2023** with revised tariff records in eTariff format to reflect the FERC's action.⁴⁸

(-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 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*.⁴⁹ 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.

⁴⁵ 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").

⁴⁶ *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.

⁴⁷ *Constellation Mystic Power, LLC*, 184 FERC ¶ 61,070 (Aug. 1, 2023) ("*Mystic First CapEx Info Settlement Order*").

⁴⁸ *Id.* at P 7.

⁴⁹ 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.

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*,⁵⁰ 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. ISO-NE and Monitoring Analytics, LLC filed doc-less motions to intervene.

Since the last Report, on July 10, 2023, ENECOS submitted comments (out-of-time) asserting that Mystic's compliance filing did not provide information sufficient to show that Mystic's after-the-fact pipeline-related crediting ensures that Mystic customers do not pay for pipeline costs that do not benefit them ("Crediting Issue"), the Schedule 3A true-up process does not provide the opportunity for an adequate verification process, and ISO-NE's COSA-related filings to date have similarly not addressed the Crediting Issue. ENECOS requested that the FERC direct Mystic to provide a work paper to "verify its assertion that it has always applied a full credit for third-party pipeline transportation costs to Constellation LNG's billings to Mystic". On July 20, 2023, Mystic protested ENECOS' comments.

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) or Margaret Czepiel (202-218-3906; mczepiel@daypitney.com).

- **Transmission Rate Annual (2024) Update/Informational Filing (ER20-2054)**

On July 31, 2023, the PTO AC submitted its annual filing identifying adjustments to Regional Transmission Service charges, Local Service charges, and Schedule 12C Costs under Section II of the Tariff for 2024. The filing reflected the charges to be assessed under annual transmission and settlement formula rates, reflecting actual 2022 cost data, plus forecasted revenue requirements associated with projected PTF, Local Service and Schedule 12C capital additions for 2023 and 2024, as well as the Annual True-up including associated interest. The PTO AC states that the annual updates results in a Pool "postage stamp" RNS Rate of \$154.35/kW-year effective January 1, 2024, an increase of \$12.71 /kW-year from the charges that went into effect on January 1, 2023. In addition, the filing includes updates to the revenue requirements for Scheduling, System Control and Dispatch Services (the Schedule 1 formula rate), which result in a Schedule 1 charge of \$1.95 kW-year (effective June 1, 2023 through May 31, 2024), a \$0.20/kW-year increase from the Schedule 1 charge that last went into effect on June 1, 2023.

While this filing will not be noticed for public comment, this filing triggers the commencement of an Information Exchange Period and a Review Period under the Protocols. Interested Parties have until **September 15, 2023** to submit information and document requests, and the PTOs are required to make a good faith effort to respond to all requests within 15 calendar days, but by no later than October 15, 2023. During the Review Period, Interested Parties have until November 15, 2023 to submit Informal Challenges to the PTOs, and the PTOs are required to make a good faith effort to respond to any Informal Challenges no later than December 15, 2023. Interested Parties have until January 31, 2024 to file a Formal Challenge with the FERC.

⁵⁰ *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).

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

About this time last year, 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,⁵¹ the formula rates that will be in effect for 2023 include a billing true up of seven months of 2021 (June-December). The PTO AC stated that the annual updates result in a Pool “postage stamp” RNS Rate of \$140.94 /kW-year effective January 1, 2023, a decrease of \$1.84 /kW-year from the charges that went into effect on January 1, 2022. In addition, the filing included updates to the revenue requirements for Scheduling, System Control and Dispatch Services (the Schedule 1 formula rate), which result in a Schedule 1 charge of \$1.75 kW-year (effective June 1, 2022 through May 31, 2023), a \$0.12/kW-year decrease from the Schedule 1 charge that last went into effect on June 1, 2022. This filing was not noticed for public comment.

The July 29 filing was reviewed with the Transmission Committee at its August 16, 2022 summer meeting and at an August 22, 2022 technical session for Interested Parties. The July 29 filing triggered the commencement of the Information Exchange Period and a Review Period under the Interim Protocols. Interested Parties had until September 15, 2022 to submit information and document requests, and the PTOs were required to make a good faith effort to respond to all requests within 15 days, but by no later than October 15, 2022. During the Review Period, Interested Parties had until November 15, 2022 to submit Informal Challenges to the PTOs, and the PTOs were required to make a good faith effort to respond to any Informal Challenges by no later than December 15, 2022. Interested Parties had until January 31, 2023 to file a Formal Challenge with the FERC.

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

⁵¹ 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”).

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

- **Waiver Request: FCA18 Summer Qualified Capacity (Yarmouth 4) (ER23-2356)**

On July 6, 2023, FPL Energy Wyman IV LLC (“Wyman IV”) requested a one-time waiver of the Tariff to allow an incremental increase in the summer Qualified Capacity at W.F. Wyman Station Unit 4 (“Yarmouth 4”). In its Waiver Request, Wyman IV explained how, as a result of the failure by Yarmouth 4’s Lead Market Participant (NextEra Energy Marketing, LLC (“NextEra EM”)) to re-submit by the applicable April 6, 2023 FCA18 deadline a restoration plan related to a forced outage during Yarmouth 4’s summer claimed capability audit,⁵² Yarmouth 4’s FCA18 Summer Qualified Capacity (for the 2027-2028 Capacity Commitment Period (“CCP 2027-2028”)) was reduced to approximately 432 MW, rather than 595 MW, under the Tariff rules. Wyman IV seeks a one-time waiver of the Tariff to allow ISO-NE to revise Yarmouth 4’s Summer Qualified Capacity to reflect its higher capability consistent with the Tariff. ISO-NE, Wyman IV stated, does not oppose the waiver request. Comments on Wyman IV’s waiver request were due on or before July 27, 2023; none were filed. NEPOOL and National Grid each filed a doc-less motion to intervene. 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).

- **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](#).⁵³ [Consumer Advocates](#)⁵⁴ 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,⁵⁵ 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 (to June 9, 2023) and deadline for FERC action (to **August 8, 2023**). Comments on the Deficiency Letter response were due on or before June 30, 2023. Indicated Suppliers filed comments in support of ISO-NE’s Deficiency Letter response, urging the FERC to promptly accept

⁵² Section III.13.4.2.1.3 of the Tariff allows adjustments for significant decreases to be made if the Lead Market Participant submits to ISO-NE a FCM Restoration Plan describing the measures taken to demonstrate “that the resource will be able to provide an amount of capacity consistent with its total CSO for the CCP by the start of all months in that CCP in which the resource has a CSO.” ISO-NE must receive the Plan by no later than 10 Business Days after the Lead Market Participant is notified of the resource’s Summer ARA Qualified Capacity and Winter ARA Qualified Capacity for ARA3.

⁵³ “Indicated Suppliers” are CPV Towantic LLC, Eastern Generation LLC, JERA Americas Inc., and Vistra Corp.

⁵⁴ “Consumer Advocates” are the MA AG, CT OCC, NH OCA, and the Maine OPA.

⁵⁵ “Public Systems” for purposes of this proceeding are CMEEC, MMWEC, NHEC, and VPPSA.

the IEP Parameter Updates as of August 4, 2023, so that the Updates can be included in the index rate for Winter 2023/24 (which will be posted August 8, 2023).

If you have any questions concerning this proceeding, please contact Rosendo Garza (860-275-0660; 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 [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 were due on or before **July 5, 2023** and were filed by Elevate Renewables F7, LLC ("Elevate Renewables"). Elevate Renewables urged the FERC to accept ISO-NE's filing as submitted, without condition or modification. On July 12, National Grid requested that the FERC reject Elevate Renewables' July 5 comments (as an impermissible, untimely answer to National Grid's January 19, 2023 pleading filing in this proceeding and as beyond the scope of the questions in or responses to the Deficiency Letter). Elevate Renewables answered National Grid's motion to reject on July 27, urging the FERC to reject that motion.

The SATO Revisions, including the Deficiency Letter and all of the pleadings filed in this proceeding are again pending before the FERC. If you have any questions concerning this proceeding, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

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

In a lengthy compliance Order⁵⁶ 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 filing⁵⁷ ("Order 2222 Compliance Order").⁵⁸

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 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

⁵⁶ 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."

