

EXECUTIVE SUMMARY

Status Report of Current Regulatory and Legal Proceedings as of December 6, 2023

The following activity, as more fully described in the attached Litigation Report, has occurred since the report dated November 1, 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	Brookfield IEP Complaint (IEP Exclusion of Pumped Storage ESFs) (EL23-89)	Nov 29	Tariff changes in response to the <i>Brookfield IEP Complaint Order</i> jointly filed by ISO-NE and NEPOOL (see Section III, Docket No. ER24-492 below)
1	206 Proceeding: ISO Market Power Mitigation Rules (EL23-62)	Nov 2	ISO-NE and NEPOOL file changes to address at least one of the FERC’s concerns in the <i>Dynegy Mitigation Order</i> (see Section III, Docket No. ER24-324 below)

II. Rate, ICR, FCA, Cost Recovery Filings

* 5	ICR-Related Values and HQICCs – Annual Reconfiguration Auctions (ER24-528)	Nov 30	ISO-NE and NEPOOL jointly file ICR-Related Values and HQICCs for 2024/25 ARA3, 2025/26 ARA2; and 2026/27 ARA1; comment deadline Dec 21, 2023
* 5	FCA18 Qualification Informational Filing (ER24-476)	Nov 22 Nov 24-Dec 4	ISO-NE submits required FCA18 informational filing; comment deadline Dec 7, 2023 NEPOOL, Calpine, National Grid, Public Citizen intervene
* 6	ICR-Related Values and HQICCs – FCA18 (2027-28) Capacity Commitment Period (ER24-362)	Nov 7 Nov 8-15	ISO-NE and NEPOOL file ICR-Related Values for the 2027-28 Capacity Comm. Period Calpine, NESCOE, Public Citizen intervene
6	2024 NESCOE Budget (ER24-91)	Nov 3	NEPOOL files comments supporting 2024 NESCOE Budget
7	Essential Power Newington CIP-IROL (Schedule 17) Section 205 Cost Recovery Filing (ER24-80)	Nov 2 Dec 5	NEPOOL files doc-less motion to intervene FERC accepts revised rate schedule permitting recovery of \$276,421 in incremental medium impact CIP-IROL Costs, eff. <i>Dec 11, 2023</i>
8	Mystic 8/9 COSA (ER18-1639)		
10	(-018) Second CapEx Info Filing	Dec 5	First issues order on the remaining (ENECOS’ Formal) challenges to the Second CapEx Info Filing, granting in part, subject to hearing and settlement judge procedures, and dismissing in part, those formal challenges
9	(-026) ENECOS Request for Reh’g of <i>Mystic I Order on Remand Modification Order</i>	Nov 6	FERC accepts Tariff Sheets Filing, eff. <i>Jun 1, 2022</i>
* 12	ISO-NE Securities: Authorization for Future Drawdowns (ES24-18)	Nov 13 Dec 4	ISO-NE requests continued a authorization for drawdowns under new Revolving Credit Line and Payment Default Shortfall Fund National Grid intervenes

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

* 13	IEP Compliance Filing (ER24-492)	Nov 29 Nov 30	ISO-NE and NEPOOL jointly file changes that make eligible to participate in the IEP pumped storage resources participating as ESFs in the New England Markets; comment deadline Dec 20, 2023 Brookfield intervenes
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* 13	DECR FCM Qualification Revisions (ER24-484)	Nov 27	ISO-NE and NEPOOL jointly file revisions to the FCM qualification rules for DECRs; comment deadline Dec 18, 2023
		Nov 28-Dec 1	NESCOE, MA DPU, Calpine intervene
* 13	Waiver Request: OP-14 Solar Dispatch Point Requirements (Galt Power) (ER24-478)	Nov 22	Galt Power requests for its FR/SR Facilities a waiver of the requirements for solar resources to receive and respond to DNE Dispatch Points; comment deadline Dec 13, 2023
		Nov 24	ISO-NE opposes shortened comment period request and indicates it will oppose requested waiver; NEPOOL intervenes
* 13	Downward De-List Bid Price Flexibility (ER24-420)	Nov 17	ISO-NE and NEPOOL jointly file changes to allow Lead Market Participants greater flexibility for submitting Permanent and Retirement De-List Bids in a FCA; comment deadline Dec 8, 2023
		Nov 17-Dec 4	NESCOE, Calpine, Constellation, National Grid intervene
* 14	FCM CONE and Net CONE Updates for FCAs 19 and 20 (ER24-401)	Nov 15	ISO-NE and NEPOOL jointly file updates to reflect for FCAs 19 and 20 the elimination of MOPR (through revisions to the ATWACC);
		Nov 15-Dec 6	NESCOE, Calpine, Constellation, National Grid intervene
		Dec 6	NEPGA submits comments supporting updates
* 14	FCA19 Delay Proposal (ER24-339)	Nov 3	ISO-NE and NEPOOL jointly file FCA 19 Schedule Changes
		Nov 6-22	Brookfield, Calpine, Dominion, Eversource, MAAG, National Grid, NESCOE, NRG, Orsted, RENEW, MA DPU, Public Citizen intervene doc-lessly
		Nov 22-24	FirstLight , NEPGA , and PublicSystems file comments supporting FCA 19 Schedule Changes
* 14	Energy Supply Offer Mitigation Changes (ER24-324)	Nov 2	ISO-NE and NEPOOL jointly file changes to eliminate the potential for upward mitigation of Energy Supply Offers
		Nov 6-15	Calpine, Constellation, MAAG, National Grid, NESCOE intervene
		Nov 16	Dynergy/Vistra , NEPGA file comments supporting Changes
15	DASI Proposal (ER24-275)	Nov 2-30	LS Power , NEPGA , NESCOE , EPSA , the National Hydropower Association , and the ISO-NE IMM and EMM file comments generally supporting the DASI proposal
		Nov 21	Brookfield, Calpine, Constellation, CPV Towantic, Dominion, ENE, Eversource, FirstLight, LS Power, MAAG, National Grid, NRG, Public Systems, Shell, MA DPU intervene doc-lessly only
		Dec 6	ISO-NE files an answer to certain comments filed
15	ISO/RTO Credit-Related Information Sharing (ER24-138)	Nov 6	National Grid intervenes
15	Effective Date Deferral – Binary Storage Facility DARD Regulation (ER24-115)	Nov 6	National Grid intervenes
15	IEP Parameter Updates (ER23-1588)	Nov 30	FERC issues <i>IEP Parameter Updates Allegheny Order</i> , modifying the discussion in, but reaching the same result as, the <i>IEP Parameter Updates Order</i>
16	New England's Order 2222 Compliance Filings (ER22-983)	Nov 2	FERC conditionally accepts 60-Day compliance filing; directs further compliance due on or before Jan 31, 2024
		Dec 4	AEU requests reh'g of Nov 2 <i>Order 2222 60-Day Compliance Filing Order</i>

