

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of September 6, 2023

The following activity, as more fully described in the attached Litigation Report, has occurred since the report dated August 2, 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 22 Sep 5	ISO-NE , FirstLight , NECOS , NEPGA file comments and protests to Brookfield’s Complaint Brookfield answers ISO-NE and NECOS comments and protest
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II. Rate, ICR, FCA, Cost Recovery Filings

6	Stonepeake Kestrel CIP-IROL (Schedule 17) Section 205 Cost Recovery Filing (ER23-2429)	Aug 22	Stonepeake Kestrel amends its filing and reduces the amount of IROL-CIP Costs that it’s seeking to recover from \$1.6 million to \$ 1.48 million ; comment deadline on amended filing Sep 12, 2023
7	Bucksport Generation (Schedule 17) Section 205 Cost Recovery Filing (ER23-2428)	Aug 22	Bucksport Generation amends its filing and reduces the amount of IROL-CIP Costs that it’s seeking to recover from \$277,874 to \$251,419 ; comment deadline on amended filing Sep 14, 2023
7	FCA18 De-List Bids Filing (ER23-2379)	Aug 22	FERC accepts ISO-NE’s filing, eff. <i>Sep 11, 2023</i>
7	CSC CIP-IROL (Schedule 17) Section 205 Cost Recovery Filing (ER23-1826)	Aug 28	FERC accepts amended filing for recovery of \$650,244 in CIP-IROL costs, eff. <i>Jul 4, 2023</i>
8	BHD Regulatory Asset-Establishment & Recovery Through Rates (ER23-1598)	Aug 7	Versant requests delay in FERC action, to Oct 7, 2023 , to allow for possible resolution of MPUC’s questions and concerns
9	Mystic 8/9 COSA (ER18-1639)		
9	(-025) First CapEx Settlement Agreement Tariff Sheets Filing	Aug 30	Mystic files revised tariff records in eTariff format, effective <i>Jun 1, 2022</i> , to reflect the FERC’s approval of the First CapEx Settlement Agreement; comment deadline Sep 20, 2023
* 12	Versant MPD OATT 2022 Annual Update Settlement Agreement (ER20-1977-005)	Aug 30	Versant submits 2022 Annual Update Offer of Settlement between itself and the Maine Wholesale Customer Group, the Aroostook Energy Assoc., the Maine OPA, and the MPUC; comment deadline Sep 20, 2023

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

13	IEP Parameter Updates (ER23-1588)	Aug 4 Sep 5	FERC accepts IEP Parameter Updates, eff. <i>Aug 4, 2023</i> Public Interest Organizations request reh’g of <i>IEP Parameter Updates Order</i>
14	New England’s <i>Order 2222</i> Compliance Filing (ER22-983)	Aug 28	ISO-NE and NEPOOL joint file 180-day Mitigation Compliance Revisions (Mitigation Compliance Revisions); comment deadline Sep 18, 2023

IV. OATT Amendments / TOAs / Coordination Agreements

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| 16 | Versant Power Att. F App. D Depreciation Rate Change (ER23-2483) | Aug 8 | Versant Power supplements its filing with additional exhibits |
| 17 | CMP Att. F App. D Depreciation Rate Change (ER23-2477) | Aug 28 | FERC accepts change, eff. <i>Jul 1, 2023</i> |
| 17 | <i>Order 881</i> Compliance Filing: New England (ER22-2357) | Aug 14 | ISO-NE, NEPOOL, the PTO AC, CSC jointly file revisions to Section II of the OATT in response to the requirements of the <i>New England Order 881 Compliance Order</i> |

V. Financial Assurance/Billing Policy Amendments

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| 18 | FAP Eligible LOC Issuer Changes (ER23-2277) | Aug 11 | FERC accepts Eligible LOC Issuer Changes, eff. <i>Aug 27, 2023</i> |
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VI. Schedule 20/21/22/23 Changes & Agreements

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| 18 | Schedule 21-VP: Real Power Loss Factor Charge (ER23-2142) | Aug 11 | FERC accepts change, eff. <i>Sep 1, 2023</i> |
| 18 | Schedule 21-VP: Versant/Black Bear LSAs (ER23-2035) | Aug 29 | Versant submits refund report; comment deadline <i>Sep 19, 2023</i> |
| * 19 | Schedule 21-VP: 2022 Annual Update Settlement Agreement (ER20-2054-003) | Aug 29 | Versant submits 2022 Annual Update Offer of Settlement between itself and the MPUC; comment deadline <i>Sep 19, 2023</i> |

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

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| * 19 | Capital Projects Report -2023 Q2 (ER23-2620) | Aug 11
Aug 16
Aug 28, 31 | ISO-NE files 2023 Q2 Report
NEPOOL submits comments supporting Report
National Grid, Eversource intervene doc-lessly |
| 19 | Interconnection Study Metrics Processing Time Exceedance Report 2023 Q2 (ER19-1951) | Aug 14 | ISO-NE files 2023 Q2 Report |
| * 20 | ISO-NE 2023 Q2 FERC Form 3Q (not docketed) | Aug 21 | ISO-NE submits its 2023 Q2 FERC Form 3Q |

IX. Membership Filings

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| * 20 | Sep 2023 Membership Filing (ER23-2756) | Aug 31 | <i>New Members:</i> Phoenix Energy Group and 3Degrees Group;
<i>Terminations:</i> Just Energy (U.S.) Corp., NRG Power Marketing, Norwalk Power, Somerset Power, and WP&G Holdings; and the <i>Name Change</i> of NRG Business Marketing, LLC; comments deadline <i>Sep 21, 2023</i> |
| 21 | Membership – Manchester Methane Involuntary Termination (ER23-2390) | Sep 1 | FERC accepts the involuntary termination of the Participant status of Manchester Methane, eff. <i>Sep 11, 2023</i> |

21	Jul 2023 Membership Filing (ER23-2319)	Aug 28	New Members: Hecate Energy Albany 2; Erie Wind, LLC; and SCEF1 FUEL CELL, LLC Terminations: Concurrent LLC; and Brookfield Energy Marketing LP Name Change: CPV Spruce Mountain Wind, LLC
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X. Misc. - ERO Rules, Filings; Reliability Standards

21	NERC Report on Evaluation of Physical Reliability Standard (CIP-014) (RD23-2)	Aug 10 Aug 21	FERC/NERC staff convene tech. conf. to discuss BPS physical security FERC issues post-tech. conf. notice inviting comments; comment deadline Sep 21, 2023
21	Inverter-Based Resource Registration (RD22-4)	Aug 16 Aug 31	NERC files first 90-Day Progress Report APPA comments on Aug 16 Report
* 22	2024 NERC/NPCC Business Plans and Budgets (RR23-3)	Aug 23	NERC submits proposed 2024 Business Plan and Budget for itself and its Regional Entities, including NPCC; comment deadline Sep 14, 2023

XI. Misc. - of Regional Interest

23	203 Application: Energy Harbor / Vistra (EC23-74)	Aug 4 Aug 15 Aug 17 Aug 22 Sep 1 Sep 5	Vistra/Energy Harbor answer NOPEC PJM IMM answers Energy Harbor/Vistra's Jul 10 answer FERC issues deficiency letter; response due Sep 18, 2023 US DOJ Antitrust Division submits comments OHIO PUC's office of Fed. Energy Advocate support Ohio Consumer Counsel's protest Vistra/Energy Harbor answer US DOJ Antitrust Division comments
23	203 Application: Weaver Wind / Greenbacker (EC23-68)	Aug 2	Weaver Wind notifies the FERC that the authorized transaction was consummated on Jul 25, 2023
24	PURPA Enforcement Petition: Allco Finance Limited (EL23-84)	Aug 14 Aug 21 Aug 24	NECEC Transmission, MOPA file protests; MA State Agencies request an extension of time to file comments FERC grants extension of time to file comments only to Aug 24, 2023 MA State Agencies protest Allco Petition
* 24	D&E Agreement Amendment: PSNH/NECEC (ER23-2645)	Aug 17 Aug 28	PSNH files an amendment to D&E Agreement with NECEC; comment deadline Sep 7, 2023 National Grid intervenes
24	LGIA: RIE/ISO-NE/RISEC & Tiverton (ER23-2494 and ER23-2491)	Aug 8	RI Energy intervenes
24	LGIA Termination: CL&P/ISO-NE/NTE CT (ER23-2378)	Aug 31	FERC accepts notice of termination of LGIA, eff. <i>Jul 12, 2023</i>
25	Engineering & Test Agreement: CL&P/BPUS (ER23-2335)	Aug 15	FERC accepts Engineering and Test Agreement, eff. <i>Jul 6, 2023</i>
25	IA Cancellation: NEP/TransCanada (ER23-2182)	Aug 10	FERC accepts notice of cancellation, eff. <i>Aug 14, 2023</i>
25	D&E Agreement Cancellation: NSTAR/Medway Grid (ER23-2117)	Aug 10	FERC accepts notice of cancellation, eff. <i>Jun 13, 2023</i>

XII. Misc. - Administrative & Rulemaking Proceedings

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| 27 | Second New England Winter Gas-Electric Forum (AD22-9) | Aug 24-28 | Post Forum Comments filed by NEPOOL , NESCOE , Acadia Center , AEU , Avangrid , Calpine , CLF/UCS/Sierra Club , Constellation , Eversource , FirstLight , Generation Bridge , IECG , LS Power , CT OCC , Maine OPA , MA AG , NH OCA , National Grid , NECOS , New England LDCs , New Leaf , PowerOptions , Public Systems , Repsol , RI Energy , VEIC , Maine PUC , MA DPU , EPSA , INGAA , NGA , Berkshire Enviv. Action Team , and the Fix the Grid Campaign , and Potomac Economics |
| 29 | Joint Federal-State Task Force on Electric Transmission (AD21-15) | Aug 8
Aug 29 | FERC posts transcript of Jul 16, 2023 meeting
FERC issues Order on Nominations identifying state commissioners who will serve on the Task Force for the Sep 2023 – Aug 2024 term, including Commissioner Riley Allen (VT PUC) and Chair Marissa Gillett (CT PURA) |
| 31 | <i>Order 2023</i> : Interconnection Reforms (RM22-14) | Aug 24-31
Aug 28

Sep 6 | 35 Parties requests clarification and/or reh'g of <i>Order 2023</i>
Joint RTOs request extension of time, to at least 90 days after the FERC issues a substantive order on the issues raised on clarification and/or reh'g
<i>Order 2023</i> published in <i>Federal Register</i> ; absent further action, compliance filings due Dec 5, 2023 |
| 33 | NOPR: Transmission Siting (RM22-7) | Aug 9

Aug 21 | Chairman Phillips' response to Senator Schumer's Jun 20, 2023 letter posted to eLibrary
Each Commissioner's response to Senator Barrasso's Apr 26, 2023 letter posted to eLibrary |

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

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| * 35 | Big River Steel (BRS) and Entergy Arkansas (EA) (IN23-11) | Aug 21 | FERC approves Stipulation and Consent Agreement that resolves OE's investigation into BRS's participation in a MISO demand response program between Sep 2016 and Apr 2022; BRS must disgorge \$15,940,399 , pay a \$6 million civil penalty , and EA must disgorge \$5,033,780 , and ensure return of \$8,181,899 to its customers |
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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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| 40 | Seabrook Dispute Order (23-1094, 23-1215) (consol.) | Aug 17 | Court consolidates 23-1215 with 23-1094 |
| 42 | Opinion 531-A Compliance Filing Undo (20-1329) | Aug 3 | FERC files abeyance status report |
| 43 | Northern Access Project (22-1233) | | Oral argument scheduled for Sep 18, 2023 |
| 43 | Algonquin Atlantic Bridge Project Orders (22-1146, 22-1147) (consol.) | Aug 14 | Court orders remaining consolidated cases remain in abeyance and directs the parties to file motions to govern future proceedings by Sep 11, 2023 |

M E M O R A N D U M

TO: NEPOOL Participants Committee Members and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: September 6, 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 September 6, 2023. If you have questions, please contact us.