⁵⁷ 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.

⁵⁸ *ISO New England Inc. and New England Power Pool Participants Comm.*, 182 FERC ¶ 61,137 (Mar. 1, 2023).

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 (“AEU *et al.*”) (who jointly protested what they asserted was a failure to make any adjustments to facilitate participation by DERs located behind a customer meter, and a failure 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.* On June 28, 2023, AEU *et al.* filed answer to ISO-NE’s June 14 answer. 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](#)⁵⁹ 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).

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”.⁶⁰ 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.”

⁵⁹ “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”).

⁶⁰ *ISO New England Inc. and New England Power Pool Participants Comm.*, 183 FERC ¶ 62,050 (May 1, 2023) (“*Order 2222 Compliance Allegheny Notice*”).

Federal Court (DC Circuit) Appeals. CMP and UI, National Grid, Eversource, and ISO-NE filed separate appeals of the *Order 2222 Compliance Order*. Those appeals have been consolidated (Case No. 23-1167) and will be reported on in [Section XVI below](#).

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

IV. OATT Amendments / TOAs / Coordination Agreements

- **Versant Power Att. F App. D Depreciation Rate Change (ER23-2483)**

On July 26, 2023, Versant Power (“VP”) proposed updated depreciation rates for Versant Power’s local transmission facilities in eastern and coastal Maine (the “Bangor Hydro District” or “BHD”) that are set forth in Appendix D to Attachment F of the ISO-NE OATT. A January 1, 2025 effective was proposed. Comments on this filing are due on or before **August 16, 2023**. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **CMP Att. F App. D Depreciation Rate Change (ER23-2477)**

Also on July 26, 2023, CMP proposed updated depreciation rates for its transmission facilities that are set forth in Appendix D to Attachment F of the ISO-NE OATT. CMP requested a July 1, 2023 effective. Comments on this filing are also due on or before **August 16, 2023**. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **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,⁶¹ 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).

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

On June 15, 2023, the FERC conditionally accepted the proposed revisions to the OATT in response to the requirements of *Order 881*⁶² (“OATT *Order 881* Compliance Changes”).⁶³ As previously reported, the Filing Parties⁶⁴ 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

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

⁶² *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*”).

⁶³ *ISO New England Inc.*, 183 FERC ¶ 61,180 (June 15, 2023) (“*New England Order 881 Compliance Order*”).

⁶⁴ As previously reported, the “Filing Parties” were ISO-NE, NEPOOL, the PTO AC, and CSC.

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* were due on or before July 17, 2023; none were filed and Order 881 is final and unappealable.

60-Day Compliance Changes. The 60-Day Compliance Changes, due August 14, 2023, will be considered by the Participants Committee at its August 3 meeting (Agenda Item #5).

If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

V. Financial Assurance/Billing Policy Amendments

- **FAP Eligible LOC Issuer Changes (ER23-2277)**

On June 28, 2023, ISO-NE and NEPOOL jointly filed revisions to the ISO-NE Financial Assurance Policy ("FAP") to allow ISO-NE to remove banks from the List of Eligible Letter of Credit ("LOC") Issuers (the "Eligible LOC List") ("Eligible LOC Issuer Changes"). Specifically, the Eligible LOC Issuer Changes (i) allow the ISO to remove a bank from the Eligible LOC List if ISO-NE determines that despite satisfying the eligibility criteria, accepting a LOC from a bank on the list presents an unreasonable risk that the bank may fail to honor the terms of such letter of credit; (ii) provides Market Participants five Business Days from the date of notice by ISO-NE that a bank is removed from the Eligible LOC List to replace the LOC (and ISO-NE has discretion to extend this cure period to 20 Business Days); and (iii) add language to clarify that when a bank is removed from the Eligible LOC List, ISO-NE will provide a notice to the Budget & Finance Subcommittee. An August 27, 2023 effective date was requested. The Eligible LOC Issuer Changes were supported by the Participants Committee at its June 27, 2023 meeting. Comments on the Eligible LOC Issuer Changes were due on or before July 19, 2023; none were filed. National Grid intervened doc-lessly. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

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 were due on or before July 6, 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; 860-275-0533).

- **Schedule 21-VP: Versant/Black Bear LSAs (ER23-2035)**

On July 28, 2023, the FERC accepted 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”).⁶⁵ The service agreements are based on the Form of Local Service Agreement contained in Schedule 21-Common under the ISO-NE OATT, but were filed because they are non-conforming insofar as they reflect different rates from those set forth in Schedule 21-VP. The LSAs were accepted for filing effective August 1, 2023, rather than January 1, 2021 as requested.⁶⁶ Challenges to the *Versant Black Bear LSAs Order*, and the refunds ordered, are due on or before **August 28, 2023**. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activities to Report

VIII. Regional Reports

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

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

- ♦ The TOs’ November 2, 2015 regional refund report;
- ♦ The TOs’⁶⁹ 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).

- **LFTR Implementation Quarterly Status Report (ER07-476)**

On July 14, 2023, ISO-NE filed its 59th quarterly status report regarding LFTR implementation. ISO-NE reported that it implemented monthly reconfiguration auctions (accepted in ER12-2122) beginning October 2019. ISO-NE further reported that, while it will continue to evaluate its as-filed LFTR design and financial assurance issues, including an ongoing evaluation of the FTR market and risk associated with FTRs and LFTRs, it is currently focused on higher priority market-design initiatives. ISO-NE concluded its report by describing the 18-month implementation that would be required once the LFTR financial assurance issues are resolved. These status reports are not noticed for public comment.

- **IMM Quarterly Markets Reports – Spring 2023 (ZZ23-4)**

On August 1, 2023, the IMM filed with the FERC its Spring 2022 report of “market data regularly collected by [the IMM] in the course of carrying out its functions under ... Appendix A and analysis of such market data,” as required pursuant to Section 12.2.2 of Appendix A to Market Rule 1. These filings are not noticed for public comment by the FERC. The Spring 2023 Report will be discussed with the Markets Committee at its August 8-10, 2023 Summer Meeting.

⁶⁵ *ISO New England Inc.*, Docket No. ER23-2035-000 (July 28, 2023) (“*Versant Black Bear LSAs Order*”).

⁶⁶ The FERC denied the requested waiver of its 60-day prior notice requirement (18 C.F.R. § 35.11), finding that the Filing Parties did not make an adequate showing of extraordinary circumstances. Accordingly, the Filing Parties must, on or before **Aug. 28, 2023**, refund the time value of revenues collected for the time period the rate was collected without FERC authorization (with refunds limited so as not to cause Filing Parties to operate at a loss) and file a refund report with the FERC, including information supporting calculation of the time value of revenues collected without FERC authorization and any limit on the refunds due, on or before **Sep. 27, 2023**.

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

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

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

- **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.⁷⁰ 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). December 2022 saw the first Pay-for-Performance ("PFP") event since 2018. The December 2022 event lasted 17 five-minute intervals (1 hour 25 minutes) and resulted in the transfer of \$35.9 million from under-performing resources to over-performing resources. Import and nuclear resources received the most over-performance payments, while gas resources were charged the most for under-performance. A significant amount of gas generation was out of economic merit order in the Day-Ahead Energy Market due to very high natural gas costs, and in Real-Time could not respond to high prices during the emerging event due to start time constraints.

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 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.

⁷⁰ Please note that Annual Markets Reports filings are not noticed for public comment by the FERC.

- **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

- **Aug 2023 Membership Filing (ER23-2514)**

On July 31, 2023, NEPOOL requested that the FERC accept the membership of Clover Energy LLC (Supplier Sector). Comments on the August membership filing are due on or before **August 21, 2023**.

- **Involuntary Termination of Membership of Manchester Methane, LLC (ER23-2390)**

On July 13, 2023, NEPOOL and ISO-NE jointly requested that the FERC terminate (i) the NEPOOL Participant status of Manchester Methane, LLC (“Manchester Methane”) and (ii) the Market Participant Service Agreement between ISO-NE and Manchester Methane, each as a result of the failure by Manchester Methane to pay when and as due the amounts invoiced to it under the Billing Policy. NEPOOL and ISO-NE requested that the termination of Manchester Methane’s NEPOOL and Market Participant status become effective as of September 11, 2023. Comments on this filing are due on or before **August 3, 2023**.