IV. OATT Amendments / TOAs / Coordination Agreements



19	UI Att. F App. D Depreciation Rate Changes (ER24-272)	Nov 21	Bridgeport Energy intervenes
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19	National Grid Attachment F App. A PBOP Fixed Expense Revisions (ER24-125)	Nov 7 Dec 5	Eversource, MA AG intervene FERC accepts revisions, <i>eff. Jan 1, 2024</i>
19	Attachment F Corrections & Updates (ER23-2940)	Nov 22	FERC accepts corrections and updates, <i>eff. Nov 28, 2023</i>
19	Order 676-J Compliance Filings Part II (ER23-1771; ER23-1782)	Nov 13, 17	Versant and ISO-NE submit revisions to MPD OATT Section 4 and Schedule 24, respectively, to include the citation to the order granting the requested waivers of certain v. 003.3 NAESB WEQ Standards; comment deadline for Schedule 24 changes Dec 8, 2023
20	Order 881 Compliance Filing: New England (ER22-2357)	Dec 4	FERC accepts Order 881 60-Day Compliance Changes, <i>eff. Jun 1, 2025</i>

V. Financial Assurance/Billing Policy Amendments



No Activities to Report

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



20	Schedule 21-VP: Versant/Jonesboro LSA (ER24-24)	Nov 30	FERC accepts LSA, <i>eff. Dec 4, 2023</i> , denies waiver of prior filing requirement, orders Time Value Refunds
21	Schedule 21-ES: PSNH /Great Lakes Hydro IA Termination (ER24-17)	Nov 30	FERC accepts notice of termination of superseded IA, <i>eff. Oct 5, 2023</i>
21	Sched. 21-GMP: National Grid/ISO-NE/GMP LSA (ER23-2804)	Nov 7 Dec 4 Dec 6	FERC accepts LSA, <i>eff. Nov 11, 2023</i> , denies waiver of prior filing requirement, orders Time Value Refunds Filing Parties request extension of time to make Time Value Refunds and to file Refund Report FERC grants Filing Parties' request for an extension of time to make Time Value Refunds (to Jan 22, 2024) and file to a Refund Report (to Feb 21, 2024)

VII. NEPOOL Agreement/Participants Agreement Amendments



No Activities to Report

VIII. Regional Reports



22	Capital Projects Report - 2023 Q3 (ER24-94)	Dec 5	FERC accepts 2023 Q3 Report, <i>eff. Oct 1, 2023</i>
23	Interconnection Study Metrics Processing Time Exceedance Report 2023 Q3 (ER19-1951)	Nov 14	ISO-NE files 2023 Q3 Report
* 24	ISO-NE FERC Form 3Q (2023/Q3) (not docketed)	Nov 21	ISO-NE submits its 2023 Q3 FERC Form 3Q

IX. Membership Filings



24	Dec 2023 Membership Filing (ER24-512)	Nov 30	New Members: Citadel Energy Marketing; Downeast Wind; JGT2 Energy; and Qnti.fyi Inc.; Termination of Participant status: Sam Mintz; comment deadline Dec 21, 2023
24	Oct 2023 Membership Filing (ER23-2966)	Nov 22	FERC accepts (i) the membership in NEPOOL of: KCE CT 10, KCE CT 11, and the Sierra Club; and (ii) the termination of the Participant status of BP Energy Holding Company

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

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|------|--|--------|---|
| * 24 | Report on 2022 Winter Storm Elliott (AD23-8) | Nov 7 | FERC posts FERC/NERC/RE report entitled "Inquiry into Bulk-Power System Operations During December 2022 Winter Storm Elliott" |
| * 25 | Revised Reliability Standard: PRC-023-6 (RD23-5) | Nov 3 | FERC files revised Reliability Standard |
| 25 | Inverter-Based Resource Registration (RD22-4) | Nov 14 | NERC files second 90-Day Progress Report |
| 26 | Changes to NERC ROPs (RR23-4) | Nov 28 | FERC approves changes to ROPs |

XI. Misc. - of Regional Interest

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| * 27 | E&P Agreement, 2d Amendment: Seabrook / NECEC Transmission (ER24-508) | Nov 30 | Seabrook files a second amendment to the E&P Agreement with NECEC Transmission; comment deadline Dec 21, 2023 |
| * 27 | IA Cancellation MCo / Dichotomy Collins Hydro (ER24-353) | Nov 3 | MCo files notice of cancellation of IA with Dichotomy Collins Hydro that was superseded by new SGIA with NEP |