I. Complaints/Section 206 Proceedings

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

As previously reported, 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,² 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 were due on or before August 22, 2023 and were filed by [ISO-NE](#), [FirstLight](#), [NECOS](#),³ and the New England Power Generators Association ("[NEPGA](#)"). On September 5, Brookfield answered ISO-NE's comments and NECOS' protest. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

As reported below, this Section 206 proceeding, instituted by the FERC on May 5, 2023 (pursuant to its 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),⁴ is being held in abeyance.

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 See *ISO New England Inc.*, 183 FERC ¶ 61,059 (Apr. 24, 2022) ("*IEP Remand Compliance Filing Order*").

³ "NECOS" are Belmont Municipal Light Dept., Block Island Utility District, Braintree Electric Light Dept., Chicopee Municipal Light Dept., Energy New England, LLC, Georgetown Municipal Light Dept., Hingham Municipal Lighting Plant, Littleton Electric Light & Water Dept., Merrimac Municipal Light Dept., Middleborough Gas & Electric Dept., Middleton Electric Light Dept., North Attleborough Electric Dept., Norwood Municipal Light Dept., Pascoag Utility District, Reading Municipal Light Dept., Rowley Municipal Lighting Plant, Stowe Electric Dept., Taunton Municipal Lighting Plant, Wallingford Electric Division, and Westfield Gas & Electric Light Dept.

⁴ *Dynegy Marketing and Trade, LLC and ISO New England, Inc.*, 183 FERC ¶ 61,091 (May 5, 2023) ("*Dynegy Mitigation Order*"). In the Dynegy Mitigation Order, ISO-NE was directed 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

Parties to this proceeding include: NEPOOL, Calpine, Connecticut Office of Consumer Counsel (“CT OCC”), Massachusetts (“MA”) Attorney General (“MA AG”), NEPGA, New England States Committee On Electricity (NESCOE),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 July 14, 2023, the FERC granted ISO-NE’s June 28, 2023 motion, supported by NEPOOL on July 5, 2023, requesting that the FERC hold this proceeding in abeyance to allow potential ISO-NE Tariff design changes to be vetted through the Participant Processes. The FERC stated 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’s 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 In the case of ISO-NE’s tariff, the FERC found that the absence of volumetric minimum collateral requirements for FTR Market Participants (“volumetric FTR collateral requirements”) appeared to render the ISO-

determine that the Tariff has in fact become unjust and unreasonable or unduly discriminatory. The refund effective date for this proceeding is May 12, 2023.

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*”).

NE Tariff unjust and unreasonable. Accordingly, ISO-NE was directed, on or before October 26, 2022, to either: (1) show cause as to why the Tariff remains just and reasonable and not unduly discriminatory or preferential; or (2) explain what changes to the Tariff it believes would remedy the identified concerns if the FERC were to determine that the Tariff has in fact become unjust and unreasonable or unduly discriminatory or preferential.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

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."

revisions to the FAP consistent with any such order. Comments on ISO-NE's response were due on or before November 25, 2022; none were filed. As noted, this matter remains pending before the FERC.

If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **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*.

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*").

- **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 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

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, 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.

model. For a single utility of average risk, the FERC will average the medians rather than the midpoints. The FERC said that it would continue to use the same proxy group criteria it established in *Opinion 531* to run the ROE models, but it made a significant change to the manner in which it will apply the high-end outlier test.

The FERC provided preliminary analysis of how it would apply the proposed methodology in the Base ROE I Complaint, suggesting that it would affirm its holding that an 11.14% Base ROE is unjust and unreasonable. The FERC suggested that it would adopt a 10.41% Base ROE and cap any preexisting incentive-based total ROE at 13.08%.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)**

Stonepeake Kestrel Energy Marketing LLC (“Stonepeake Kestrel”) initiated this proceeding on July 18, 2023, by requesting that the FERC accept 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 initially sought recovery of \$1,605,854 in incremental medium impact CIP-IROL Costs incurred between March 29, 2021 and March 31, 2023. Since the last Report, on August 22, Stonepeake Kestrel amended its July 18 filing to remove

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).

certain capital and interest on operations and maintenance costs from its revised rate schedule.³⁰ Accordingly, Stonepeake Kestrel is now seeking recovery of **\$1,483,297** in IROL-CIP Costs. Comments on Stonepeake Kestrel's amended filing are due on or before **September 12, 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)**

Similarly, Bucksport Generation LLC ("Bucksport Generation") has requested that the FERC accept its revised rate schedule to allow recovery of its eligible medium-impact IROL-CIP Costs. For the same reasons articulated by Stonepeake Kestrel, Bucksport Generation also amended its initial filing (removing certain capital and interest on operations and maintenance costs from its revised rate schedule) and now seeks to recover **\$251,419** in incremental medium impact CIP-IROL Costs incurred between March 29, 2021 and March 31, 2023. Comments on Bucksport Generation's amended filing are due on or before **September 14, 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)**

On August 21, 2023, the FERC accepted ISO-NE's 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.³¹ As previously reported, 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. Unless the *FCA18 De-List Bids Order* is challenged, this proceeding will be concluded. 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 that the FERC accept 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 sought recovery of \$723,601 in 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. In its response, among other things, CSC removed the interest on operations and maintenance expenses, as well as IROL-CIP Accumulated Deferred Income Taxes and Working Capital, from its calculations, reducing the amount of the costs sought to be recovered to **\$650,244**. Comments on CSC's deficiency letter response were due on or before August 18, 2023; none were filed.

Amended CSC Filing Accepted. On August 28, 2023, the FERC accepted CSC's CIP-IROL Cost Recovery filing, effective *July 4, 2023*.³² Unless the August 28, 2023 order is challenged, this proceeding will be concluded.

³⁰ Stonepeake Kestrel explained that it removed working capital and interest on operations and maintenance costs for the purposes of this filing in order to avoid a deficiency letter similar to the one received by CSC in Docket No. ER23-1826 (see below), and to obtain an affirmative order in this proceeding as expeditiously as possible.

³¹ *ISO New England Inc.*, Docket No. ER23-2379-000 (Aug. 21, 2023) (unpublished letter order) ("*FCA18 De-List Bids Order*").

³² *Cross-Sound Cable Co., LLC*, Docket No. ER23-1826-001 (Aug. 28, 2023) (unpublished letter order).

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 (see below)). 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).

Request to Delay FERC Action Until October 7, 2023. On August 7, 2023, Versant requested without opposition that the FERC delay its action on this matter in order to allow for Versant Power and the MPUC, which are exchanging information, to resolve the MPUC’s questions and concerns described above.

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

- **Mystic COS Agreement Updates to Reflect Constellation Spin Transaction³³ (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.³⁴ 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, 2022,³⁵ 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).

³³ 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.

³⁴ *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,081 (May 2, 2022) (“May 2, 2022 Order”).

³⁵ *Constellation Mystic Power, LLC*, 181 FERC ¶ 61,099 (Nov. 2, 2022).

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

Mystic I Remand. As previously reported, the DC Circuit issued a decision on August 23, 2022³⁶ 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 Systems³⁷ 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.

(-025) First CapEx Settlement Agreement Tariff Sheets Filing. As directed in the August 1, 2023 order conditionally approving the First CapEx Settlement Agreement,³⁸ Mystic filed, on August 31, 2023, revised tariff records in eTariff format, effective *June 1, 2022*, to reflect the FERC's action. Comments, if any, on the Tariff Sheets filing are due on or before **September 20, 2023**.

(-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*.³⁹ Mystic asserted that (a) the 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

³⁶ *Constellation Mystic Power, LLC v. FERC*, 45 F.4th 1028 (D.C. Cir. 2022) ("*Mystic I Remand Order*").

³⁷ "Public Systems" for these purposes are: MMWEC, CMEEC, NHEC, VPPSA, the Eastern New England Consumer-Owned Systems ("ENECOS"), and Energy New England, LLC ("ENE").

³⁸ *Constellation Mystic Power, LLC*, 184 FERC ¶ 61,070 (Aug. 1, 2023) ("*Mystic First CapEx Info Settlement Order*").

³⁹ *Constellation Mystic Power, LLC*, 182 FERC ¶ 61,200 (Mar. 28, 2023) ("*Mystic I Order on Remand*"), *reh'g denied by operation of law*, 183 FERC ¶ 62,115 (May 30, 2023). In the *Mystic I Order on Remand*, the FERC (1) found the initial allocation of 91% of Everett's fixed operating costs to Mystic remains just and reasonable and required that the revenue sharing mechanism be reinstated in the COSA; (2) held its ruling on the clawback issue in abeyance pending resolution in the settlement proceeding; (3) found that the existing language of the COSA mitigates the incentive to unduly delay capital projects; and (4) clarified that all interested parties can review and challenge Mystic's revenue credits and tank congestion charges during a subsequent true-up process. The FERC directed Mystic to submit a 30-day compliance filing, on or before April 27, 2023, revising the COSA to reinstate the revenue sharing mechanism (see -023).