- **July 2023 Membership Filing (ER23-2319)**

On June 30, 2023, NEPOOL requested that the FERC accept: (i) the memberships of Hecate Energy Albany 2 LLC [Related Person to Howard Wind and RoxWind (Supplier Sector)]; Erie Wind, LLC [Related Person to Brookfield Renewable Trading and Marketing (Supplier Sector)]; and SCEF1 FUEL CELL, LLC [Related Person to Bridgeport Fuel Cell and Derby Fuel Cell (AR Sector, RG Sub-Sector)]; (ii) termination of Concurrent LLC (Supplier Sector); and Brookfield Energy Marketing LP [Related Person to Brookfield (Supplier Sector)]; and (iii) the name change of: CPV Spruce Mountain Wind, LLC (f/k/a Spruce Mountain Wind, LLC). The July membership filing is pending before the FERC.

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

On July 27, 2023, the FERC accepted: (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)].

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

On June 27, 2023, the FERC accepted⁷¹: (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).

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).

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

As directed by the FERC's December 15, 2022 order,⁷² 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](#).

August 10, 2023 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. Attached to its most recent supplemental notice issued July 27, 2023 is an agenda for the technical conference, which includes more detail for each panel.⁷³ Only invited panelists and staff from the FERC and NERC will participate in the panel discussions. Interested parties may listen and observe, and written comments may be submitted after the conference in Docket No. RD23-2. Information on this technical conference is also posted on the Calendar of Events on the FERC's website (www.ferc.gov).

- **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*").⁷⁴ As previously reported, the changes to the *Cold Weather Standards*, which address certain key

⁷¹ *New England Power Pool Participants Comm.*, Docket No. ER23-1768-000 (June 27, 2023) (unpublished letter order).

⁷² *N. Amer. Elec. Rel. Corp.*, 181 FERC ¶ 61,230 (Dec. 15, 2022).

⁷³ Panels will discuss (i) the effectiveness of CIP-014-3 -- applicability and minimum level of physical protection; and (ii) solutions beyond CIP-014-3 -- best practices and operational preparedness and grid planning to respond to and recover from physical and cyber security threats and potential obstacles.

⁷⁴ *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*,⁷⁵ 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”;⁷⁶
- ♦ 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”;⁷⁷
- ♦ 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;⁷⁸
- ♦ to increase the length of R2’s continuous operations requirement (one hour being too short);⁷⁹
- ♦ to include in R7 deadlines for implementation completion of corrective action plans, as recommended in the *November 2021 Report*;⁸⁰
- ♦ to shorten the implementation plan for existing generating units, staggering the implementation for existing unit(s) in a generator owner’s fleet;⁸¹ 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.⁸²

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

⁷⁵ 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”).

⁷⁶ *Id.* at P 4.

⁷⁷ *Id.* at P 6.

⁷⁸ *Id.* at P 7.

⁷⁹ *Id.* at P 8.

⁸⁰ *Id.* at P 9.

⁸¹ *Id.* at P 10.

⁸² *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.”⁸³

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”.⁸⁴ 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.”

Cold Weather Standards Allegheny Order. As was its right under section 313(a) of the FPA, the FERC issued an order, on June 29, 2023, modifying the discussion in the *Cold Weather Standards Order* but reaching the same result.⁸⁵ Challenges, if any, to the Cold Weather Standards Allegheny Order must be filed in Federal Court on or before **August 28, 2023**. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

As previously reported, NERC is required to file on an informational basis quarterly status updates regarding the development of new or modified Reliability Standards pertaining to virtualization and cloud computing services. NERC submitted its most recent informational filing regarding one active CIP standard development project (Project 2016-02 – Modifications to CIP Standards (“Project 2016-02”))⁸⁶ 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 notice⁸⁷ 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, 2023⁸⁸ and were filed by nearly 20 parties, including, among others, [ISO-](#)

⁸³ *Id.* at P 5.

⁸⁴ *N. Am. Elec. Rel. Corp.*, 183 FERC ¶ 62,034 (Apr. 20, 2023) (“*Cold Weather Standards Allegheny Notice*”).

⁸⁵ *N. Am. Elec. Rel. Corp.*, 183 FERC ¶ 61,222 (June 29, 2023) (“*Cold Weather Standards Allegheny Order*”).

⁸⁶ 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.

⁸⁷ *Reliability Standards to Address Inverter-Based Resources*, 181 FERC ¶ 61,125 (Nov. 17, 2022) (“*IBR NOPR*”).

⁸⁸ The *IBR NOPR* was published in the *Fed. Reg.* on Dec. 6, 2022 (Vol. 87, No. 233) pp. 74,541-74,563.

[NE](#), the [IRC](#), [SPP](#), [CAISO](#), [Advanced Energy United](#), [ACPA/SEIA](#), [EEI](#), and [EPRI](#). Reply comments were due on March 6, 2023 and were filed by [ISO-NE](#), [APPA](#), and [CA DWP](#). This matter is pending before the FERC.

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

On June 15, 2023, the FERC issued a final rule⁸⁹ directing NERC to develop a new or modified Reliability Standard no later than **December 15, 2024**⁹⁰ 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*.

- **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 2022,⁹¹ 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 2023.⁹² 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 was accepted on July 3, 2023.⁹³

XI. Misc. - of Regional Interest

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

On July 28, 2023, the FERC authorized⁹⁴ 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 ("Lease") between Three Corners Solar, LLC ("Lessor") and Three Corners Prime Tenant, LLC ("Lessee") pursuant to

⁸⁹ *Transmission System Planning Performance Requirements for Extreme Weather*, Order No. 896, 183 FERC ¶ 61,191 (June 15, 2023) ("*Order 896*").

⁹⁰ *Order 896* was published in the *Fed. Reg.* on June 23, 2023 (Vol. 88, No. 120) pp. 41,262-41,287.

⁹¹ 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").

⁹² *N. Am. Elec. Rel. Corp.*, 181 FERC ¶ 61,095 (Nov. 2, 2022) ("*2023 Budgets Order*").

⁹³ *N. Am. Elec. Rel. Corp.*, 184 FERC ¶ 61,002 (July 3, 2023).

⁹⁴ *Three Corners Solar, LLC and Three Corners Prime Tenant, LLC*, 184 FERC ¶ 62,060 (Jul. 28, 2023).

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”). Pursuant to the July 28 order, Lessor and Lessee must file a notice within 10 days of consummation of the transaction, which as of the date of this Report has not yet occurred. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **203 Application: 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 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. Since the last Report, Vistra and the Energy Harbor Public Utilities responded to the protests and comments. Answers to that answer were filed by NOPEC and the Ohio Consumers’ Council. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **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).⁹⁵ 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; 860-275-0533).

- **PURPA Enforcement Petition: Allco Finance Limited (EL23-84)**

On July 24, 2023, Allco Finance Limited (“Allco”) petitioned the FERC to initiate an enforcement action against the Massachusetts DPU and DOER (collectively, the “Massachusetts Agencies”) to remedy what it asserts if the Massachusetts Agencies’ improper implementation of PURPA. Allco states that the Massachusetts Agencies have implemented a state law that empowers the Massachusetts Agencies to compel wholesale energy transactions outside the confines of PURPA, and that empowers those Agencies to exclude all Qualifying Facilities from participating in solicitations for energy and capacity for Massachusetts utilities. Comments on Allco’s PURPA Enforcement Petition are due on or before **August 14, 2023**. Thus far, doc-less interventions have been filed by MA DOER, MA DPU, HQUS, MOPA, NEPGA, and Public Citizen. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **LGIA: RIE/ISO-NE/RISEC & Tiverton (ER23-2494, ER23-2491)**

On July 26, 2023, ISO-NE and Rhode Island Energy (“RIE”) filed two revised LGIAs to reflect RIE as the new Interconnecting Transmission Owner. A January 1, 2023 effective date was requested for each of the following LGIAs:

- **ER23-2494:** Second Revised LGIA that governs the interconnection of Rhode Island State Energy Center, LP’s (“RISEC”) 209 MW facility located in Johnston, RI.
- **ER23-2491:** First Revised LGIA that governs the interconnection of Tiverton’s 305 MW generating facility located in Newport County in Tiverton, RI.