XII. Misc. - Administrative & Rulemaking Proceedings

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| 29 | Reliability Technical Conference (AD23-9) | Nov 3-14
Nov 14
Nov 30-Dec 1
Nov 27-Dec 5 | Comments, including pre-tech conf and speaker statements/materials and comments, posted to eLibrary
FERC invites post-tech conf comments; comment deadline Dec 14, 2023
EEL, supported by NRDC, requests extension of time, to Dec 20, 2023, to file comments
Reliable Energy Analytics , US EPA Office of Air and Radiation , Sue Tierney file post-tech conf comments |
| 29 | New England Gas-Electric Forums (AD22-9) | Nov 6 | FERC Chairman and NERC CEO issue a joint statement regarding the potential loss of the Everett Marine Terminal |
| 30 | Joint Federal-State Task Force on Electric Transmission (AD21-15) | Nov 6 | FERC issues order listing PA PUC Vice Chair Kimberly Barrow to serve out the remainder of Joseph L. Fiordalis's one-year term |
| 30 | NOPR: EQR Filing Process and Data Collection (RM23-9) | Nov 17, 27
Dec 5 | EEL/EPSC request additional time to comment on <i>EQR NOPR</i>
BPA requests additional time to comment on <i>EQR NOPR</i> |
| 31 | <i>Order 2023</i> : Interconnection Reforms (RM22-14) | Nov 7-27 | Parties petition DC Circuit for review of <i>Order 2023</i> (see Section XVI below) |

XIII. FERC Enforcement Proceedings

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| * 36 | 2023 FERC Enforcement Staff Report (AD07-13-017) | Nov 16 | OE issues 2023 annual report |
| Natural Gas-Related Enforcement Actions | | | |
| 36 | Black Hills Corp., et al. (IN23-10) | Dec 5 | FERC approves Stipulation and Consent Agreement that resolves OE's investigation into Black Hills' failure, on more than 100 occasions, to file before jurisdictional service commenced associated jurisdictional agreements; Black Hills must pay a \$150,000 civil penalty , and submit to OE compliance monitoring for two years |

XIV. Natural Gas Proceedings

No Activity to Report

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

40	<i>Order 2023</i> (23-1282 et al.) (consolidated)	Dec 1-4	Parties file Statements of Issue; Docketing Statements; motions to govern future proceedings due <i>Dec 12, 2024</i>
40	<i>Order 2222</i> Compliance Orders (23-1167 et al.)(consolidated)	Dec 6	23-1335 consolidated with 23-1167 et al.; motions to govern future proceedings due by <i>Jan 24, 2024</i>
40	Seabrook Dispute Order (23-1094, 23-1215) (consol.)	Nov 3	FERC files Final Reply Brief and Final Brief; NECEC Transmission and Avangrid (Intervenors for Respondent) file Final Brief
42	Opinion 531-A Compliance Filing Undo (20-1329)	Nov 28	FERC files status report, suggests continued abeyance

M E M O R A N D U M

TO: NEPOOL Participants Committee Members and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

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

I. Complaints/Section 206 Proceedings
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- **Brookfield IEP Complaint (IEP Exclusion of Pumped Storage ESFs) (EL23-89)**

On September 21, 2023, the FERC granted the complaint filed by Brookfield Renewable Trading and Marketing LP ("Brookfield") regarding the exclusion of pumped storage hydroelectric facilities that are Electric Storage Facilities ("ESFs") from the Inventoried Energy Program ("IEP").² In granting the Complaint, effective August 2, 2023, the FERC found "pumped storage [ESFs] are similarly situated to battery storage [ESFs] for purposes of participation in the [IEP] ... [agreed] with Brookfield that the ISO-NE Tariff is unduly discriminatory because it prohibits pumped storage [ESFs] from similarly participating in the [IEP]".³ Accordingly, the FERC ordered ISO-NE to revise its Tariff. Any challenges to the *Brookfield IEP Complaint Order* were due on or before October 23, 2023; none were filed. Tariff changes in response to the *Order* were supported by the Participants Committee at its November 2, 2023 meeting (Consent Agenda Item #3) and were jointly filed with ISO-NE on November 29, 2023 in Docket No. ER24-492 (see Section III below). Reporting on the complaint proceeding is now concluded, with any further developments related to the Tariff changes to be reported in Section III (ER24-492) below. 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. 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

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 *Brookfield Renewable Trading and Marketing LP v. ISO New England Inc.*, 184 FERC ¶ 61,169 (Sep. 21, 2023) ("*Brookfield IEP Complaint Order*").

³ *Id.* at P 31.

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 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.

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

Being Held In Abeyance. On 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**. Changes in response to the *Dynegy Mitigation Order* were supported by the Participants Committee at its November 2, 2023 meeting (Consent Agenda Item #2) and jointly filed with ISO-NE in Docket No. ER24-324 (see Section III below.)

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).

- **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.

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.

- **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,⁷ 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*).⁸ However, the FERC's orders were challenged, and in *Emera Maine*,⁹ 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)¹⁰ and third (EL14-86)¹¹ 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.¹² The *Initial Decision* also lowered the ROE ceilings. Parties to these proceedings filed briefs on exception to the FERC, which has not yet issued an opinion on the ALJ's *Initial Decision*.
- **Base ROE Complaint IV (EL16-64).** The fourth and final ROE proceeding¹³ also went to hearing before an Administrative Law Judge ("ALJ"), Judge Glazer, who issued his initial decision on March 27, 2017.¹⁴ The *Base ROE IV Initial Decision* concluded that the currently-filed base ROE of 10.57%,

⁷ 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*").

⁸ *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*").

⁹ *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).

¹⁰ 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%.

¹¹ 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.

¹² *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*").

¹³ 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.

¹⁴ *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 162 FERC ¶ 63,026 (Mar. 27, 2018) ("*Base ROE Complaint IV Initial Decision*").