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".⁴⁰ 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 remains pending before the FERC.

(-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 August 15, 2023, NESCOE, as it had agreed to in the FERC-approved First CapEx Settlement Agreement, submitted a notice that it was withdrawing its October 17, 2022 Formal Challenge No. III.A to the 2022 Informational Filing (its challenge that the 2023 CapEx Projects were unsupported). FERC action on the Second CapEx Info Filing remains pending.

(-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*.⁴¹ 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.

⁴⁰ *Constellation Mystic Power, LLC*, 183 FERC ¶ 62,115 (May 30, 2023) ("*Mystic I Order on Remand Allegheny Notice*").

⁴¹ 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*,⁴² 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.

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.

⁴² *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).

- **Versant MPD OATT 2022 Annual Update Settlement Agreement (ER20-1977-005)**

On August 30, 2023, Versant submitted a Joint Offer of Settlement (“Versant MPD OATT 2022 Annual Update Settlement Agreement”) between itself and the Maine Wholesale Customer Group, the Aroostook Energy Association, the Maine Office of the Public Advocate (“MOPA”), and the Maine Public Utilities Commission (together, the “Maine Parties”) which, if approved, would resolve all issues raised by the Maine Parties with regards to Versant’s 2022 annual update to the transmission charges under the MPD OATT. Comments on the Versant MPD OATT 2022 Annual Update Settlement Agreement are due on or before **September 20, 2023**. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **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,⁴³ 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:

⁴³ 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”).

[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).

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,⁴⁴ 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 August 4, 2023, the FERC accepted ISO-NE and NEPOOL's proposed revisions to Appendix K to Market Rule 1 to update certain parameters within the Inventoried Energy Program ("IEP Parameter Updates").⁴⁵ Specifically, the IEP Parameter Updates: (i) replace the IEP's fixed rate with an indexed rate that automatically adjust to account for changes in gas markets prior to each winter period, (ii) modify 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) are meant to clarify and improve the administration of the IEP. The IEP Parameter Updates were accepted effective as of August 4, 2023.

Request for Rehearing. On September 5, 2023, Public Interest Organizations ("PIOs")⁴⁶ requested rehearing of the *IEP Parameter Updates Order*. The PIOs' request for rehearing is pending, with FERC action required on or before October 5, 2023, or the request will be deemed denied by operation of law. 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

⁴⁴ 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.

⁴⁵ *ISO New England Inc. and New England Power Pool Participants Comm.*, 184 FERC ¶ 61,082 (Aug. 4, 2023) ("*IEP Parameter Updates Order*").

⁴⁶ PIOs are for purposes of this proceeding: the Sierra Club and Conservation Law Foundation ("CLF").

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 Order⁴⁷ 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 filing⁴⁸ (“*Order 2222 Compliance Order*”).⁴⁹

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

⁴⁷ 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.”

⁴⁸ 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.

⁴⁹ *ISO New England Inc. and New England Power Pool Participants Comm.*, 182 FERC ¶ 61,137 (Mar. 1, 2023).

would apply to Distributed Energy Capacity Resources (“DECR”) participating in FCA18. The second, an informational filing that provides an update on implementation timeline milestones associated with DECR participation in FCA18 and the other markets. Those compliance filings were submitted on March 31, 2023. Comments on the 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 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.

On August 28, 2023, ISO-NE and NEPOOL jointly filed the 180-day compliance changes (“Mitigation Compliance Revisions”). ISO-NE requested a March 1, 2024 effective date for the Mitigation Compliance Revisions. Further, ISO-NE asked that the FERC issue an order accepting the Mitigation Compliance Revisions no later than November 1, 2023 to allow sufficient time for implementation of the proposed revisions prior to the scheduled qualification process for FCA19. Also, consistent with the requests made in ISO-NE’s Request for Rehearing and 30-Day

Informational and Compliance Filing in this docket, ISO-NE proposed March 1, 2024 as the new effective date for the rules allowing DECRs to participate in the FCM. Comments on the 180-Day Compliance Filing are due on or before **September 18, 2023**.

Requests for Rehearing and/or Clarification (-002). On March 31, 2023, [ISO-NE](#) and [New England Public Utilities](#)⁵⁰ 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".⁵¹ 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."

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 ("Versant") proposed updated depreciation rates for its local transmission facilities in eastern and coastal Maine (the "Bangor Hydro District" or "BHD") set forth in Appendix D to Attachment F of the ISO-NE OATT. A January 1, 2025 effective was proposed. On August 8,

⁵⁰ "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").

⁵¹ *ISO New England Inc. and New England Power Pool Participants Comm.*, 183 FERC ¶ 62,050 (May 1, 2023) ("*Order 2222 Compliance Allegheny Notice*").

Versant supplemented its filing with exhibits that were inadvertently excluded from its initial filing. Comments on this filing were due on or before August 16, 2023; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

On August 28, 2023, the FERC accepted updated depreciation rates for CMP's transmission facilities that are set forth in Appendix D to Attachment F of the ISO-NE OATT.⁵² The updated depreciation rates were accepted effective as of *July 1, 2023*, as requested. Unless the August 28 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).

- **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,⁵³ 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 remain 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*⁵⁴ ("OATT *Order 881* Compliance Changes").⁵⁵ The OATT *Order 881* Compliance Changes were accepted effective as of *July 12, 2025*, subject to two compliance filings – on due on or before **August 14, 2023** (60-day compliance filing); the other, **November 12, 2024** (the AAR explanation filing). The 60-day compliance filing must (i) revise the Tariff to specify that transmission service at ISO-NE's seams use AARs as the basis for evaluation for near-term transmission service requests (or explain why ISO-NE should not be required to do so); (ii) revise the Tariff to include the examples listed in the FERC's *pro forma* Attachment M (or explain why ISO-NE should not be required to do so); (iii) remove proposed revisions to Schedule 18 excepting the Cross-Sound Cable from the requirements of *Order 881* (or explain why such changes should not be required); and (iv) revise the Tariff to require ISO-NE in a database that it maintains (rather than dividing responsibility between ISO-NE and transmission owners) to host all transmission line ratings, ratings methodologies, and exceptions or alternate ratings (or explain why they should not be required to do so). The AAR explanation filing must explain the timelines for calculating or submitting AARs.

(-001) 60-Day Compliance Changes. On August 14, 2023, ISO-NE, NEPOOL, the PTO AC, and CSC jointly filed revisions to Section II of the OATT in response to the requirements of the *New England Order 881 Compliance Order*. The further compliance changes (i) clarify that ISO-NE will use AARs at its seams; (ii)

⁵² *ISO New England Inc. and Central Maine Power Co.*, Docket No. ER23-2477-000 (Aug. 28, 2023) (unpublished letter order).

⁵³ *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-J, 175 FERC ¶ 61,139 (May 20, 2021) ("Order 676-J").

⁵⁴ *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*").

⁵⁵ *ISO New England Inc.*, 183 FERC ¶ 61,180 (June 15, 2023) ("*New England Order 881 Compliance Order*").

reinsert the list of exceptions in Attachment Q, and specify that the specific criteria for determining whether a transmission line is eligible for an exception will be detailed in ISO-NE's Planning and Operating Procedures; (iii) remove revisions to Schedule 18 proposed to except CSC from the requirements of *Order 881*; and (iv) modify both Attachment Q to the ISO OATT and Attachment M to Schedule 21-Common to require that ISO-NE host all ratings, ratings methodologies, and exceptions in its database. Comments on the further compliance changes were due on or before September 5, 2023; none were filed. The 60-Day Compliance Changes are pending before the FERC.

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 August 11, 2023, the FERC accepted ISO-NE and NEPOOL's 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").⁵⁶ As previously reported, the Eligible LOC Issuer Changes (i) allow ISO-NE 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. The Eligible LOC Issuer Changes were accepted effective as of August 27, 2023. Unless the August 11, 2023 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

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

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

On August 11, 2023, the FERC accepted Versant Power's proposed revision to Schedule 21-VP of the ISO-NE OATT to reflect a change in the Real Power Loss factor for Local Point-to-Point Service from 1.99 % to 1.764 %, effective September 1, 2023.⁵⁷ Unless the August 11 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Schedule 21-VP: 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").⁵⁸ 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, triggering a refund requirement.⁵⁹ On August 29, 2023, Versant Power submitted a Refund Report detailing the time value

⁵⁶ *ISO New England Inc. and New England Power Pool Participants Comm.*, Docket No. ER23-2277-000 (unpublished letter order).

⁵⁷ *ISO New England Inc.*, Docket No. ER23-2142-000 (Aug. 11, 2023) (unpublished letter order).

⁵⁸ *ISO New England Inc.*, Docket No. ER23-2035-000 (July 28, 2023) ("*Versant Black Bear LSAs Order*").

⁵⁹ 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, Versant was required to refund the time value of revenues

refunds it paid to Black Bear Hydro Partners, LLC and Black Bear SO, LLC on August 18, 2023. Comments, if any, on the Refund Report are due on or before **September 19, 2023**. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Schedule 21-VP: 2022 Annual Update Settlement Agreement (ER20-2054-003)**

On August 29, 2023, Versant submitted a Joint Offer of Settlement (“Versant 2022 Annual Update Settlement Agreement”) between itself and the MPUC. Versant stated that, if approved, the 2022 Annual Update Settlement Agreement would resolve all issues raised by the MPUC with respect to the 2022 Annual Update. Comments on the Versant 2022 Annual Update Settlement Agreement are due on or before **September 19, 2023**. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activities to Report

VIII. Regional Reports⁶⁰

- **Capital Projects Report - 2023 Q2 (ER23-2620)**

On August 11, 2023, ISO-NE filed its Capital Projects Report and Unamortized Cost Schedule covering the second quarter (“Q2”) of calendar year 2023 (the “Report”). ISO-NE is required to file the Report under section 205 of the FPA pursuant to Section IV.B.6.2 of the Tariff. Report highlights include the following new projects: (i) nGEM Software Development Part III (\$4.5 million); (ii) IMM Data Analysis Phase IV (\$1.2 million); (iii) Energy Management System Short-term Load Forecast Replacement (\$1.2 million); (iv) Elimination of Minimum Offer Price Rule (\$528,600); (v) Energy Management System Host Monitoring Software Replacement (\$280,600); and (vi) Market Information Server Reporting by Sub-Accounts (\$276,000). Projects with a significant change (amounts returned to the Emerging Work Fund) were (i) Solar Do-Not-Exceed Dispatch Phase II (\$144,100); (ii) Forecast Enhancements (\$173,000); and (iii) Windows Server 2019R2 Deployment Phase I (\$185,500). Comments on this filing were due on or before September 1, 2023. NEPOOL filed comments supporting the 2023 Q2 Report. Eversource and National Grid filed doc-less interventions only. 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).