⁹⁵ *Weaver Wind, LLC and Weaver Wind Maine Master Tenant, LLC*, 183 FERC ¶ 62,077 (May 12, 2023).

Comments on these filings are due on or before **August 16, 2023**. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **LGIA Termination: CL&P/ISO-NE/NTE CT (ER23-2378)**

On July 11, 2023, CL&P and ISO-NE submitted a Notice of Termination of an executed LGIA with NTE Connecticut LLC ("NTE CT"). The LGIA covered the interconnection of NTE CT's 714 MW combined cycle generating facility located in Killingly, Connecticut. Filing Parties state that NTE CT is in breach of the LGIA, has failed to cure the Breach within a reasonable time, and has effectively abandoned the Large Generating Facility. The notice requested a July 12, 2023 effective date. Comments on the LGIA termination notice were due on or before August 1, 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; 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 were due on or before July 5, 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; 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 were due on or before July 3, 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; 860-275-0533).

- **Engineering & Test Agreement: CL&P / BPUS (ER23-2335)**

On July 5, 2023, CL&P filed an Engineering and Test Agreement ("Agreement") with BPUS Generation Development LLC ("Interconnection Customer" or "BPUS"). The Agreement sets forth the terms and conditions under which CL&P will perform necessary engineering and testing services in connection with the development of BPUS's large generating facility, and prior to the execution of 3-party IA with ISO-NE. CL&P has designated the Agreement IA-ESCLP-011. CL&P requested a July 6, 2023 effective date. Comments on this filing were due on or before July 26; none were filed. BPUS filed a doc-less motion to intervene. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **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 were due on or before June 28, 2023 and were filed by the Maine PUC. Versant answered

the June 28 comments of the Maine PUC on July 13, 2023, and the Maine PUC answered Versant's July 13, 2023 comments on July 18, 2023. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

On July 31, 2023, the FERC accepted an LGIA between National Grid and Millennium Power (designated as IA-NEP-59) that provides for continued interconnection service to Millennium's facility.⁹⁶ 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. The LGIA was accepted effective as of May 3, 2023, as requested. Unless the July 31 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

On June 30, 2023, the FERC accepted both the revised LSA between ISO-NE, NEP and RIE⁹⁷ and Service Agreement No. 23 between NEP and RIE.⁹⁸ 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. Each were accepted, *effective May 5, 2023*. The June 30 orders were not challenged and are final and unappealable. If you have any remaining questions concerning this matter, please contact Pat Gerity (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 July 24, 2023, the FERC accepted 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"), filed by Generate NB Fuel Cells, LLC ("Generate") on May 26, 2023.⁹⁹ As previously reported, the FOA covers 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. The FOA was accepted, effective as of *May 27, 2023*, as requested. Unless the July 24 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

On April 28, 2023, ISO-NE and 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.

⁹⁶ *New England Power Co.*, Docket No. ER23-2065-000 (July 31, 2023) (unpublished letter order).

⁹⁷ *ISO New England Inc.*, Docket No. ER23-1831-000 (June 30, 2023) (unpublished letter order).

⁹⁸ *ISO New England Inc.*, Docket No. ER23-1830-000 (June 30, 2023) (unpublished letter order).

⁹⁹ *Generate NB Fuel Cells, LLC*, Docket No. ER23-1979-000 (July 24, 2023) (unpublished letter order).

- **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.

Since the last Report, the FERC accepted, on July 5, 2023, the third of these LGIAs,¹⁰⁰ the RI LFG Genco LGIA, filed in ER23-1741, effective as of January 1, 2023, as requested.¹⁰¹ Unless the FERC's orders approving the LGIAs are challenged, these proceedings will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

On January 31, 2023, ISO-NE and RIE 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, 2023,¹⁰² 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). On June 27, ISO-NE and RIE filed a joint motion requesting the FERC hold both proceedings in abeyance to allow RIE to continue discussions with the RI Division to resolve concerns raised by the Division, the resolution of which will affect the LSAs. RIE continues to seek January 1, 2023 as the effective date for the LSAs. There has been no activity in this proceeding since ISO-NE and RIE asked that the proceedings be held in abeyance. If you have any questions, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

On July 12, 2022, in response to the requirements of *Order 881*, Versant Power filed a proposed new Attachment T to the Versant Power Open Access Transmission Tariff for the Maine Public District ("MPD OATT"). Attachment T, Versant reported, incorporates all the contents of the *pro forma* OATT's new Attachment M. An effective date of July 12, 2025 was requested in an errata filing submitted on August 1, 2022. On August 2, 2022, MPUC submitted comments asserting that Versant's Compliance Filing, without further detail, is insufficient to meet the requirements of *Order 881* and should either (i) be rejected outright, ordering Versant to re-file with sufficient detail, or (ii) subject to a deficiency letter requiring further information with respect to the Compliance Filing. MPUC withdrew those comments on August 31, 2022 in exchange for certain understandings with Versant Power (including MPUC's attendance, as a non-voting participant, at any NMISA working group discussions on *Order 881* implementation planning and Versant Power's submission of informational compliance filings to keep the FERC apprised of versant's progress in developing its AAR implementation plan). On September 6, 2022, Versant Power supplemented its compliance filing to confirm the MPUC's understandings, as delineated in its Notice of Withdrawal. This

¹⁰⁰ The FERC accepted, on June 21, 2023, the LGIAs filed in ER23-1767 and ER23-1748, effective as of January 1, 2023. See *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).

¹⁰¹ *ISO New England Inc.*, Docket No. ER23-1741-001 (July 5, 2023) (unpublished letter order)

¹⁰² *ISO New England Inc.*, Docket No. ER23-1003-000 (Mar. 31, 2023) (unpublished letter order).

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

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

On June 7, 2023, as amended on June 30, 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. No comments on the filings were filed and the Transfer Agreement is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

XII. Misc. - Administrative & Rulemaking Proceedings¹⁰³

- **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 were due on or before June 28, 2023 and were filed by, among others: [AEP](#), [AEU](#), [Clean Energy Buyers Assoc.](#), [EEI](#), [EPSA](#), [ITC](#), [MISO](#), [NRDC](#), [Vistra/NRG](#). This matter is pending before the FERC.

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

As previously reported, Invenergy Transmission (“Invenergy”) filed a petition, on July 19, 2022, requesting that the FERC hold a technical conference to explore ways to potentially make available and compensate certain grid reliability and resilience benefits associated with interregional high voltage direct current (“HVDC”) merchant transmission. Initial comments to be considered by the FERC in its determination of any action to be taken were due on or before August 26, 2022. Comments were filed by 13 parties and included, among others, [CSC](#), [ENGIE](#), [Invenergy](#), [Phase I/II Asset Owners and IRH](#), [Joint Consumer Advocates](#), [MISO](#), [ACORE](#), [ACPA](#), [SEIA](#), and [Neptune and Hudson](#). [Invenergy](#) answered the comments filed by [MISO](#).

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

¹⁰³ 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: Joint FERC-DOE Supply Chain Risk Management Tech. Conf. (Dec 7, 2022) (AD22-12).

[Council](#), [Renew Missouri Advocates](#), [SOO Green HVDC Link ProjectCo](#), and [World Resources Institute](#). 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 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](#). On July 10, 2023, the FERC issued a notice inviting parties to submit comments regarding the topics discussed at the Second Forum. Comments are due by **August 24, 2023**. A final transcript of the Forum was posted to eLibrary on July 21, 2023.

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](#)¹⁰⁴ 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). In comments filed on July 19, 2023, the CA PUC supported the Motion to Lodge, but emphasized that California's establishment of the TPR Process does not obviate the need for the FERC to adopt critical transmission policy reforms applicable to the CAISO (and the rest of the country). This matter is pending before the FERC.