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.¹⁵ 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.¹⁶ 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*¹⁷ (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.¹⁸

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

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

The FERC provided preliminary analysis of how it would apply the proposed methodology in the Base ROE I Complaint, suggesting that it would affirm its holding that an 11.14% Base ROE is unjust and unreasonable. The FERC suggested that it would adopt a 10.41% Base ROE and cap any preexisting incentive-based total ROE at 13.08%.¹⁹ 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

¹⁵ *Id.* at P 2.; Finding of Fact (B).

¹⁶ *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (Oct. 18, 2018) (“*Order Directing Briefs*” or “*Coakley*”).

¹⁷ *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*.

¹⁸ *Id.* at P 19.

¹⁹ *Id.* at P 59.

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 Customers²⁰ 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*²¹ 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

- **ICR-Related Values and HQICCs – Annual Reconfiguration Auctions (ER24-528)**

On November 30, 2023, ISO-NE and NEPOOL jointly filed materials that identify the Installed Capacity Requirement (“ICR”), Local Sourcing Requirements (“LSR”), Maximum Capacity Limits (“MCL”), Hydro Quebec Interconnection Capability Credits (“HQICCs”), and capacity requirement values for the System-Wide and Marginal Reliability Impact Capacity Demand Curves (collectively, the “ICR-Related Values”) for the third annual reconfiguration auction (“ARA”) for the 2024-25 Capability Year, the second ARA for the 2025-26 Capability Year, and the first ARA for the 2026-27 Capability Year. The ICR-Related Values were supported by the Participants Committee at its November 2, 2023 meeting (Agenda Item 5). A January 29, 2024 effective date was requested. Comments on this filing are due on or before **December 21, 2023**. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **FCA18 Qualification Informational Filing (ER24-476)**

On November 22, 2024, ISO-NE submitted its informational filing for qualification in FCA18 (the “FCA18 Informational Filing”). ISO-NE is required under Market Rule Section 13.8.1 to submit an informational filing with the FERC containing the determinations made by ISO-NE for the upcoming Forward Capacity Auction (“FCA”) at least 90 days prior to each auction. FCA18 is scheduled to begin February 5, 2024. The Informational Filing contained ISO-NE’s determinations that three Capacity Zones will be modelled for FCA18 - Northern New England (“NNE”), Maine, and Rest of Pool. NNE and Maine will be modeled as export-constrained. The Informational Filing reported that there will be 29,855 MW of existing capacity in FCA18

²⁰ For purposes of the motion seeking clarification, “Customers” are CT PURA, MA AG and EMCOS.

²¹ *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).

competing with 4,108 MW of new capacity under a Net ICR of 30,550 MW (ICR minus HQICCs). ISO-NE reported also that there were a total of 1,391 MW of De-List Bids. A summary of the De-List Bids accepted and those rejected for reliability purposes was included in a privileged Attachment E. ISO-NE qualified 8 demand bids, totaling 858 MW, and 47 supply offers, totaling 341 MW, to participate in the substitution auction. Comments on the FCA18 Informational Filing are due on or before **December 7, 2023**. Thus far, NEPOOL, Calpine, National Grid, and Public Citizen have filed doc-less interventions. If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **ICR-Related Values and HQICCs – FCA18 (2027-28) Capacity Commitment Period (ER24-362)**

On November 7, 2023, ISO-NE and NEPOOL jointly filed the ICR, MCL for the Maine and NNE Capacity Zones, HQICCs, and Marginal Reliability Impact (“MRI”) Demand Curves (collectively, the “2026-27 ICR-Related Values”) for the 2026-27 Capacity Commitment Period (“CCP”). The 2027-28 ICR will be 31,591 MW (reflecting tie benefits of 1,041 MW) and HQICCs of 1,041 MW/mo., the net amount of capacity to be purchased in FCA18 to meet the ICR will be 30,550 MW. The MCL for the Maine Capacity Zone is 4,150 MW. The MCL for the NNE Capacity Zone is 8,760 MW. (For FCA18, there are no import-constrained Capacity Zones; Accordingly, ISO-NE did not have to calculate a LSR for any Capacity Zone.) The Participants Committee supported the FCA18 ICR-Related Values at its October 5, 2023 meeting. Comments on this filing were due November 28, 2023; none were filed. Calpine, NESCOE and Public Citizen intervened doc-less. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **2024 NESCOE Budget (ER24-91)**

This proceeding was initiated by ISO-NE’s October 13, 2023 filing of the budget for funding NESCOE’s 2024 operations. The 2024 Operating Expense Budget for NESCOE is \$2,596,014. The amount to be recovered reflects true-ups from 2023 (over-collections of \$862,664). Accordingly, if accepted, the NESCOE budget will result in a charge of \$0.00807 per kilowatt (“kW”) of Monthly Network Load (a \$0.00106/kW increase from 2023). The 2024 NESCOE budget was supported by the Participants Committee at its October 5, 2023 meeting. Comments and any interventions were due on or before November 3, 2023. NEPOOL filed comments on November 3 supporting the 2024 NESCOE Budget. NESCOE and National Grid filed doc-less interventions only. This matter is pending before the FERC. If there are any questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **2024 ISO-NE Administrative Costs and Capital Budgets (ER24-90)**

Also on October 13, 2023, ISO-NE filed for recovery of its 2024 administrative costs (the “2024 Revenue Requirement”) and submitted its capital budget and supporting materials for calendar year 2024 (“2024 Capital Budget”, and together with the 2024 Revenue Requirement, the “2024 ISO Budgets”). The 2024 ISO-NE Budgets were filed together pursuant to the Settlement Agreement entered into to resolve challenges to the 2013 ISO-NE Budgets. In the October 13 filing, ISO-NE reported that the 2023 Revenue Requirement is \$276.9 million (a \$36.7 million or 15.3% increase over 2023), which decreases to \$273.9 million after the over-collection for 2022 is subtracted. Of that total, ISO-NE’s administrative costs (i.e., the 2024 Core Operating Budget) comprise \$244.3 million; depreciation and amortization of regulatory assets, \$32.6 million; and a \$3.0 million true-up decrease for 2022 over-collections.