- **Interconnection Study Metrics Processing Time Exceedance Report 2023 Q2 (ER19-1951)**

On August 14, 2023, ISO-NE filed, as required,⁶¹ public and confidential⁶² versions of its Interconnection Study Metrics Processing Time Exceedance Report (the “Exceedance Report”) for the Second Quarter of 2023 (“2023 Q2”). ISO-NE reported that, with respect to:

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

collected for the time period the rate was collected without FERC authorization (with refunds limited so as not to cause Versant to operate at a loss) and file a refund report with the FERC.

⁶⁰ Reporting on the *Opinion 531* Refund Reports (EL11-66) has been suspended since the last Report and will be continued if and when there is new activity to report.

⁶¹ Under section 3.5.4 of ISO-NE’s Large Generator Interconnection Procedures (“LGIP”), ISO-NE must submit an informational report to the FERC describing each study that exceeds its Interconnection Study deadline, the basis for the delay, and any steps taken to remedy the issue and prevent such delays in the future. The Exceedance Report must be filed within 45 days of the end of the calendar quarter, and ISO-NE must continue to report the information until it reports four consecutive quarters where the delayed amounts do not exceed 25 percent of all the studies conducted for any study type in two consecutive quarters.

⁶² ISO-NE requested that the information contained in Section 3 of the un-redacted version of the Exceedance Report, which contains detailed information regarding ongoing Interconnection Studies and if released could harm or prejudice the competitive position of the Interconnection Customer, be treated as confidential under FERC regulations.

- 6 out of 7 2023 Q2 IFS Reports delivered to Interconnection Customers were delivered later than the best efforts completion timeline (90 days from the Interconnection Customer's execution of the study agreement).
- 13 IFS Reports not yet completed have exceeded the 90-day completion expectation.
- The average mean time from ISO-NE's receipt of the executed IFS Agreement to delivery of the completed IFS report to the Interconnection Customer was 186 days (roughly 60 days longer than in 2023 Q1).
- ♦ **System Impact Study ("SIS") Reports**
 - Both of the SIS Reports delivered to Interconnection Customers were delivered later than the best efforts completion timeline of 270 days.
 - 19 SIS Studies that are not yet completed have exceeded the 270-day completion expectation.
 - The average mean time from ISO-NE's receipt of the executed SIS Agreement to delivery of the completed SIS report to the Interconnection Customer was 394.5 days (a decrease of roughly 390 days from 2023 Q1).
- ♦ **Facility Study Reports**
 - 1 Facility Study Report delivered to an Interconnection Customer was delivered later than the best efforts completion timeline of 90 days.
 - 1 Facility Study that is not yet completed have exceeded the 290-day completion expectation for a 20% level of cost estimate.
 - The average mean time from ISO-NE's receipt of the executed Facility Study Agreement to delivery of the completed Facility Study report to the Interconnection Customer was 181 days.

Section 4 of the Report identified steps ISO-NE has identified to remedy issues and prevent future delays, including mitigating the impact of backlogs and initiating clustering, moving to earlier in the process certain Interconnection Customer data reviews, and enhanced information sharing and coordination efforts with Interconnecting TOs. This report was not noticed for public comment.

- **ISO-NE FERC Form 3Q (2023/Q2) (not docketed)**

On August 21, 2023, ISO-NE submitted its 2023/Q1 FERC Form 3Q (quarterly financial report of electric utilities, licensees, and natural gas companies). Submission of a FERC Form 3-Q is a quarterly requirement which supplements the annual FERC Form 1 financial reporting requirement. These filings are not noticed for public comment.

IX. Membership Filings

- **September 2023 Membership Filing (ER23-2756)**

On August 31, 2023, NEPOOL requested that the FERC accept: (i) the following Applicant's membership in NEPOOL: Phoenix Energy Group, LLC (Supplier Sector); and 3Degrees Group, Inc. (GIS-Only Participant); (ii) the termination of the Participant status of: Just Energy (U.S.) Corp. [Related Person to Just Energy Limited and Hudson Energy Services (Supplier Sector)]; NRG Power Marketing LLC, Norwalk Power LLC and Somerset Power LLC [all Related Persons to NRG Business Marketing et al. (Supplier Sector)]; and WP&G Holdings, LLC (Supplier Sector); and (iii) the Name Change of NRG Business Marketing, LLC (f/k/a Direct Energy Business Marketing, LLC). Comments on this filing are due on or before **September 21, 2023**.

- **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 were due on or before August 21, 2023; none were filed. This matter is pending before the FERC.

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

On September 1, 2023, the FERC accepted the termination of Manchester Methane, LLC's ("Manchester Methane") status as a NEPOOL and ISO-NE Market Participant.⁶³ The involuntary termination of Manchester Methane's NEPOOL and Market Participant status will become effective as of September 11, 2023. Unless the September 1, 2023 order is challenged, this proceeding will be concluded.

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

On August 28, 2023, the FERC accepted: (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).⁶⁴

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,⁶⁵ 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 August 10, 2023, FERC and NERC staff convened an in-person technical conference at NERC's headquarters in Atlanta, GA. The conference discussed physical security of the Bulk-Power System ("BPS"), including the adequacy of existing physical security controls, challenges, and solutions. Speaker materials are posted in the FERC's eLibrary. Those interested are invited to file post-technical conference comments to address issues raised during the technical conference, as identified in the August 3, 2023 Final Notice of Joint Technical Conference. Those comments are due on or before **September 20, 2023**.

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

As directed in the FERC's order accepting NERC's work plan to address registration of Inverter-Based Resources ("IBRs") that are connected to the BPS but not within NERC's definition of the bulk electric system ("non-BES IBRs"),⁶⁶ NERC filed on August 16, 2023, its first progress update on activities by the ERO Enterprise (NERC and the Regional Entities) to execute the Work Plan and initiate revisions to the NERC Registry Criteria to

⁶³ *ISO New England Inc. and New England Power Pool*, Docket No. ER23-2390-000 (Sept. 1, 2023) (unpublished letter order).

⁶⁴ *New England Power Pool Participants Comm.*, Docket No. ER23-2319-000 (Aug. 28, 2023) (unpublished letter order).

⁶⁵ *N. Amer. Elec. Rel. Corp.*, 181 FERC ¶ 61,230 (Dec. 15, 2022).

⁶⁶ *N. Amer. Elec. Rel. Corp.*, 183 FERC ¶ 61,116 (May 18, 2023) ("*IBR Work Plan Order*") (requiring NERC to file progress reports every 90 days detailing the progress towards identifying and registering owners and operators of unregistered IBRs).

register owners and operators of non-BES IBRs that, in the aggregate, have a material impact on BPS reliability. NERC reported on its plans to post proposed Registry Criteria revisions on the NERC website for a 45-day formal comment in early September. On August 31, 2023, APPA filed comments on the IBR Work Plan Update.

- **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”))⁶⁷ 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 notice⁶⁸ proposing to direct NERC (i) to develop new or modified Reliability Standards that address the following reliability gaps related to IBRs: 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, 2023⁶⁹ and were filed by nearly 20 parties, including, among others, [ISO-NE](#), the [IRC](#), [SPP](#), [CAISO](#), [Advanced Energy United](#), [ACPA/SEIA](#), [EEI](#), and [EPRI](#). Reply comments were due on March 6, 2023 and were filed by [ISO-NE](#), [APPA](#), and [CA DWP](#). This matter is pending before the FERC.

- **2024 NERC/NPCC Business Plans and Budgets (RR23-3)**

On August 24, 2023, NERC submitted its proposed Business Plan and Budget, as well as the Business Plans and Budgets for the Regional Entities, including NPCC, for 2024. FERC regulations⁷⁰ require NERC to file its proposed annual budget for statutory and non-statutory activities 130 days before the beginning of its fiscal year (January 1), as well as the annual budget of each Regional Entity for their statutory and non-statutory activities, including complete business plans, organization charts, and explanations of the proposed collection of all dues, fees and charges and the proposed expenditure of funds collected. NERC reports that its proposed 2024 funding requirement represents an overall increase of approximately 12.5% over NERC’s 2023 funding requirement. The NPCC U.S. allocation of NERC’s net funding requirement is \$12.26 million. NPCC has requested \$22.01 million in statutory funding (a U.S. assessment per kWh (2022 NEL) of \$0.000021) and \$1.15 million for non-statutory functions. Comments on this filing are due on or before **September 14, 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 2022,⁷¹ including NPCC. The Report includes comparisons of actual funding

⁶⁷ 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.

⁶⁸ *Reliability Standards to Address Inverter-Based Resources*, 181 FERC ¶ 61,125 (Nov. 17, 2022) (“IBR NOPR”).

⁶⁹ The IBR NOPR was published in the *Fed. Reg.* on Dec. 6, 2022 (Vol. 87, No. 233) pp. 74,541-74,563.

⁷⁰ 18 CFR § 39.4(b) (2014).

⁷¹ 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”).

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.

XI. Misc. - of Regional Interest

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

On July 28, 2023, the FERC authorized⁷² 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 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 IMM). 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 PJM’s IMM. Comments were filed by the Justice Department’s Antitrust Division on August 22; Vistra and Energy harbor answered those comments on September 5. In addition, on August 17, 2023, the FERC issued a deficiency letter identifying the additional information that it needs to process the application. The Response to the deficiency letter is due on or before September 18, 2023 and will constitute an amendment to the application. The FERC noted that the application will not be a completed application for purposes of FERC regulations⁷³ until the information requested is submitted. A notice of amendment will be issued upon receipt of the response.

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 August 2, 2023, Weaver Wind, LLC and Weaver Wind Maine Master Tenant, LLC (“Weaver Wind”) filed a notice that the FERC-authorized transaction,⁷⁴ pursuant to which Jade Energy LLC, a wholly-owned subsidiary of Greenbacker Renewable Energy Company, acquired all the membership interests in Weaver Wind, was consummated on July 25, 2023 (making Weaver Wind a Related Person to Howard Wind and Hecate Energy Albany 2). Reporting on this proceeding is now concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

⁷² *Three Corners Solar, LLC and Three Corners Prime Tenant, LLC*, 184 FERC ¶ 62,060 (Jul. 28, 2023).

⁷³ 18 C.F.R. § 33.11(a) (2023).