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

Since the last Report, a seventh meeting¹⁰⁵ of the FERC-established Joint Federal-State Task Force on Electric Transmission ("Transmission Task Force" or "JFSTF")¹⁰⁶ was held July 16, 2023, at the JW Marriott in Austin, TX. In addition, on June 29, 2023, the National Association of Regulatory Utility Commissioners ("NARUC") nominated the state commissioners for the August 2023 to July 2024 term, including Commissioner Riley Allen (VT PUC) and Chair Marissa Gillett (CT PURA) from the NECPUC region.¹⁰⁷

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

ISO/RTO Reports. On April 21, 2022, the FERC issued an order¹⁰⁸ 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-

¹⁰⁴ "CA Utilities" are Pacific Gas and Electric Co. ("PG&E"), Southern California Edison Co. ("SCE"), and San Diego Gas & Elec. Co. ("SDG&E").

¹⁰⁵ Summaries of the first – sixth meetings of the Transmission Task Force can be found in previous Reports.

¹⁰⁶ *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).

¹⁰⁷ The 2023/24 State Commissioner Transmission Task Force nominees are: (1) Commissioner John Howard, NY PSC; (2) President Joseph Fiordaliso, NJ BPU; (3) Chair Andrew French, KS Corp. Comm.; (4) Chair Dan Scripps, MI PSC; (5) Commissioner Riley Allen, VT PUC; (6) Chair Marissa Gillett, CT PURA; (7) Commissioner Kimberly Duffley, NC Utils. Comm.; (8) Chair Tricia Pridemore, GA PSC; (9) Commissioner Darcie Houck, CA PUC; and (10) Chair Thad LeVar, Utah PSC.

¹⁰⁸ *Modernizing Wholesale Electricity Market Design*, 179 FERC ¶ 61,029 (Apr. 21, 2022) ("*Order Directing Reports*").

led technical conferences, convened in 2021 and summarized in previous Reports, addressing ISO/RTO resource adequacy¹⁰⁹ and energy and ancillary services markets.¹¹⁰

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](#),¹¹¹ [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 NOPR¹¹² proposing to add a new section to its regulations to require that any entity communicating with the FERC or other specified organizations (e.g. ISO/RTOs, FERC-approved market monitors, NERC and its Regional Entities, or transmission providers) related to a matter subject to FERC jurisdiction submit accurate and factual information and not submit false or misleading information, or omit material information (“Duty of Candor Requirements”). An entity would be shielded from violation of the new regulation if it has exercised due diligence to prevent such occurrences. The FERC’s current regulations prohibit, in defined circumstances, inaccurate communications to the FERC and other organizations upon which the FERC relies to carry out its statutory obligations. However, because those requirements cover only certain communications and impose a patchwork of different standards of care for such communications, the FERC believes that a broadly applicable duty of candor will improve its ability to effectively oversee jurisdictional markets. It further indicated that its proposed due ‘diligence standard’ and other limitations are intended to minimize the additional burdens to industry that come with the new Duty of Candor Requirements.

On September 1, 2022, Joint Associations¹¹³ requested an additional month to submit comments.¹¹⁴ 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](#),

¹⁰⁹ 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](#).

¹¹⁰ 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.](#), [NYSEDA](#), [PJM Providers Group](#), and [Public Citizen](#). Reply comments were filed by [EPRI](#), [NERC and its Regional Entities](#) and [Vistra](#).

¹¹¹ “New England Public Systems” are CMMEC, MMWEC, NHEC, and VPPSA.

¹¹² *Duty of Candor*, 180 FERC ¶ 61,052 (July 28, 2022) (“*Duty of Candor NOPR*”).

¹¹³ “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”).

¹¹⁴ The *Duty of Candor NOPR* was published in the *Fed. Reg.* on Aug. 12, 2022 (Vol. 87, No. 155) pp. 49,784-49,793.

[APGA](#), [APPA](#), [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*,¹¹⁵ 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* became effective July 3, 2023.¹¹⁶

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".¹¹⁷ 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."

Order 893-A. On July 27, 2023, the FERC granted NRECA's request for clarification and, accordingly, dismissed NRECA's alternative request for rehearing.¹¹⁸ Specifically, the FERC clarified that (i) pursuant to section 35.48(e)(3) of its regulations, a utility is required to demonstrate in its filing that it will make cybersecurity investments to comply with a cybersecurity-related CIP Reliability Standard after the effective date of FERC approval but before the effective date of the Reliability Standard itself (at which point the Standard is mandatory and enforceable); (ii) a utility must achieve compliance with a FERC-approved Reliability Standard before it becomes mandatory and enforceable to demonstrate satisfaction of the eligibility criteria in section 35.48(e)(3); (iii) utilities that seek incentive-based rate treatment for cybersecurity investments made prior to the effective date of the FERC's approval of a cybersecurity-related CIP Reliability Standard would do so under the case-by-case approach specified in section 35.48(e)(2) of the FERC's regulations; (iv) the duration of the incentive (other than for information sharing programs) is limited to the period between the date after the effective date of the FERC-approved incentive that the utility is in compliance and the date that the Reliability Standard becomes mandatory and enforceable; and (v) *Order 893* does not preclude utilities that make sales of energy, capacity, ancillary

¹¹⁵ *Incentives for Advanced Cybersecurity Investment*, Order No. 893, 183 FERC ¶ 61,033 (Apr. 21, 2023) ("*Order 893*"), request for clarification granted and reh'g dismissed, 184 FERC ¶ 61,053 (July 27, 2023).

¹¹⁶ *Order 893* was published in the Fed. Reg. on May 3, 2023 (Vol. 88, No. 85) pp. 28,348-28,125.

¹¹⁷ *Incentives for Advanced Cybersecurity Investment*, 183 FERC ¶ 62,154 (June 22, 2023) ("*Order 893 Allegheny Notice*").

¹¹⁸ *Incentives for Advanced Cybersecurity Investment*, Order 893-A, 184 FERC ¶ 61,053 (July 27, 2023) ("*Order 893-A*").

services, or any other jurisdictional product at market-based rates from also making separate sales at cost-based rates that include incentive-based rate treatment for eligible cybersecurity investments.

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

On June 15, 2023, the FERC adopted a reporting requirement¹¹⁹ that directs transmission providers to file a one-time informational report describing their current or planned policies and processes for conducting extreme weather vulnerability assessments¹²⁰ (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*].¹²¹

- **Order 2023: Interconnection Reforms (RM22-14)**

On July 28, 2023, the FERC issued Order 2023,¹²² its final rule on 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. *Order 2023* adopts reforms to: (i) implement a first-ready, first-served cluster study process;¹²³ (ii) increase the speed of interconnection queue processing;¹²⁴ and (iii) incorporate technological advancements into the interconnection process.¹²⁵ Many of the reforms adopted in *Order 2023* closely track the reforms set out in the FERC’s Notice of

¹¹⁹ *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*”).

¹²⁰ 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.

¹²¹ *Order 897* has still not, as of the date of this Report, been published in the *Federal Register*.

¹²² *Improvements to Generator Interconnection Procedures and Agreements*, Order No. 2023, 184 FERC ¶ 61,054 (July 28, 2023) (“*Order 2023*”).

¹²³ A first-ready, first-served cluster study process improves efficiency in the interconnection study process by including the following elements: increased access to information prior to entering the queue; a mechanism to study interconnection requests in groups where all interconnection requests in the group are equally queued and of equal study priority; and increased financial commitments and readiness requirements to enter and proceed through the queue. In contrast, the existing first-come, first-served serial study process in the *pro forma* LGIA and LGIP provides limited information to interconnection customers prior to entering the queue, assigns interconnection requests an individual queue position based solely on the date of entry into the queue, and contains limited financial and readiness requirements.