ISO-NE further reported that the 2024 Capital Budget is \$35 million, a \$1.5 million increase over 2023, and is comprised of the following (with 2024 projected costs and target completion dates, if available, in parentheses):

▸ Day-Ahead Ancillary Services Improvements (Mar 2025)	(\$3.8 million)	▸ CIP Electronic Security Perimeter Redesign Phase II (Dec 2024)	(\$2 million)
▸ nGem Software Development Part III (Mar 2025)	(\$2.5 million)	▸ Enterprise Resource Planning System Replacement (Mar 2025)	(\$1.6 million)

▸ Operating System Server Upgrade Phase I (Jul 2024)	(\$1.2 million)	▸ Resource Capacity Accreditation (Dec 2025)	(\$1 million)
▸ Solar DNE Dispatch Phase II (Oct 2024)	(\$900,000)	▸ Microsoft 365 Service Adoption (Sep 2024)	(\$1 million)
▸ IMM Data Analysis Phase IV (May 2024)	(\$500,000)	▸ 2024 Issue Resolution Project (Dec 2024)	(\$1 million)
▸ Energy Management System (“EMS”) Short-term Load Forecast (Jul 2024)	(\$400,000)	▸ <i>Order 2222</i> (Dec 2026)	(\$500,000)
▸ IT Asset Workflow (“ITAW”) Integration and Updates (May 2024)	(\$200,000)	▸ Privileged Account Management Security Enhancements Phase II (Dec 2024)	(\$500,000)
▸ EMS Host Monitoring Software Replacement (Jan 2024)	(\$100,000)	▸ Capitalized Interest	(\$1.5 million)
▸ Settlement Technology Improvements (Mar 2024)	(\$100,000)	▸ Non-Project Capital Expenditures	(\$5.3 million)
▸ nGem RT Mkt Clearing Engine Implementation (Jun 2025)	(\$6 million)	▸ Other Emerging Work	(\$1.6 million)
▸ <i>Order 881</i> Compliance (Jun 2025)	(\$3.3 million)		

The 2024 ISO-NE Budgets were supported by the Participants Committee at its October 5, 2023 meeting. Comments on this filing and interventions were due November 3, 2023. NEPOOL filed comments supporting the 2024 Budgets. National Grid, NESCOE, and MA DPU filed doc-less interventions only. This matter is pending before the FERC. If there are any questions on this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **EP Newington CIP-IROL (Schedule 17) Section 205 Cost Recovery Filing (ER24-80)**

On December 5, 2023, the FERC accepted a revised rate schedule filed by Essential Power Newington, LLC (“EP Newington”) to allow EP Newington 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.²² As previously reported, EP Newington will recover **\$276,421** in incremental medium impact CIP-IROL Costs incurred between July 1, 2022 and June 30, 2023. The revised rate schedule was accepted effective as of *December 11, 2023*. Unless the December 5 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).

- **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

²² *Essential Power Newington, LLC*, Docket No. ER24-80-000 (Dec. 5, 2023).

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 (-001). 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, 2023, the Maine Office of the Public Advocate (“MOPA”) filed a motion to intervene (out-of-time).

Joint Offer of Settlement (-002). On September 22, 2023, Versant filed a joint offer of settlement (“Settlement Offer”) between itself, the MPUC and MOPA. Versant stated the Settlement Offer, if accepted, would resolve all issues raised by the MPUC in this proceeding, including those described above. Comments on the Settlement Offer were due on or before October 12, 2023; none were filed. The Settlement Offer is pending before the FERC.

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 Transaction²³ (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.²⁴ 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, 2022,²⁵ directing Mystic to make a compliance filing with revised tariff records in eTariff format reflecting the FERC’s action in the November 2 order. Mystic submitted that compliance filing on December 2, 2022 (ER22-1192-003). No comments were received by the December 23, 2022 comment date, and there was no activity in this proceeding since the last Report. This compliance filing remains pending before the FERC. FERC action on the compliance filing will conclude this proceeding. If you have questions on any aspect of this proceeding, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

Mystic I Remand. As previously reported, the DC Circuit issued a decision on August 23, 2022²⁶ 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*.

²³ 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.

²⁴ *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,081 (May 2, 2022) (“*May 2, 2022 Order*”).

²⁵ *Constellation Mystic Power, LLC*, 181 FERC ¶ 61,099 (Nov. 2, 2022).

²⁶ *Constellation Mystic Power, LLC v. FERC*, 45 F.4th 1028 (D.C. Cir. 2022) (“*Mystic I Remand Order*”).

(-000) Third CapEx Info Filing. On September 15, 2023, Mystic submitted, as required by orders in this proceeding and Sections I.B.1.i. and II.6. of Schedule 3A of the COS Agreement (“Protocols”) its “Third 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, 2024 to May 31, 2024 (“2024 CapEx Projects”). This filing was not noticed for public comment by the FERC.

(-026) ENECOS Request for Rehearing of Mystic I Order on Remand Modification Order. On November 6, 2023, ENECOS requested rehearing of the *Mystic I Order on Remand Modification Order*.²⁷ Specifically, ENECOS requested that the FERC both (i) reinstate the its conclusions as to the scope of customer scrutiny of formula rate inputs under the COSA set forth in its March 28, 2023 *Mystic I Order on Remand*²⁸ and (ii) grant Public Systems’ motion for additional disclosure to facilitate customer review of the extraordinary costs incurred during the first 18 months of the COSA’s operation. The FERC must take action on ENECOS’ request for rehearing by **December 6, 2023**, or the request will be deemed denied by operation of law.