⁷⁴ *Weaver Wind, LLC and Weaver Wind Maine Master Tenant, LLC*, 183 FERC ¶ 62,077 (May 12, 2023).

- **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 “MA State Agencies”) to remedy what it asserts if the MA State Agencies’ improper implementation of PURPA. Allco states that the MA State Agencies have implemented a state law that empowers the MA State 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. Doc-less interventions have been filed by MA DOER, MA DPU, HQUS, MOPA, NEPGA, Public Citizen, MA AG, National Grid, and NECEC Transmission LLC.

On August 14, 2023, MA State Agencies filed a Joint Motion for Extension of Time to file comments, from August 14, 2023 to October 23, 2023 (stating that additional time was needed to consult with the MA AG). On August 21, the FERC issued a notice extending the comment deadline only to August 24, 2023. [NECEC Transmission](#), [Maine Office of Public Advocate](#) and [MA State Agencies](#) protested Allco’s complaint. 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 Amendment: PSNH/NECEC (ER23-2645)**

On August 17, 2023, Public Service Company of New Hampshire (“PSNH”) filed an amendment to the First Engineering, Design and Procurement Agreement (“D&E Agreement”) with NECEC Transmission LLC (“NECEC”) that was accepted by the FERC as Service Agreement No. IA-PSNH-13. The revised D&E Agreement sets forth the terms and conditions under which PSNH was to undertake certain design and engineering activities for the mitigation of violations identified in the preliminary initial interconnection analysis summary for NECEC’s proposed 1,200-megawatt high-voltage direct current line from Québec to Lewiston, ME (Queue Position #979). PSNH requested an August 18, 2023 effective date. Comments on this filing are due on or before **September 7, 2023**. 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.

Comments on these filings were due on or before August 16, 2023; none were filed. RI Energy filed doc-less interventions in both proceedings. 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 Termination: CL&P/ISO-NE/NTE CT (ER23-2378)**

On August 31, 2023, the FERC accepted a Notice of Termination of a 3-party LGIA between CL&P, ISO-NE and NTE Connecticut LLC (“NTE CT”).⁷⁵ The LGIA covered the interconnection of NTE CT’s 714 MW combined cycle generating facility located in Killingly, Connecticut. The notice was accepted effective as of *July 12, 2023*, as requested. Unless the August 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).

⁷⁵ *ISO New England Inc. and The Conn. Light and Power Co.*, Docket No. ER23-2378-000 (Aug. 31, 2023) (unpublished letter order).

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

On August 15, 2023, the FERC accepted an Engineering and Test Agreement (“Agreement”) between CL&P and BPUS Generation Development LLC (“Interconnection Customer” or “BPUS”).⁷⁶ As previously reported, 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 designated the Agreement IA-ESCLP-011. The Agreement was accepted effective as of July 6, 2023, as requested. Unless the August 15 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).

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

On August 10, 2023, the FERC accepted the New England Power Company (“NEP”)’s 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.⁷⁷ The Notice of Cancellation was accepted, effective *August 14, 2023*, as requested. Unless the August 10 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).

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

On August 10, 2023, the FERC accepted NSTAR’s notice of cancellation of the Engineering, Design and Procurement Agreement (“D&E Agreement”) with Medway Grid, LLC (“Medway Grid”).⁷⁸ 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. The notice of cancellation was accepted effective as of June 13, 2023, as requested. Unless the August 10 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).

- **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. On July 31, 2023, Versant Power asked the FER to delay action on this filing until **October 9, 2023** to allow for a possible resolution of the MPUC’s questions and concerns. Accordingly, 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).

⁷⁶ *The Conn. Light and Power Co.*, Docket No. ER23-2335-000 (Aug. 15, 2023) (unpublished letter order).

⁷⁷ *New England Power Co.*, Docket No. ER23-2182-000 (Aug. 10, 2023) (unpublished letter order).

⁷⁸ *NSTAR Electric Co.*, Docket No. ER23-2117-000 (Aug. 10, 2023) (unpublished letter order).

- **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, 2023,⁷⁹ 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 27, 2023, the FERC conditionally accepted Versant Power’s proposed new Attachment T to the Versant Power Open Access Transmission Tariff for the Maine Public District (“MPD OATT”) filed in response to the requirements of *Order 881*.⁸⁰ The FERC found that Versant Power had complied with most of the requirements of *Order 881*.⁸¹ However, Versant Power was directed to file, no later than **November 12, 2024** (8 months prior to Versant Power’s July 12, 2025 Attachment T implementation date), a further compliance filing that provides an explanation of its timelines for calculating or submitting AARs. The *MPD OATT Order 881 Compliance Order* was not challenged as is final and unappealable. 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 remains 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 Proceedings

- **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;

⁷⁹ *ISO New England Inc.*, Docket No. ER23-1003-000 (Mar. 31, 2023) (unpublished letter order).

⁸⁰ *Versant Power*, 184 FERC ¶ 61,047 (July 27, 2023) (“*MPD OATT Order 881 Compliance Order*”).

⁸¹ *Id.* at P 9.

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 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 were due by August 24, 2023 and were filed by, among others: [NEPOOL](#), [NESCOE](#), [Acadia Center](#), [AEU](#), [Avangrid](#), [Calpine](#), [CLF/UCS/Sierra Club](#), [Constellation](#), [Eversource](#), [FirstLight](#), [Generation Bridge](#), [IECG](#), [LS Power](#), [CT OCC](#), [Maine OPA](#), [MA AG](#), [NH OCA](#), [National Grid](#), [NECOS](#), [New England LDCs](#), [New Leaf](#), [PowerOptions](#), [Public Systems](#), [Repsol](#), [RI Energy](#), [VEIC](#), [Maine PUC](#), [MA DPU](#), [EPSA](#), [INGAA](#), [NGA](#), [Berkshire Eniv. Action Team](#), [Fix the Grid Campaign](#), and [Potomac Economics](#). 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. Poulos](#), [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](#)⁸² 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.

⁸² "CA Utilities" are Pacific Gas and Electric Co. ("PG&E"), Southern California Edison Co. ("SCE"), and San Diego Gas & Elec. Co. ("SDG&E").

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

Since the last Report, the FERC posted to eLibrary a transcript of the seventh meeting⁸³ of the FERC-established Joint Federal-State Task Force on Electric Transmission (“Transmission Task Force” or “JFSTF”).⁸⁴ In addition, on August 29, 2023, the FERC issued an order listing the state commission representatives who will serve on the Task Force, each for a one-year term, commencing September 1, 2023, and expiring August 31, 2024, including Commissioner Riley Allen (VT PUC) and Chair Marissa Gillett (CT PURA) from the NECPUC region.⁸⁵

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

ISO/RTO Reports. On April 21, 2022, the FERC issued an order⁸⁶ directing each independent system operator (“ISO”) and regional transmission organization (“RTO”), including ISO-NE, to submit on or before October 18, 2022 a report that describes: (1) current system needs given changing resource mixes and load profiles; (2) how it expects its system needs to change over the next five and 10 years; (3) whether and how it plans to reform its energy and ancillary services (“EAS”) markets to meet expected system needs over the next five and 10 years; and (4) information about any other reforms, including capacity market reforms and any other resource adequacy reforms that would help it meet changes in system needs. The *Order Directing Reports* followed a series of staff-led technical conferences, convened in 2021 and summarized in previous Reports, addressing ISO/RTO resource adequacy⁸⁷ and energy and ancillary services markets.⁸⁸

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](#)

⁸³ Summaries of the first – sixth meetings of the Transmission Task Force can be found in previous Reports.

⁸⁴ *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).

⁸⁵ The 2023/24 State Commissioner Transmission Task Force members 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. *Joint Federal-State Task Force on Electric Transmission*, 184 FERC ¶ 61,126 (Aug. 29, 2023) (Order on Nominations).

⁸⁶ *Modernizing Wholesale Electricity Market Design*, 179 FERC ¶ 61,029 (Apr. 21, 2022) (“*Order Directing Reports*”).

⁸⁷ 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](#).

⁸⁸ The FERC held two staff-led technical conferences addressing ISO/RTO EAS markets, one on Sept. 14, 2021; the second on Oct. 12, 2021. Transcripts of both technical conferences are posted in eLibrary. In advance of the EAS technical conferences, FERC staff issued on Sept. 7, 2021 a White Paper entitled “[Energy and Ancillary Services Market Reforms to Address Changing System Needs](#)” summarizing recent EAS markets reforms as well as reforms then under consideration. Initial comments on the topics discussed during the EAS technical conferences were filed by: [ISO-NE](#), [Appian Way Energy Partners](#), [Constellation](#), [Dominion](#), [Envir. Defense Fund](#), [FirstLight](#), [LS Power](#), [CAISO](#), [MISO](#), [NYISO](#), [PJM](#), [SPP MMU](#), [ACPA](#), [Clean Energy Organizations](#), [EEI](#), [Energy Trading Institute](#), [EPRI](#), [EPSA](#), [Middle River Power](#), [National Hydropower Assoc.](#), [NYSERDA](#), [PJM Providers Group](#), and [Public Citizen](#). Reply comments were filed by [EPRI](#), [NERC and its Regional Entities](#) and [Vistra](#).

Systems,⁸⁹ [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 NOPR⁹⁰ 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 Associations⁹¹ requested an additional month to submit comments.⁹² On September 14, 2022, the FERC granted that request. Accordingly, initial comments were due November 11, 2022 and over 30 sets of comments were filed, including by: [ISO-NE](#), [ISO-NE IMM](#), [ISO-NE EMM](#), [PJM IMM](#), [ABA](#), [AGA](#), [APGA](#), [APPA](#), [EEI](#), [Energy Trade Associations](#), [INGA](#), [NGSA](#), [Nodal Exchange](#), [NRECA](#), [State Agencies](#), [US Chamber of Commerce](#), [DE Riverkeeper Network](#), [New Civil Liberties Alliance](#), and [Nodal Exchange](#). The [US Chamber of Commerce](#) filed reply comments on December 12, 2022. There was no activity in the proceeding since the last Report. This matter is pending before the FERC.

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

On June 15, 2023, the FERC adopted a reporting requirement⁹³ that directs transmission providers to file a one-time informational report describing their current or planned policies and processes for conducting extreme weather vulnerability assessments⁹⁴ (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 **October 25, 2023**.⁹⁵

⁸⁹ “New England Public Systems” are CMMEC, MMWEC, NHEC, and VPPSA.