In order to implement a first-ready, first-served cluster study process, *Order 2023* requires: (1) transmission providers to publicly post available information pertaining to generator interconnection; (2) transmission providers to use cluster studies as the interconnection study method; (3) transmission providers to allocate cluster study costs on a pro rata and per capita basis; (4) transmission providers to allocate network upgrade costs based on a proportional impact method; (5) interconnection customers to pay study and commercial readiness deposits as part of the cluster study process; (6) interconnection customers to demonstrate site control at the time of submission of the interconnection request; and (7) transmission providers to impose withdrawal penalties on interconnection customers for withdrawing from the interconnection queue, with certain exceptions. We also require transmission providers to adopt a transition process to move from the existing serial interconnection process to the new cluster study process.

¹²⁴ In order to increase the speed of interconnection queue processing, *Order 2023*: (1) eliminates the reasonable efforts standard for conducting interconnection studies and imposes a financial penalty on transmission providers that fail to meet interconnection study deadlines; and (2) establishes an affected system study process and associated *pro forma* affected system agreements.

¹²⁵ In order to incorporate technological advancements into the interconnection process, *Order 2023* requires transmission providers to: (1) allow more than one generating facility to co-locate on a shared site behind a single point of interconnection and share a single interconnection request; (2) evaluate the proposed addition of a generating facility at the same point of interconnection prior to deeming such an addition a material modification if the addition does not change the originally requested interconnection service level; (3) allow interconnection customers to access the surplus interconnection service process once the original interconnection customer has an executed LGIA or requests the filing of an unexecuted LGIA; (4) use operating assumptions in interconnection studies that reflect the

Proposed Rulemaking.¹²⁶ However, the FERC did revise aspects of the reforms.¹²⁷ *Order 2023* will become effective [60 days after its publication in the *Federal Register*] (“Publication Date”).

Importantly, the FERC is requiring the submission of compliance filings within 90 calendar days of the Publication Date (rather than the 180 days proposed in the NOPR). The FERC said it “believe[s] that it is important to implement this final rule in a timely manner, given the pressing need to reform the interconnection processes, as discussed in this final rule.” The FERC went on to explain that, on the FERC-approved effective date of the transmission provider’s compliance filing with this final rule, the transmission provider will commence the transition study process. After the conclusion of the transition study process, the transmission provider will begin the first standard cluster study process, and in its compliance filing, the transmission provider will indicate the number of calendar days after the conclusion of the transition study process when it will begin this first standard cluster study process (e.g., 30 calendar days after the conclusion of the transition study process).

We are still digesting *Order 2023*’s nearly 1,500 pages. A fulsome summary will be provided to and discussed with the Transmission Committee. Compliance will require changes to the Tariff’s *pro forma* LGIA, LGIP, SGIA and SGIP. Absent further changes to the compliance schedule, there will be much to accomplish in a relatively short amount of time. Buckle up.

Interconnection Reforms NOPR. As previously reported, the FERC issued the Interconnection Reforms NOPR,¹²⁸ more than 400 pages long, on June 16, 2022. The *Interconnection Reforms NOPR* 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.

If you have any questions concerning this matter, please contact Margaret Czepiel (202-218-3906; mczepiel@daypitney.com) or Eric Runge (617-345-4735; 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 result in jurisdictional rates that are just and reasonable.¹²⁹ *Order 895* will not permit information sharing to be

proposed charging behavior of an electric storage resource; and (5) evaluate the list of alternative transmission technologies enumerated in this final rule during the generator interconnection study process.

¹²⁶ *Order 2023* also requires: (i) interconnection customers requesting to interconnect a non-synchronous generating facility to: (a) provide the transmission provider with the models needed for accurate interconnection studies; and (b) have the ability to maintain power production at pre-disturbance levels and provide dynamic reactive power to maintain system voltage during transmission system disturbances and within physical limits; (ii) all newly interconnecting large generating facilities provide ride through capability consistent with any standards and guidelines that are applied to other generating facilities in the balancing authority area on a comparable basis; and (iii) with respect to the *pro forma* SGIP and *pro forma* SGIA, the incorporation of enumerated alternative transmission technologies into the interconnection process, and the provision of modeling and ride through requirements for non-synchronous generating facilities.

¹²⁷ Reforms revised in *Order 2023* pertain to the cluster study process, allocation of cluster study and network upgrade costs, increased financial commitments and readiness requirements, financial penalties for delayed interconnection studies, the affected system study process, *pro forma* affected system agreements, the material modification process, operating assumptions for interconnection studies, incorporating the enumerated alternative transmission technologies, and ride through requirements. In addition, the FERC declined to adopt the NOPR proposals pertaining to informational interconnection studies, shared network upgrades, the optional resource solicitation study, and the alternative transmission technologies annual report.

¹²⁸ *Improvements to Generator Interconnection Procedures and Agreements*, 179 FERC ¶ 61,194 (June 16, 2022) (“*Interconnection Reforms NOPR*”).

¹²⁹ *Credit-Related Info. Sharing in Organized Wholesale Elec. Mkts*, Order No. 895, 183 FERC ¶ 61,193 (June 15, 2023) (“*Order 895*”).

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, 2023.¹³⁰

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

On December 15, 2022, the FERC issued a NOPR¹³¹ 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,¹³² the FERC issued on April 21, 2022 a NOPR¹³³ that would require public utility transmission providers to:

- (i) conduct long-term regional transmission planning on a sufficiently forward-looking basis to meet transmission needs driven by changes in the resource mix and demand;
- (ii) more fully consider dynamic line ratings and advanced power flow control devices in regional transmission planning processes;
- (iii) seek the agreement of relevant state entities within the transmission planning region regarding the cost allocation method or methods that will apply to transmission facilities selected in the

¹³⁰ *Order 895* was published in the Fed. Reg. on June 22, 2023 (Vol. 88, No. 119) pp. 40,696-28,125.

¹³¹ *Applications for Permits to Site Interstate Electric Transmission Facilities*, 181 FERC ¶ 61,205 (Dec. 15, 2022) ("*Transmission Siting NOPR*").

¹³² 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](#).

¹³³ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 179 FERC ¶ 61,028 (Apr. 21, 2022) ("*Transmission NOPR*").

- 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, 2022.¹³⁴ Nearly 200 sets of comments were filed, including comments by [NEPOOL](#), [ISO-NE](#), [Acadia/CLF](#), [Anbaric](#), [AEU](#), [Avangrid](#), [BP](#), [Dominion](#), [Enel](#), [Engie](#), [Eversource](#), [Invenergy](#), [LSP Power](#), [MOPA](#), [MMWEC/CMEEC/NHEC/VPPSA](#), [National Grid](#), [NECOES](#), [NESCOE](#), [NextEra](#), [NRG](#), [Onward Energy](#), [Orsted](#), [PPL](#), [Shell](#), [Transource](#), [VELCO](#), [Vistra](#), [ISO/RTO Council](#), [NERC](#), [US DOJ/FTC](#), [MA AG](#), [State Agencies](#), [VT PUC/DPS](#), [Potomac Economics](#), [ACPA](#), [ACRE](#), [APPA](#), [EEI](#), [EPSA](#), [Industrial Customer Organizations](#), [LPPC](#), [NASUCA](#), [NRECA](#), [Public Interest Organizations](#), [SEIA](#), [TAPS](#), [WIRES](#), [Harvard Electricity Law Initiative](#), [New England for Offshore Wind](#), and the [R Street Institute](#).

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

LS Power and NRG filed comments in this proceeding, as well as in (Transmission Planning and Cost Management Joint Federal-State Task Force on Electric Transmission) (AD22-8) and JFSTF proceeding (AD21-15). They asserted that the FERC “cannot sufficiently address the transmission planning issues raised in its

¹³⁴ 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.

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) or Margaret Czepiel (202-218-3906; mzczepiel@daypitney.com).

- **Order 898: Accounting and Reporting Treatment of Certain Renewable Energy Assets (RM21-11)**

On June 29, 2023, the FERC issued Order 898¹³⁵ which amends the Uniform System of Accounts (“USofA”) and relevant FERC forms to: (i) include new accounts for wind, solar, and other renewable generating assets; (ii) create a new functional class for energy storage accounts; (iii) codify the accounting treatment of renewable energy credits; (iv) create new accounts within existing functions for hardware, software, and communication equipment. As for hydrogen, the FERC found that existing and proposed public utility accounts are sufficient for current and anticipated uses of hydrogen as an electric fuel or energy storage medium and that no new public utility accounts, nor additional guidance are therefore needed. The FERC reiterated that, for either electric generation or energy storage, the recording and reporting of hydrogen specific fuel, equipment, and operations and maintenance expenses should follow the most appropriate account instructions for the function it is used to fulfill. *Order 898* will become effective on *January 1, 2025*.