As previously reported, Mystic requested rehearing and/or clarification of the March 28, 2023 *Mystic I Order on Remand* (-024). 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 30, 2023, the FERC issued a “Notice of Denial of Rehearings by Operation of Law and Providing for Further Consideration”.²⁹

The FERC then issued the *Mystic I Order on Remand Modification Order* which modified the discussion in the *Mystic I Order on Remand* and set aside that *Order* in part.³⁰ In addition, the *Order* also denied Public Systems³¹ May 19, 2023 request that the FERC direct ISO-NE to release additional information concerning ISO-NE’s audit of performance under Mystic COSA (“Audit Information Request”).³²

²⁷ *Constellation Mystic Power, LLC*, 185 FERC ¶ 61,016 (Oct. 6, 2023) (“*Mystic I Order on Remand Modification Order*”). The *Mystic I Order on Remand Modification Order* set aside the FERC determinations in the *Mystic I Order on Remand* that: (i) interested parties may review and challenge revenues and Revenue Credits during the true-up process; (ii) interested parties may review and challenge Tank Congestion Charges during the true-up process; and (iii) the revenues from the sliding scale revenue sharing mechanism for third-party vapor sales should be included within the true-up. As previously reported, the FERC concluded in the *Mystic I Order on Remand* that “the language of the true-up and Protocol provisions of the [COS] Agreement, Schedule 3A, does not include these three items within the scope of the true-up, nor is calculation of these items consistent with purpose for the true-up mechanism in the [COS] Agreement because none of them are projected in advance, but rather they are each settled and audited on a monthly basis. The FERC found that “existing cost review and audit processes, ... facilitated by ISO-NE, its auditors, and the Internal Market Monitor, are sufficient to ensure that Mystic adheres to its filed rate with respect to these items and continues to appropriately balance customers’ interest in transparency of the formula rate with Mystic’s interests in protecting commercially-sensitive information, reducing security risks, and avoiding burdensome audit obligations”.

²⁸ *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) (“*Mystic I Order on Remand Allegheny Notice*”); *Mystic I Order on Remand Modification Order* (addressing arguments raised on *reh’g* and setting aside the *Mystic I Order on Remand*, in part, granting Constellation motion to lodge and denying Public Systems’ Request for Disclosure of Audit Information).

²⁹ *Mystic I Order on Remand Allegheny Notice*.

³⁰ *Constellation Mystic Power, LLC*, 185 FERC ¶ 61,016 (Oct. 6, 2023) (“*Mystic I Order on Remand Modification Order*”).

³¹ “Public Systems” for these purposes are: MMWEC, CMEEC, NHEC, VPPSA, the Eastern New England Consumer-Owned Systems (“ENECOS”), and Energy New England, LLC (“ENE”).

³² In the *Mystic I Order on Remand Modification Order*, the FERC found that the additional audit information requested was “not supported by the Mystic [COSA] and unnecessary, given the attention that ISO-NE, its auditors, and the Market Monitor give these items on a regular basis”. Nevertheless, the FERC accepted “ISO-NE’s offer to provide additional transparency measures for the remainder of the Mystic Agreement as soon as practicable, starting no later than [December 5, 2023].” (P 13).

(-018) Second CapEx Info Filing. On December 5, 2023, the FERC issued an order³³ on the formal challenges to Mystic's September 15, 2022 "Second CapEx Info Filing".³⁴ As previously reported, formal challenges to the Second CapEx Info Filing were submitted by NESCOE and ENECOS³⁵ (with ENECOS challenges supported separately by MMWEC/NHEC). Several rounds of answers, described in previous reports, followed. In February 2023, Mystic asked that the Formal Challenges to the Second CapEx Info Filing be held in abeyance pending submission of a settlement agreement to resolve challenges to the First CapEx Info Filing. ENECOS protested that request, identifying issues in their challenges to the Second CapEx Info Filing that would not be resolved by a First CapEx Settlement Agreement. The First CapEx Settlement Agreement was filed and approved, leaving for resolution certain of ENECOS' challenges.

In the *Second CapEx Info Filing Order*, the FERC granted in part, subject to hearing and settlement judge procedures, and dismissed in part, ENECOS' Formal Challenges. Specifically, the FERC found that, issues of material fact, that could not be resolved on the record before it, continued with respect to a number of ENECOS' Formal Challenges. Accordingly, the FERC set for hearing and settlement judge procedures issues raised, in whole or in part, in ENECOS Formal Challenges 1, 2, 6, and 7. The FERC summarily dismissed ENECOS' Formal Challenges 3-5 and 8 (as outside the scope of the proceeding).

While the FERC set several aspects of ENECOS Formal Challenges for a trial-type evidentiary hearing, the FERC encouraged the parties to make every effort to settle their disputes before hearing procedures are commenced, and to that end, is holding the hearing in abeyance pending the completion of settlement judge procedures. The Chief ALJ was directed to appoint a settlement judge on or before **January 19, 2024**; the appointed Settlement Judge was directed to convene a settlement conference as soon as practicable and to file a report within 60 days of her/his appointment on the status of settlement discussions.

(-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*.³⁶ 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.

³³ *Constellation Mystic Power, LLC*, 185 FERC ¶ 61,170 (Dec. 5, 2023) ("*Second CapEx Info Filing Order*").

³⁴ The "Second CapEx Info Filing" provides 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").

³⁵ ENECOS Formal Challenges included failures by Mystic: (1) to adequately support its July 1, 2004 – Dec. 31, 2017 Rate Base on Attachment B to Mystic 8&9 Schedule D (with the majority of the cost appearing to O&M expenses that should have been expensed prior to the term); (2) to adequately support its Jan. 1, 2018 – May 31, 2022 Rate Base in line with the requirements of Schedule 3A and the Methodology of the Mystic COSA; (3-5) to prove that certain costs under Mystic's 2022 CapEx Projects - specifically, its Campus Segregation Project and comprehensive rotor inspections - are necessary to meet the reliability need of the Mystic COSA and the least-cost commercially reasonable option consistent with Good Utility Practice; (6) to sufficiently support Everett's Nov. 1, 2018 – May 31, 2022 Rate Base in Attachment B; (7) to properly classify certain of Everett's 2022 and 2023 CapEx Projects costs (some of which should have been characterized as maintenance expenses charged before the term of the Mystic COSA); and (8) to include costs of firm interstate and intrastate pipeline transportation reservations in Everett Schedule B of the populated template.