⁹⁰ *Duty of Candor*, 180 FERC ¶ 61,052 (July 28, 2022) (“*Duty of Candor NOPR*”).

⁹¹ “Joint Associations” included the following trade associations on behalf of their respective members: the American Gas Assoc. (“AGA”), American Public Gas Assoc. (“APGA”), Interstate Natural Gas Assoc. of America (“INGA”), Edison Electric Institute (“EEI”), EPSA, Energy Trading Institute (“ETI”), Natural Gas Supply Assoc. (“NGA”), and Process Gas Consumers Group (“PGCG”).

⁹² The *Duty of Candor NOPR* was published in the *Fed. Reg.* on Aug. 12, 2022 (Vol. 87, No. 155) pp. 49,784-49,793.

⁹³ *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*”).

⁹⁴ 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.

⁹⁵ *Order 897* was published in the *Fed. Reg.* on June 27, 2023 (Vol. 88, No. 122) pp. 41,477-41,499.

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

On July 28, 2023, the FERC issued Order 2023,⁹⁶ 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;⁹⁷ (ii) increase the speed of interconnection queue processing;⁹⁸ and (iii) incorporate technological advancements into the interconnection process.⁹⁹ Many of the reforms adopted in *Order 2023* closely track the reforms set out in the FERC’s Notice of Proposed Rulemaking.¹⁰⁰ However, the FERC did revise aspects of the reforms.¹⁰¹ *Order 2023* will become effective November 6, 2023,¹⁰² which is 60 days from the September 6, 2023 publication of *Order 2023* in the *Federal Register* (“Publication Date”).

⁹⁶ *Improvements to Generator Interconnection Procedures and Agreements*, Order No. 2023, 184 FERC ¶ 61,054 (July 28, 2023) (“*Order 2023*”).

⁹⁷ 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.

⁹⁸ 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.

⁹⁹ 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 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.

¹⁰⁰ *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.

¹⁰¹ 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.

¹⁰² *Order 2023* was published in the Fed. Reg. on Sep. 6, 2023 (Vol. 88, No. 171) pp. 61,041-61,349.

Importantly, the FERC is requiring the submission of compliance filings within 90 calendar days of the Publication Date, or **December 5, 2023** (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).

A more [detailed summary](#) of, and [a presentation](#) on, *Order 2023* was 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.

Requests for Clarification and/or Rehearing and A Request for an Extension of Time. Since the last Report, requests for rehearing, clarification and/or an extension of time were filed by 35 parties. Those parties raised, among other issues, the following:

- ♦ The FERC erred in removing the Reasonable Efforts standard and imposing penalties for late studies;
- ♦ The FERC must clarify aspects of the transition process and use of Transitional Cluster Studies and Transitional Serial Studies;
- ♦ Transmission Providers need additional details on the FERC’s requirement for Transmission Provider’s to publish heatmaps;
- ♦ The FERC must provide insight on the process of performing cluster studies as well as the cost allocation methodology; and
- ♦ Transmission Providers require further clarity regarding the alternative transmission technologies that they are required to review.

PJM, MISO and SPP (“Joint RTOs”) requested an extension of time, to at least 90 days after the FERC issues a substantive order addressing the arguments on clarification and rehearing, with a request that an order on that request be issued by September 27, 2023. A summary of the request for extension of time, as well as of the prominent issues raised in the requests for rehearing, is provided in a separate memo included as Appendix A to this Report.

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.¹⁰³ *Order 895* will not permit information sharing to be conditioned on the specific consent of the market participant, would permit the receiving ISO/RTO to use market participant credit-related information received from another ISO/RTO to the same extent and for the same purposes that the receiving ISO/RTO may use credit-related information collected from its own market

¹⁰³ *Credit-Related Info. Sharing in Organized Wholesale Elec. Mkts*, Order No. 895, 183 FERC ¶ 61,193 (June 15, 2023) (“*Order 895*”).

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* became effective *August 21, 2023*.¹⁰⁴ Since the last Report, SPP asked for a 14-day extension of time for the submission of its compliance filing. The SPP request is pending before the FERC. No other ISO/RTO has requested an extension of time.

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

On December 15, 2022, the FERC issued a NOPR¹⁰⁵ 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* were due on or before May 17, 2023. Comments were filed by [CLF](#), [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](#). Since the last Report, Chairman Phillips' response to Senator Schumer's June 20, 2023 letter and each of the Commissioner's responses to Senator Barrasso's April 26, 2023 letter were posted to eLibrary. This matter is pending before the FERC.

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

Following its ANOPR process,¹⁰⁶ the FERC issued on April 21, 2022 a NOPR¹⁰⁷ 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

¹⁰⁴ *Order 895* was published in the Fed. Reg. on June 22, 2023 (Vol. 88, No. 119) pp. 40,696-28,125.

¹⁰⁵ *Applications for Permits to Site Interstate Electric Transmission Facilities*, 181 FERC ¶ 61,205 (Dec. 15, 2022) ("*Transmission Siting NOPR*").

¹⁰⁶ 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](#).

¹⁰⁷ *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, 2022.¹⁰⁸ 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

¹⁰⁸ 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; mczepiel@daypitney.com).

XIII. FERC Enforcement Proceedings

Electric-Related Enforcement Actions

- **Big River Steel (BRS) and Entergy Arkansas (EA) (IN23-11)**

On August 21, 2023, the FERC approved a Stipulation and Consent Agreement with Big River Steel LLC (“BRS”) and Entergy Arkansas, LLC (“Entergy AK”)¹⁰⁹ that resolved OE’s investigation into whether BRS’ participation in a MISO demand response program between September 2016 and April 2022 (the “Relevant Period”) violated MISO’s Tariff or FERC regulations. Entergy AK was (as the Market Participant for BRS) selling Energy, in the form of reduced energy usage, in MISO’s Day Ahead and Real Time markets. BRS did not (with the exception of seven days in February 2021) reduce energy consumption levels in response to MISO accepting its demand response offers. Instead, BRS operated at the load levels at which it would have operated if it were not a DRR-1 unit. OE concluded that this conduct violated § 38.2.5(d)(ii)(e) of the MISO Tariff because BRS did not “respond to [MISO] directives to . . . change output levels” by reducing its load below what it would otherwise have been. Because Entergy AK was the Market Participant for BRS’s participation as a DRR-1, OE concluded that Entergy AK is responsible for BRS’s conduct that violated the MISO Tariff. Under the Settlement, in which neither BRS nor Entergy AK admits nor denies the alleged violations, BRS agreed to **disgorge \$15,940,399** it received through its participation as a DRR-1 unit in MISO during the Relevant Period, to pay a **\$6 million civil penalty**, and to provide compliance training to its traders if it intends to participate again as a DRR-1 unit in MISO. Entergy AK agreed to **disgorge \$5,033,780** in connection with BRS’s participation as a DRR-1 unit in MISO, and to **ensure that customers are credited the net amount (\$8,181,899)**, with interest from the date that MISO transmits funds to EAL under the Agreement, that the customers were charged in connection with BRS’s participation as a DRR-1 unit in MISO. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

Natural Gas-Related Enforcement Actions

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

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,¹¹⁰ 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,¹¹¹ which (i) directed the Chief ALJ to reassign this proceeding to another ALJ not previously involved in the proceeding (i.e., designate a

¹⁰⁹ *Big River Steel LLC and Entergy Arkansas, LLC*, 184 FERC ¶ 61,111 (Aug. 21, 2023).

¹¹⁰ 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.

¹¹¹ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 183 FERC ¶ 61,190 (June 14, 2023) (“*June 14 Order*”).

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 order¹¹² in which it directed Rover and ETP (together, "Respondents") to show cause why they should not be found to have violated NGA section 7(e), FERC Regulations (18 C.F.R. § 157.20); and the FERC's Certificate Order,¹¹³ 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;¹¹⁴ (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.¹¹⁵ This matter is pending before the FERC.

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

On April 28, 2016, the FERC issued a show cause order¹¹⁶ 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 2012.¹¹⁷

The FERC also directed TGPNA to show cause why it should not be required to disgorge unjust profits of **\$9.18 million**, plus interest; TGPNA, Tran and Hall to show cause why they should not be assessed civil penalties (TGPNA - **\$213.6 million**; Hall - **\$1 million** (jointly and severally with TGPNA); and Tran - **\$2 million** (jointly and

¹¹² *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 177 FERC ¶ 61,182 (Dec. 16, 2021) ("*Rover/ETP Tuscarawas River HDD Show Cause Order*").

¹¹³ *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*").

¹¹⁴ 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.

¹¹⁵ *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.

¹¹⁶ *Total Gas & Power North America, Inc.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) ("*TGPNA Show Cause Order*").

¹¹⁷ 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.

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.¹¹⁸ On July 27, 2021, Chief Judge Cintron designated Judge Suzanne Krolkowski as the Presiding ALJ and established an extended Track III Schedule for the proceeding.

Discovery in this case closed on December 2, 2022. On December 16, 2022, Respondents filed for a preliminary injunction in the US District Court for the Southern District of Texas ("Southern District"). In order to allow for briefing and a decision on that motion, the FERC placed this proceeding in abeyance.¹¹⁹

On June 14, 2023, the Commission issued an Order on Presiding Officer Reassignment,¹²⁰ 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 Krolkowski 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.¹²¹ The certificate was conditioned on: (i) Iroquois' completion of construction of the proposed facilities and making them available for service within **three years** of the date of the;

¹¹⁸ *Total Gas & Power North America, Inc. et al.*, 176 FERC ¶ 61,026 (July 15, 2021).

¹¹⁹ *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).

¹²⁰ *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*").

¹²¹ *Iroquois Gas Transmission Sys., L.P.*, 178 FERC ¶ 61,200 (2022) (*Iroquois Certificate Order*).

(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,¹²² and that effectively halted construction of the NECEC Project,¹²³ 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 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).

¹²² 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?"

¹²³ 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.

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

Underlying FERC Proceeding: ER22-983¹²⁴

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*.¹²⁵ 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 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.

¹²⁴ *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").

¹²⁵ 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, 23-1215) (consolidated)**
Underlying FERC Proceeding: EL21-6, EL 23-3¹²⁶
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.¹²⁷ NextEra subsequently petitioned the Court for review of the June 15, 2023 *Seabrook Dispute Allegheny Order*, which was consolidated with Case No. 23-1094. As previously reported, initial submissions have been filed,¹²⁸ as have 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: ER22-707¹²⁹
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*.

¹²⁶ *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*”); *NextEra Energy Seabrook, LLC et al.*, 183 FERC ¶ 61,196 (June 15, 2023) (“*Seabrook Dispute Allegheny Order*”).