XIII. FERC Enforcement Proceedings

Electric-Related Enforcement Actions

- **NRG (IN23-3)**

On July 20, 2023, the FERC approved a Stipulation and Consent Agreement with NRG Energy, Inc. (“NRG”)¹³⁶ that resolved OE’s investigation into whether NRG complied with the Parameter Limited Schedule requirements of the PJM Tariff. Specifically, OE concluded that NRG violated those requirements during the 2018-2020 delivery years.¹³⁷ Under the Settlement, in which NRG neither admits nor denies the alleged violations, NRG agreed to **disgorge \$32,658** and to **pay a civil penalty of \$37,342** to the United States Treasury. NRG also agreed to submit annual compliance monitoring reports for at least one year. PJM was again directed to distribute the disgorgement amount for the benefit of PJM customers and upon approval by Enforcement of PJM’s plan for doing so. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; 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”)¹³⁸ 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 rules¹³⁹ 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

¹³⁵ *Accounting and Reporting Treatment of Certain Renewable Energy Assets*, Order No. 898, 183 FERC 61,205 (June 29, 2023) (“*Order 898*”).

¹³⁶ *NRG Energy, Inc.*, 184 FERC ¶ 61,026 (July 20, 2023).

¹³⁷ *Id.* at P 5.

¹³⁸ *Entergy Arkansas, LLC*, 183 FERC ¶ 61,207 (June 22, 2023).

¹³⁹ 18 C.F.R. § 35.41(a) and (b).

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).

Natural Gas-Related Enforcement Actions

- **Pacific Summit Energy LLC (IN23-9)**

On June 30, 2023, the FERC approved a Stipulation and Consent Agreement with Pacific Summit Energy LLC ("Pacific Summit")¹⁴⁰ that resolved OE's investigation into whether Pacific Summit engaged in a related-positions fraudulent scheme involving physical trading at Transco Zone 6 for the purpose of benefiting related financial positions during the October 2017 Bidweek (September 25-29, 2017), in violation of section 4A of the Natural Gas Act and the FERC's Anti-Manipulation Rule. Under the Settlement, in which Pacific Summit neither admits nor denies the alleged violations, Pacific Summit agreed to **disgorge \$154,623** and to **pay a civil penalty of \$360,000** to the United States Treasury. Pacific Summit also agreed to submit annual compliance monitoring reports for at least two years. The disgorgement payments will be made at the direction of OE Staff *pro rata* to market participants who had financial instruments settle based on the effected indexes in October 2017. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **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,¹⁴¹ 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,¹⁴² 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.

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

On December 16, 2021, the FERC issued a show cause order¹⁴³ 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

¹⁴⁰ *Pacific Summit Energy LLC*, 183 FERC ¶ 61,236 (June 30, 2023).

¹⁴¹ 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.

¹⁴² *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 183 FERC ¶ 61,190 (June 14, 2023) ("*June 14 Order*").

¹⁴³ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 177 FERC ¶ 61,182 (Dec. 16, 2021) ("*Rover/ETP Tuscarawas River HDD Show Cause Order*").

Regulations (18 C.F.R. § 157.20); and the FERC's Certificate Order,¹⁴⁴ 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;¹⁴⁵ (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.¹⁴⁶ This matter is pending before the FERC.

- **BP (IN13-15)**

On July 7, 2023, the FERC approved a Stipulation and Consent Agreement with BP America Inc., BP Corporation North America, Inc., BP America Production Company, and BP Energy Company (collectively "BP")¹⁴⁷ that resolves (i) the FERC's years long investigation into BP's violations of the FERC's Anti-Manipulation Rules, as well as (ii) the more recent litigation before the 5th Circuit Court of Appeals. BP agreed to **pay a civil penalty of \$10.75 million (roughly ½ of the amount assessed in Opinion 549-A)**¹⁴⁸ and **not to seek return of the \$250,295 of disgorgement** that it has already paid. This will conclude reporting on this matter.

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

On April 28, 2016, the FERC issued a show cause order¹⁴⁹ 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 2012.¹⁵⁰

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

¹⁴⁴ *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").

¹⁴⁵ 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.

¹⁴⁶ *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.

¹⁴⁷ *BP America Inc. et al.*, 184 FERC ¶ 61,016 (July 7, 2023).

¹⁴⁸ *BP America Inc. et al.*, Opinion No. 549-A, 173 FERC ¶ 61,239 (Dec. 17, 2020) ("*BP Penalties Allegheny Order*").

¹⁴⁹ *Total Gas & Power North America, Inc.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) ("*TGPNA Show Cause Order*").

¹⁵⁰ 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.

(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.¹⁵¹ On July 27, 2021, Chief Judge Cintron designated Judge Suzanne Krolikowski 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.¹⁵²

On June 14, 2023, the Commission issued an Order on Presiding Officer Reassignment,¹⁵³ 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 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. On July 18, Judge Patricia M. French was substituted as Presiding Judge (relieving Judge Krolikowski of all of her duties with respect to this proceeding).

XIV. Natural Gas Proceedings

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

New England Pipeline Proceedings

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

- **Iroquois ExC Project (CP20-48)**
 - 125,000 Dth/d of incremental firm transportation service to ConEd and KeySpan by building and operating new natural gas compression and cooling facilities at the sites of four existing Iroquois compressor stations in Connecticut (Brookfield and Milford) and New York (Athens and Dover).
 - Three-year construction project; service request by November 1, 2023.
 - On March 25, 2022, after procedural developments summarized in previous Reports, the FERC issued to Iroquois a certificate of public convenience and necessity, authorizing it to construct and operate the proposed facilities.¹⁵⁴ The certificate was conditioned on: (i) Iroquois' completion of construction

¹⁵¹ *Total Gas & Power North America, Inc. et al.*, 176 FERC ¶ 61,026 (July 15, 2021).

¹⁵² *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).

¹⁵³ *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*").

¹⁵⁴ *Iroquois Gas Transmission Sys., L.P.*, 178 FERC ¶ 61,200 (2022) (*Iroquois Certificate Order*).

of the proposed facilities and making them available for service within **three years** of the date of the; (ii) Iroquois' compliance with all applicable FERC regulations under the NGA; (iii) Iroquois' compliance with the environmental conditions listed in the appendix to the order; and (iv) Iroquois' filing written statements affirming that it has executed firm service agreements for volumes and service terms equivalent to those in its precedent agreements, prior to commencing construction. The March 25, 2022 order also approved, as modified, Iroquois' proposed incremental recourse rate and incremental fuel retention percentages as the initial rates for transportation on the Enhancement by Compression Project.

- ▶ On April 18, 2022, Iroquois accepted the certificate issued in the *Iroquois Certificate Order*.
- ▶ On June 17, 2022, in accordance with the *Iroquois Certificate Order*, Iroquois submitted its Implementation Plan, documenting how it will comply with the FERC's Certificate conditions.
- ▶ The Project is targeted for a 4th quarter 2023 in-service date.

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,¹⁵⁵ and that effectively halted construction of the NECEC Project,¹⁵⁶ was unconstitutional to the extent it required the legislation to be applied retroactively to the certificate of public convenience and necessity ("CPCN") issued for the Project if NECEC had acquired vested rights to proceed with Project construction (by undertaking substantial construction consistent with and in good-faith reliance on the CPCN before the Initiative was enacted). The Court remanded to the Business and Consumer Docket the factual question of whether NECEC performed substantial construction in good faith according to a schedule that was not created or expedited for the purpose of generating a vested rights claim (which it suggested appeared to be the case from the limited record developed in connection with the request for preliminary injunctive relief in this matter).

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

¹⁵⁵ 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?"

¹⁵⁶ 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.