³⁶ 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*,³⁷ 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 (ER20-2054-003)**

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. Public comments on this filing were due on or before September 19, 2023; none were filed. MOPA filed a doc-less intervention.

The July 31 filing also triggered the commencement of an Information Exchange Period and a Review Period under the Protocols. Interested Parties had until September 15, 2023 to submit information and document requests, and the PTOs were 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 had 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.

³⁷ *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, 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 were due on or before September 20, 2023; none were filed. The Versant MPD OATT 2022 Annual Update Settlement Agreement remains pending before the FERC. 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)**

RENEW Formal Challenge. RENEW’s January 31, 2023 formal challenge (“Challenge”) to the 2022/23 Update/Informational Filing³⁸ remains pending before the FERC. In the Challenge, RENEW asserted that (i) the TOs failed to provide adequate rate input information in the Annual Informational Filing and in the Information Exchange Period under the Interim Formula Rate Protocols regarding inclusion or exclusion of “O&M costs” on Network Upgrades that the TOs directly assign to Interconnection Customers (and thereby failing to demonstrate that such O&M costs are not being double counted in transmission rates); and (ii) the TO’s Interpretation of “Interested Party” to exclude RENEW violated the Interim Formula Rate Protocols. RENEW thus asked that the FERC (a) require the TOs to show the calculation of the annual O&M charges with sources of data inputs and show how such O&M charges are not being double recovered in transmission rates, and (b) determine that an entity such as RENEW is an Interested Party under the Interim Formula Rate Protocols and that its Information Requests seeking rate inputs and support for the O&M charges on Network Upgrades are within the scope of the Interim Formula Rate Protocols process. Comments on RENEW’s Challenge were due on or before March 16, 2023. Comments and protests were filed by: [Avangrid](#), [Eversource](#), [National Grid](#), [Public Systems](#), [RI Energy](#), [Unitil](#), [Versant Power](#), [VTransco/GMP](#). On March 31, RENEW answered the comments and protests to its Challenge. Subsequently, on April 14, Eversource answered RENEW’s March 31 answer. There has been no activity in this proceeding since Eversource’s answer. This matter remains pending before the FERC. If there are questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **ISO Securities: Authorization for Future Drawdowns (ES21-34)**

On November 13, 2023, ISO-NE requested the necessary FERC authorization for drawdowns under a \$40 million (up from \$20 million) Revolving Credit Line and a \$4 million line of credit supporting the Payment Default Shortfall Fund, each of which are with TD Bank, are for a term of three years ending June 30, 2027, and replace similar arrangements that will expire June 30, 2024.³⁹ Comments on this filing were due on or before December 4, 2023; none were filed. National Grid filed a doc-less intervention. 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).

³⁸ The 2022/23 annual 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. The formula rates in effect for 2023 included a billing true up of seven months of 2021 (June-Dec.). The Pool “postage stamp” RNS Rate, effective Jan. 1, 2023, was \$140.94 /kW-year, a decrease of \$1.84 /kW-year from the charges that went into effect the year prior. The updates to the revenue requirements for Scheduling, System Control and Dispatch Services (the Schedule 1 formula rate) resulted in a Schedule 1 charge of \$1.75 kW-year (eff. 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.

³⁹ See *ISO New England Inc.*, 139 FERC ¶ 62,248 (June 22, 2012) (initially authorizing borrowings). The arrangements that expire at the end of June 2024 were first authorized in 2021. *ISO New England Inc.*, 175 FERC ¶ 62,084 (May 12, 2021) (granting authorization through May 31, 2023, the maximum 2-year period allowable under FERC regulations); *ISO New England Inc.*, 183 FERC ¶ 62,112 (May 26, 2023) (continuing authorization through May 29, 2025, despite expiration of arrangements at the end of June 2024).

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

- **IEP Compliance Filing (ER24-492)**

On November 29, 2023, ISO-NE and NEPOOL jointly filed changes, as directed by the FERC,⁴⁰ that make eligible to participate in the IEP pumped storage resources participating as Electric Storage Facilities in the New England Markets. The Participants Committee unanimously supported the IEP changes by way of the November 2, 2023 Consent Agenda (Item # 3). Comments, if any, on the IEP changes and interventions are due on or before **December 20, 2023**. Thus far, Brookfield submitted a doc-less intervention on November 30, 2023. If you have any questions concerning this proceeding, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **DECR FCM Qualification Revisions (ER24-484)**

On November 27, 2023, ISO-NE and NEPOOL jointly filed changes to the Forward Capacity Market (“FCM”) qualification rules for Distributed Energy Capacity Resources (“DEC Rs”) (“DECR Qualification Revisions”) to allow for a more streamlined qualification process for DEC Rs as early as Forward Capacity Auction 19 (“FCA19”), and to correct inadvertent errors in the DEC R qualification rules. The Participants Committee unanimously supported the DEC R Qualification Revisions by way of the November 2, 2023 Consent Agenda (Item # 4). Comments, if any, on the DEC R Qualification Revisions and interventions are due on or before **December 18, 2023**. Thus far, Calpine, NESCOE and the MA DPU have intervened doc-less only. If you have any questions concerning this proceeding, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **Waiver Request: OP-14 Solar Dispatch Point Requirements (Galt Power) (ER24-478)**

On November 22, 2023, Galt Power, Inc. and GSRP Pipeline Acquisition I LLC (together, “Galt Power”) requested for certain resources (the “FR/SR Facilities”)⁴¹ a waiver of the requirements for solar resources to receive and respond to Do Not Exceed (“DNE”) Dispatch Points.⁴² Galt Power asserted that, due to the size and characteristics of the FR/SR Facilities, “full compliance with the DNE Requirements would be technically challenging and would impose significant costs that are not necessary to ensure reliability, which is the underlying purpose of the DNE Requirements.” Galt Power went on to demonstrate how it believes the waiver request is consistent with the FERC’s standards for granting waiver requests. Without the Waiver Request being granted in an expedited manner, Galt Power asserted that the FR/SR Facilities “will be required to expend unnecessary resources on costly and unnecessary compliance with the DNE Requirements”.