¹²⁷ 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.

¹²⁸ 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).

¹²⁹ *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, -011,¹³⁰ -013¹³¹ -017¹³²
Petitioners: Mystic, CT Parties,¹³³ MA AG, ENECOS

Status: Being Held in Abeyance; Motions to Govern Future Proceedings Due Oct 25, 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: ER18-619¹³⁴
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

¹³⁰ *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).

¹³¹ *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).

¹³² *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*).

¹³³ In this appeal, "CT Parties" are the CT PURA CT PURA, Connecticut Department of Energy and Environmental Protection ("CT DEEP"), and the CT OCC.

¹³⁴ *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: ER15-414¹³⁵

Petitioners: TOs' (CMP et al.)

Status: Being Held in Abeyance

On August 28, 2020, the TOs¹³⁶ 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*¹³⁷ 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 August 3, 2023.

¹³⁵ *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) ("Order Rejecting Filing").

¹³⁶ 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.

¹³⁷ *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: **CP15-115**¹³⁸
Petitioners: Sierra Club

Status: Briefing Complete; Oral Argument Scheduled for Sep 18, 2023

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 merits panel will be comprised of Judges Henderson, Pan and Rogers.

- **Order 872 (20-72788, * 21-70113; 20-73375, 21-70113) (consol.) (9th Cir.)**
Underlying FERC Proceeding: **RM19-15**¹³⁹
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*.¹⁴⁰ 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.)**
Underlying FERC Proceeding: **CP16-9-012**¹⁴¹
Petitioners: LS Power, Algonquin, INGA

Status: Being Held in Abeyance Pending Further Order of the Court

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 revised briefing format and schedule for those cases, and asked the Court to continue to hold the remaining cases

¹³⁸ *National Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 179 FERC ¶ 61,226 (June 29, 2022) (“*Northern Access Project Add'l Extension Order*”).

¹³⁹ *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).

¹⁴⁰ *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.

¹⁴¹ *Briefing Order; April 19 Notice of Denial of Rehearings by Operation of Law*.

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.

Since the last Report, the Court ordered that the remaining consolidated cases remain in abeyance pending further order of the Court and directed the parties to file motions to govern future proceedings by ***September 11, 2023***.

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MEMORANDUM

TO: NEPOOL Officers

FROM: NEPOOL Counsel

DATE: September 6, 2023

RE: Order No. 2023 Update: Requests for Rehearing, Clarification and/or Additional Time

On July 28, 2023, the Federal Energy Regulatory Commission (“FERC” or “the Commission”) issued Order No. 2023, a final rule reforming its *pro forma* Large and Small Generator Interconnection Procedures and Agreements to ensure that “interconnection customers are able to interconnect to the transmission system in a reliable, efficient, transparent, and timely manner” (“Order No. 2023” or the “Final Rule”).¹ Pursuant to Section 313 of the Federal Power Act (“FPA”), requests for rehearing of Order No. 2023 were due thirty days after the issuance of the Final Rule – on Monday, August 28. On or by that date, thirty-five parties submitted requests for rehearing, clarification and/or an extension of time with the Commission.² This document summarizes the prominent issues raised in the requests for rehearing and also summarizes the requests for extension of time.

Compliance filings in accordance with Order No. 2023 are currently due within 90 days after the Final Rule is published in the *Federal Register*, which occurred September 6, 2023, making the compliance filing due date December 5, 2023.³ To date, the Joint RTOs⁴ are the only entities to file a motion requesting an extension of time. The Joint RTOs requested to extend the compliance filing deadline **until at least 90 days after the Commission issues a substantive order addressing arguments on clarification and rehearing.**

¹ *Improvements to Generator Interconnection Procedures and Agreements*, Order No. 2023, 184 FERC ¶ 61,051 (2023) (“Order No. 2023” or “Order”). The Final Rule is available here: <https://www.ferc.gov/media/e-1-order-2023-rm22-14-000>. The Day Pitney summary of the Final Rule is available here: https://www.iso-ne.com/static-assets/documents/2023/08/a03_2023_08_22_tc_nepool_counsel_memo_order_2023_summary.pdf.

² Attachment 1 contains the list of all parties that submitted requests for rehearing or clarification and/or requests for extension of time.

³ The published Final Rule can be found here: <https://www.federalregister.gov/documents/2023/09/06/2023-16628/improvements-to-generator-interconnection-procedures-and-agreements>.

⁴ The Joint RTOs are PJM Interconnection, LLC (“PJM”), Midcontinent Independent System Operator, Inc. (“MISO”), and Southwest Power Pool, Inc. (“SPP”).

The following are prominent themes/issues raised in the requests for rehearing:

- The Commission erred in removing the Reasonable Efforts standard and imposing penalties for late studies;
- The Commission must clarify aspects of the transition process and use of Transitional Cluster Studies and Transitional Serial Studies;
- Transmission Providers need additional details on the Commission's requirement for Transmission Provider's to publish heatmaps;
- The Commission must provide insight on the process of performing cluster studies as well as the cost allocation methodology; and
- Transmission Providers require further clarity regarding the alternative transmission technologies that they are required to review.⁵

I. REQUESTS FOR ADDITIONAL TIME TO COMPLY

While the Joint RTOs are the only entities that explicitly filed a motion requesting additional time to comply with Order No. 2023, several other entities argued on rehearing that the Commission erred when it shortened the compliance deadline from 180 days (as was proposed in the Notice of Proposed Rulemaking) to 90 days in the Final Rule.⁶ The majority of these entities simply requested that the Commission re-establish the proposed 180-day compliance deadline.⁷

Joint RTOs requested that the Commission extend the compliance filing deadline until at least 90 days after the Commission issues a substantive order addressing arguments raised on rehearing. The Joint RTOs stated that they wanted the Commission to address the open issues raised in requests for rehearing and/or clarification and provide upfront answers on Order No. 2023's directives before requiring a compliance filing. They argued that requiring compliance filings prior to a ruling on rehearing could require Transmission Providers to make substantial changes to their filings and implementation, and ultimately cause work to be redone. The Joint RTOs also requested an order from the Commission on the extension of time within 30 days – on or by September 27. The potential practical outcome of such an extension request (if granted) would mean that Transmission Providers/RTOs may have several months, if not a year, to prepare compliance filings as the Commission can tend to take that amount of time to consider the issues raised on rehearing and issue an order addressing those arguments.

⁵ We have also provided a category herein for “other” requests for rehearing that we viewed as important to raise. However, please note that this memo does not provide an exhaustive list of all issues raised on rehearing and/or clarification.

⁶ Dominion Energy Services Request for Rehearing, PacifiCorp Request for Rehearing and the Edison Electric Institute (“EEI”) Request for Rehearing.

⁷ See e.g., PacifiCorp Rehearing Request at 20.

II. REQUESTS FOR REHEARING AND/OR CLARIFICATION: MAIN THEMES/ISSUES RAISED

A. Removal of the Reasonable Efforts Standard and Imposition of Study Delay Penalties

Likely the most prevalent topic raised in requests for rehearing is that the Commission erred in removing the Reasonable Efforts standard and imposing penalties for study delays. The entities that raised this point made arguments such as:

- The Commission's decision to eliminate the reasonable efforts standard and impose study delay penalties is not supported by substantial evidence and is arbitrary and capricious under the federal Administrative Procedure Act;⁸
- The Commission failed to consider evidence of unintended consequences of imposing penalties for study delays including additional costs that Transmission Providers will bear in complying with this requirement;⁹
- The penalty scheme violates constitutional protections on due process by assessing penalties with no development of a factual record about whether the Transmission Provider did anything wrong;¹⁰
- Elimination of the Reasonable Efforts standard is not reasoned decision-making because it will be counterproductive to the Commission's goal of expediting interconnection queue processing;¹¹
- FERC lacks statutory authority to impose late-study penalties without a determination of fault and to absolve interconnection customers from bearing any form of late-study penalty when such customers have caused the penalties to become applicable;¹²
- Late study penalties result in a regulatory taking by failing to provide recovery for prudently incurred study costs and are unduly discriminatory and preferential rendering only Transmission Providers and RTO/ISOs as potentially culpable for such penalties;¹³

⁸ Dominion Energy Services Request for Rehearing, PacifiCorp Request for Rehearing, WIRES Request for Rehearing, MISO TOs Request for Rehearing, EEI Request for Rehearing, Avangrid Request for Rehearing, NYTOs Request for Rehearing, AEP Request for Rehearing, PJM TOs Request for Rehearing, PJM Request for Rehearing, SPP Request for Rehearing.

⁹ PacifiCorp Request for Rehearing, MISO TOs Request for Rehearing, PJM Request for Rehearing.

¹⁰ PacifiCorp Request for Rehearing, PJM TOs Request for Rehearing.

¹¹ WIRES Request for Rehearing.

¹² NYTOs Request for Rehearing, PJM TOs Request for Rehearing.

¹³ NYTOs Request for Rehearing.

- The Final Rule's rigid penalty structure for study delays and the imposition of deadlines that are not tailored to the unique circumstances presented in each RTO/ISO, are arbitrary and capricious, unduly discriminatory and preferential;¹⁴
- Commission departed from well-established policy (reasonable efforts standard) without offering a reason;¹⁵
- Penalty appeal process is ill-conceived, ill-defined and adopts unreasonable regime depriving utilities of due process;¹⁶
- Penalty scheme is unduly discriminatory because it does not assign study delay penalties to Interconnection Customers regardless of their own role in causing the delay, imposes the same study delay penalty framework on each Transmission Provider without regard to the number of Interconnection Requests it is responsible for, and awards study delay penalties to Interconnection Customers on a pro rata basis;¹⁷
- Objections to the suggestion that RTO/ISOs may pass through study delay penalties imposed on it to market participants (which will ultimately be borne by consumers).¹⁸

B. Clarity Sought Regarding Transition Process and Applicability to Transmission Providers That Already Use Clustering

Several entities raised questions with the Commission about the proposed transition process to move to the first-ready, first-served cluster study process.¹⁹ These requests generally fall into two categories: (1) questions about the general logistics of the transition process; and (2) requests for clarification for entities who already have some form of clustering in their Large Generator Interconnection Procedures.

With regards to the first, entities raised the concern that the scope of the Transition Cluster Group established by the Commission unjustly and unreasonably groups customers that submit interconnection requests on the eve of transmission providers' Order No. 2023

¹⁴ NYTOs Request for Rehearing.