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).

- **Order 2222 Compliance Orders (23-1167, 23-1168, 23-1169, 23-1170)(consolidated)**

Underlying FERC Proceeding: ER22-983¹⁵⁷

Petitioners: Eversource, ISO-NE, National Grid, and CMP/UI

Status: Being Held In Abeyance Pending Further FERC Order on Rehearing in ER22-983

On June 30, 2023, ISO-NE (23-1168), CMP/UI (23-1170), Eversource (23-1167), and National Grid (23-1169) petitioned the DC Circuit Court of Appeals for review of the FERC's orders related to the FERC's *Order 2222 Compliance Orders*.¹⁵⁸ On July 3, 2023, the Court consolidated the cases, with Case No. 23-1667 as the lead case. On July 24, 2023, the FERC moved to have the consolidated cases held in abeyance pending the issuance of the Commission's further order on rehearing. The Court granted that motion on July 27, 2023, with the case is to be held in abeyance pending further order of the Court. The parties were directed to file motions to govern future proceedings in this case by October 10, 2023. Motions to intervene by non-appealing parties have been filed by Versant Power.

¹⁵⁷ *ISO New England Inc. and New England Power Pool Participants Comm.*, 182 FERC ¶ 61,137 (Mar. 1, 2023) ("*Order 2222 Compliance Order*"); *ISO New England Inc. and New England Power Pool Participants Comm.*, 183 FERC ¶ 62,050 (May 1, 2023) ("*Order 2222 Compliance Allegheny Notice*", and together with the *Order 2222 Compliance Order*, the "*Order 2222 Compliance Orders*").

¹⁵⁸ In response to the region's *Order 2222 Changes*, 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*, as described in previous Reports. When filed, 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.

- **Seabrook Dispute Order (23-1094)**
Underlying FERC Proceeding: EL21-6, EL 23-3¹⁵⁹
Petitioner: NextEra Energy Resources, LLC and NextEra Energy Seabrook, LLC
Status: Briefing Underway

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 related to the Seabrook Dispute.¹⁶⁰ As previously reported, initial submissions have been filed.¹⁶¹ Since the last Report, the FERC filed the Certified Index to the Record and NextEra filed Petitioners’ Brief. Remaining submissions include: 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.

- **2nd Revised Narragansett LSA Orders (22-1161, 22-1108) (consolidated)**
Underlying FERC Proceeding: ER22-707¹⁶²
Petitioner: Green Development
Status: Petitions for Review Denied; Issuance of Mandate Withheld

On July 28, 2023, the DC Circuit issued an order denying Green Development’s petitions for review. The Court held that each of Green Development’s four grounds for vacatur lacked merit. The Court directed the Clerk to withhold issuance of the mandate until seven days after disposition of any timely petition for rehearing or petition for rehearing *en banc*.

¹⁵⁹ *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*”).

¹⁶⁰ 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”. 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. 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. 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. 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. 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. 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.

¹⁶¹ Initial submissions include 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 (filed May 8, 2023), the Certified Index to the Record (filed July 21, 2023), and motions for leave to intervene (filed Apr. 14, 2023 by NECEC Transmission LLC and Avangrid, Inc. (collectively, “Avangrid”) in support of the FERC).

¹⁶² *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*”.

- **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, -011,¹⁶³ -013¹⁶⁴ -017¹⁶⁵
Petitioners: Mystic, CT Parties,¹⁶⁶ MA AG, ENECOS

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

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 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*. 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. Most recently, on July 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 July 27, 2023, the Court issued an order that these cases remain in abeyance and that the parties file motions to govern future proceedings by **October 25, 2023**.

- **CASPR (20-1333, 21-1031) (consolidated)****
Underlying FERC Proceeding: ER18-619¹⁶⁷
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

¹⁶³ *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).

¹⁶⁴ *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).

¹⁶⁵ *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*).

¹⁶⁶ In this appeal, "CT Parties" are the CT PURA CT PURA, Connecticut Department of Energy and Environmental Protection ("CT DEEP"), and the CT OCC.

¹⁶⁷ *ISO New England Inc.*, 162 FERC ¶ 61,205 (Mar. 9, 2018) ("*CASPR Order*").

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: ER15-414¹⁶⁸

Petitioners: TOs' (CMP et al.)

Status: Being Held in Abeyance

On August 28, 2020, the TOs¹⁶⁹ 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*¹⁷⁰ decision. On September 22, 2020, the FERC submitted an unopposed motion to hold this proceeding in abeyance for four months to allow for the Commission to "a future order on petitioners' request for rehearing of the order challenged in this appeal, and the rate proceeding in which the challenged order was issued remains ongoing before the Commission." On October 2, 2020, the Court granted the FERC's motion, and directed the parties to file motions to govern future proceedings in this case by February 2, 2021. On January 25, 2021, the FERC requested that the Court continue to hold this petition for review in abeyance for an additional three months, with parties to file motions to govern future proceedings at the end of that period. The FERC requested continued abeyance because of its intention to issue a future order on petitioners' request for rehearing of the order challenged in this appeal, and the rate proceeding in which the challenged order was issued remains ongoing before the FERC. Petitioners consented to the requested abeyance. On February 11, 2021, the Court issued an order that that this case remain in abeyance pending further order of the court. On April 21, 2021, the FERC filed an unopposed motion for continued abeyance of this case *because* the Commission intends to issue a future order on Petitioners' request for rehearing 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.

¹⁶⁸ *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) ("Order Rejecting Filing").

¹⁶⁹ 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.

¹⁷⁰ *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*").

Other Federal Court Activity of Interest

- **Northern Access Project (22-1233)**
Underlying FERC Proceeding: CP15-115¹⁷¹
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.) (9th Cir.)**
Underlying FERC Proceeding: RM19-15¹⁷²
Petitioners: SEIA et al.

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

On September 17, 2020, SEIA petitioned the 9th Circuit Court of Appeals for review of *Order 872*.¹⁷³ 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: CP16-9-012¹⁷⁴
Petitioners: LS Power, Algonquin, INGA

Status: Court Dismissed Petitions in Cases 22-1146/47; Remaining Cases (21-1115 et al.), Previously Being Held in Abeyance Pending Disposition of 22-1146/47, Will Return to Active Consideration

As previously reported, Algonquin petitioned the DC Circuit, on May 3, 2021, for review of the *Briefing Order* and the *April 19 Notice of Denial of Rehearings by Operation of Law*. Appearances, docketing statements and a statement of issues were due and filed June 4, 2021. Also on June 4, 2021, the FERC filed an unopposed motion to hold this proceeding in temporary abeyance, until August 2, 2021, including the filing of the certified index to the record, because “the May 3 petition for review no longer reflects the [FERC]’s latest determination in this matter.” The Court granted the first abeyance motion. On November 15, 2021, the Court granted a third abeyance motion by the FERC, directing the parties to file motions to govern future proceedings by January 31, 2022. On January 31, 2022, Algonquin and INGA asked the Court to extend the abeyance by an additional 120 days (to May 31, 2022). On February 15, 2022, the Court issued an order extending the abeyance and directing the Petitioners to file motions to govern future proceedings by May 31, 2022. On May 31, 2022, Petitioners asked the Court to continue to hold this proceeding in abeyance pending the First Circuit’s disposition of Algonquin’s pending motions to transfer that Court’s cases 20-1458 and 22-1201 (which also challenge the FERC’s authorization of the “Atlantic Bridge Project”).

On June 30, 2022, 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, 2022, the parties filed a proposal that cases 22-1146 and 22-1147 be severed, proposed a

¹⁷¹ *National Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 179 FERC ¶ 61,226 (June 29, 2022) (“*Northern Access Project Add'l Extension Order*”).

¹⁷² *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).

¹⁷³ *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.

¹⁷⁴ *Briefing Order; April 19 Notice of Denial of Rehearings by Operation of Law*.

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).

As previously reported, briefing was completed in Cases 22-1146 and 22-1147 and oral argument held on April 20, 2023. Since the last Report, the DC Circuit issued an order dismissing both petitions for lack of jurisdiction. The remaining matters will be returned to active consideration.

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