¹⁵ MISO TOs Request for Rehearing.

¹⁶ MISO TOs Request for Rehearing, PJM TOs Request for Rehearing.

¹⁷ PJM TOs Request for Rehearing.

¹⁸ NYPSC Request for Rehearing.

¹⁹ As described in the NEPOOL Counsel Memo on Order No. 2023, the Commission has proposed a transition process whereby entities who have been tendered a Facilities Study Agreement as of 30 Calendar Days after the date of the Transmission Provider's initial compliance filing, may opt to proceed in the serial process with a Transitional Serial Interconnection Facilities Study (and pay a deposit/demonstrate 100% site control) or withdraw without penalty. Entities who have been assigned a queue position as of 30 Calendar Days after the filing date of the initial compliance filing may opt to proceed with the Transitional Cluster Study (and pay a deposit/demonstration 100% site control) or withdraw without penalty.

compliance filing and customers that have been pending in the queue for substantially longer periods of time.²⁰ These entities argue that it is unfair for developers who have been in the queue for months or years to be put in the same transitional cluster as a developer who submits an Interconnection Request right after the compliance filing date. Instead, these entities ask the Commission to revise the Transitional Cluster Study process to set the July 28, 2023 issuance date of Order No. 2023 as the date for eligibility for Transitional Cluster Study participation.

For Transmission Providers who already have a form of clustering, there were several questions and requests for rehearing/clarification on the transition process. A few Transmission Providers argued that it was generally an error for the Commission to issue a generic rulemaking determining that *all* interconnection processes are unjust and unreasonable, even those that the Commission recently approved and which utilize clustering.²¹ The requests for rehearing and/or clarification raised the following:

- The Commission should clarify that “early adopters” i.e., entities that already use clustering approved by the Commission may conclude their pending/existing studies before transitioning to the new Order No. 2023 process;
- Clarify that if interconnection customers part of currently-existing clusters will be required to update their respective study deposits, commercial readiness deposits correlating to the amounts required at the various stages of the process should be provided, and their site control documentation should be updated in order to remain in the queue;²²
- Clarify how recently-approved queue reforms will be reviewed in the independent entity variation process.²³

C. Heatmaps

Several entities requested rehearing and/or clarification on specifics of the Commission’s heatmaps proposal,²⁴ such as:

- The Commission should clarify when heatmaps are due for Transmission Providers that do not conduct a new transition period;²⁵

²⁰ Shell Request for Rehearing, IPP Request for Rehearing.

²¹ Dominion Request for Rehearing, PJM Request for Rehearing, PJM TOs Request for Rehearing.

²² NV Energy Request for Rehearing

²³ PJM Request for Rehearing.

²⁴ As described in the NEPOOL Counsel Memo on Order No. 2023, the Commission required that Transmission Providers publicly post available information pertaining to generator interconnection in the form of a heatmap within 30 calendar days after the completion of each cluster study and cluster restudy.

²⁵ PacifiCorp Request for Rehearing.

- The individual heatmap mandate for non-RTO Transmission Providers is arbitrary and capricious and contrary to reasoned decision-making. Heatmap websites only make sense financially when done at a scale for several utilities;²⁶
- Does the heatmap have to include proposed network upgrades with capacity amounts to reflect the available transfer capacity or only the existing facilities?²⁷
- Final Rule's overly prescriptive approach to a heatmap will provide information to Interconnection Customers and its requirement that load pay for this tool rather than permitting other arrangements that would charge the costs to the Interconnection Customers that benefit from it is arbitrary and capricious.²⁸

D. Cluster and Cost Allocation Issues

In addition to the transition issues, discussed above, several entities raised general concerns about the switch to a first-ready, first-served system and the cost allocation provisions that the Commission proposed. Included among the arguments/requests made are the following:

- The 150 day timeframe for cluster studies is arbitrary and capricious as this study period is an unreasonable limitation on the time required for performing the system impact study evaluations, including necessary reliability analyses;²⁹
- Whether the Commission acted arbitrarily and capriciously and failed to engage in reasoned decision-making when it declined to require transmission owners to attend scoping meetings as part of the cluster study process;³⁰
- The Commission committed reversible error by requiring, in section 4.4.1 of the pro forma LGIP that the opportunity to reduce generation project size can be exercised only prior to the initial Cluster Study result. The opportunity to reduce generation project size should be able to be exercised after the initial Cluster Study result and prior to the start of subsequent Cluster Re-Study;³¹
- The Commission should clarify that the obligation to reimburse generator interconnection customers for affected system upgrades extends to both traditional affected system analyses and to "seams" analyses that integrate generator interconnection and regional (and inter-regional) transmission planning and cost allocation;³²
- Order No. 2023 should not result in transmission providers removing existing inter-cluster cost sharing provisions from their tariffs or prevent transmission providers from

²⁶ Non-RTO Providers Request for Rehearing.

²⁷ NV Energy Request for Rehearing.

²⁸ PJM Request for Rehearing.

²⁹ NYISO Request for Rehearing.

³⁰ Orsted Request for Rehearing.

³¹ Shell Request for Rehearing.

³² *Id.*

proposing new inter-cluster cost sharing mechanisms in the future. Example provided of ISO-NE Late Comer provision in Schedule 11 of ISO-NE OATT;³³

- FERC erred and should implement minimum impact thresholds for use within the proportional impact method when evaluating the cost allocation of network upgrades to generator interconnection customers requesting ERIS and NRIS;³⁴
- How does the 150-day restudy deadline apply to cascading restudies?³⁵
- Concern that aspects of the Commission’s reasoning could be misinterpreted as constituting a blanket determination that any thresholds or metrics used by a Transmission Provider to allocate costs among customers within a study cluster do not significantly affect rates and need not be filed with FERC;³⁶

E. Technology Issues

Order No. 2023 mandated Transmission Providers incorporate alternative transmission technologies (“ATTs”) and use operating assumptions for storage if presented by the Interconnection Customer. There were several requests for rehearing on these points, including:

- The Final Rule unlawfully excluded Dynamic Line Ratings from the final list of enumerated alternative transmission technologies;³⁷
- The Final Rule unlawfully gave Transmission Providers unfettered discretion to disregard and disadvantage advanced transmission technologies as network upgrades;³⁸
- Whether the Commission acted arbitrarily and capriciously by requiring the interconnection customer to provide a validated electromagnetic transient model at the time of queue applications despite evidence in the record that it is more useful and less burdensome when provided later in the interconnection process;³⁹
- Use of customer-provided operating assumptions is not consistent with how planning studies are performed and will add additional administrative burdens for transmission providers;⁴⁰
- The requirement that Grid Enhancing Technologies (“GETs”) be evaluated with no limits on how many such technologies Interconnection Customers may present for study and

³³ *Id.*

³⁴ Longroad Request for Rehearing.

³⁵ EEI Request for Rehearing.

³⁶ Generation Developers Request for Rehearing.

³⁷ WATT Coalition Request for Rehearing, Public Interest Organizations Request for Rehearing.

³⁸ WATT Coalition Request for Rehearing.

³⁹ Orsted Request for Rehearing.

⁴⁰ PJM Request for Rehearing, NYISO Request for Rehearing, SPP Request for Rehearing, Joint RTOs Request for Rehearing.

when they can present them undermines orderly process and is overly burdensome, particularly given requirement to report separately on the evaluation of GETs.

F. Other

Finally, there were additional requests for rehearing that do not explicitly fall into one of the categories enumerated above, but that raise important issues with respect to the Final Rule. These include issues such as:

- Whether the Commission erred by not allowing TPs additional time to submit compliance filings for their Wholesale Distribution Access Tariffs. Order 2023 states that the changes apply to a request to interconnect to a public utility's distribution facilities used to transmit electric energy in interstate commerce on behalf of a wholesale purchaser pursuant to a Commission-filed Open Access Transmission Tariff;⁴¹
- Clarification that Order No. 2023 does not require transmission providers to re-file and seek approval for portions of their existing LGIA and LGIP that have previously been approved by the Commission and are not directly impacted by Order 2023;⁴²
- FERC erred and should provide a broader range of financial security available under the LGIP/LGIA for the purposes of protecting the transmission provider from the risk of non-payment, including surety bonds or other form of security reasonably acceptable.⁴³

⁴¹ EEI Request for Rehearing.

⁴² EEI Request for Rehearing.

⁴³ Longroad Request for Rehearing.

Attachment 1 – List of Entities that Filed Requests for Rehearing, Clarification and/or an Extension of Time

VEIR Inc.	MISO Transmission Owners
Dominion Energy Services, Inc.	American Electric Power Service Corporation
Dominion Energy South Carolina, Inc., PacifiCorp and Tri-State Generation and Transmission Association, Inc. (as the “Revised Early Adopters Coalition”)	Indicated PJM Transmission Owners
PacifiCorp	National Grid Renewables Development, LLC, Clearway Energy Group LLC and Pine Gate Renewables (together, “Generation Developers”)
Dominion Energy South Carolina, Inc., Florida Power & Light Company and Public Service Company of Colorado (as the “non-RTO Providers”)	PJM Interconnection, LLC
Shell Energy North America (US) L.P., Shell New Energies US, LLC and Savion, LLC	Southwest Power Pool, Inc.
Longroad Energy Holdings, LLC	Invenergy
Working for Advanced Transmission Technologies (“WATT”) Coalition	Duke Southeast Utilities
Nevada Power Company and Sierra Pacific Power Company (together, “NV Energy”)	ITC Holdings Corp.
Orsted North America, LLC	New York Independent System Operator, Inc.
WIRES	Duke Southeast Utilities, Louisville Gas and Electric, Kentucky Utilities Company, PowerSouth Energy Cooperative, Southern Company Services Inc. (together, “Southeastern Utilities”)
The Edison Electric Institute (“EEI”)	Advanced Energy United, American Clean Power Association and the Solar Energy Industries Association (collectively, “Clean Energy Associations”)

Energy Alabama, Environmental Defense Fund, National Audubon Society, Natural Resources Defense Council, NW Energy Coalition, Sierra Club, Southern Environmental Law Center, Sustainable FERC Project (together, “Public Interest Organizations” or “PIOs”)	Cypress Creek Renewables, LLC, New Leaf Energy, Inc. and Enel Green Power (collectively, “Independent Power Producers Coalition” or “IPP Coalition”)
New York State Public Service Commission	Midcontinent Independent System Operator, Inc.
New York Transmission Owners	NewSun Energy LLC
PJM, MISO and SPP (as the “Joint RTOs”)	
Avangrid, Inc.	