Galt Power asked that the FERC set an abbreviated comment period and act on and approve the Waiver Request by December 4, 2023. Neither of those requests were granted. Comments on the Waiver Request are due on or before **December 13, 2023**. In initial comments opposing the request for an expedited comment period, ISO-NE indicated that it will oppose the Waiver Request. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Downward De-List Bid Price Flexibility (ER24-420)**

On November 17, 2023, ISO-NE and NEPOOL jointly filed changes to allow Lead Market Participants greater flexibility for submitting Permanent De-List Bids and Retirement De-List Bids in a Forward Capacity Auction (“FCA”). A March 1, 2024 effective date was requested. The Participants Committee supported the Downward De-List Bid Price Flexibility changes by way of the Consent Agenda (Item # 1) at the 2023 Summer Meeting. Comments, if any, on the Downward De-List Bid Price Flexibility changes and interventions are due on or before

⁴⁰ *Brookfield Renewable Trading and Marketing LP v. ISO New England Inc.*, 184 FERC ¶ 61,169 (Sep. 21, 2023) (“*Brookfield IEP Complaint Order*”).

⁴¹ as those requirements apply to nine sub-transmission solar projects, roughly 12 MW total nameplate capacity, that have been in operation since 2017

⁴² The extension of DNE Requirements to solar resources larger than 5 MW, with certain exceptions, takes effect Dec. 5, 2023. *ISO New England Inc.*, Docket No. ER23-517-000 (Jan. 19, 2023) (unpublished letter order); See Revisions to ISO New England Transmission, Markets and Services Tariff to Incorporate Solar Resources into DNE Dispatch Rules, Docket No. ER23-517-000 (Nov. 30, 2022).

December 8, 2023. Thus far, Calpine, Constellation, NESCOE and National Grid have intervened doc-lessly only. If you have any questions concerning this proceeding, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **FCM CONE and Net CONE Updates for FCAs 19 and 20 (ER24-401)**

On November 15, 2023, ISO-NE and NEPOOL jointly filed updates to the cost of new entry (“CONE”) and net cost of new entry (“Net CONE”) for FCAs 19 and 20, reflecting the elimination of the Minimum Offer Price Rule (“MOPR”) through revisions to the after tax weighted average cost of capital (“ATWACC”). The Participants Committee supported the CONE/Net CONE Updates by way of the November 2, 2023 Consent Agenda (Item # 1). Comments, if any, on the CONE/Net CONE Updates and interventions were due on or before December 6, 2023. On December 6, NEPGA filed comments supporting the updates. Calpine, Constellation, NESCOE, and National Grid intervened doc-lessly only. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **FCA19 Delay Proposal (ER24-339)**

On November 3, 2023, ISO-NE and NEPOOL jointly filed Tariff revisions (i) to delay FCA19, including all pre-auction and post-auction activities related thereto, for one calendar year; (ii) to also address the timeline for conducting subsequent auctions, as well as impacts to the schedule for running the three ARAs that are held between the time of the FCA and the commencement of the capacity delivery year; and (iii) to make adjustments to the FCA qualification rules for certain resources, to prevent the delay from adversely impacting their participation in the FCM (collectively, the “FCA 19 Schedule Changes”). The Participants Committee unanimously supported the FCA 19 Schedule Changes at the November 2, 2023 meeting (Item # 6). Comments on the FCA 19 Schedule Changes and interventions were due on or before November 24, 2023. Comments supporting the FCA 19 Schedule Changes were filed by: [FirstLight](#),⁴³ [NEPGA](#), and [Public Systems](#).⁴⁴ Brookfield, Calpine, Dominion, Eversource, MA AG, National Grid, NESCOE, NRG Business Marketing (“NRG”), Orsted Wind Power North America (“Orsted”), RENEW, the MA DPU, and Public Citizen intervened doc-lessly only. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **Energy Supply Offer Mitigation Changes (ER24-324)**

On November 2, 2023, ISO-NE and NEPOOL jointly filed Tariff revisions to eliminate the potential for upward mitigation of Energy Supply Offers by incorporating updates which will be used to compare each financial parameter of the Supply Offer to the Reference Level and use the lesser of the two values when performing certain automated mitigation procedures (the “Energy Supply Offer Mitigation Changes”). The Energy Supply Offer Mitigation Changes address the primary issue raised by the FERC in the *Dynegy Mitigation Order* (see Section I, EL23-62 (206 Proceeding: ISO Market Power Mitigation Rules) above). The Participants Committee unanimously supported the Energy Supply Offer Mitigation Changes at the November 2, 2023 meeting (Consent Agenda Item # 2). ISO-NE requested a *December 12, 2023* effective date for the Energy Supply Offer Mitigation Changes. Comments on the Energy Supply Offer Mitigation Changes were due on or before November 16, 2023. Comments supporting the Energy Supply Offer Mitigation Changes were filed by: [Dynegy/Vistra](#) and [NEPGA](#). Calpine, Constellation, MA AG, National Grid, and NESCOE intervened doc-lessly only. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

⁴³ FirstLight noted that, “whether the region succeeds in completing a well-designed RCA in time for FCA19 implementation will be proven (or not) by the extent of progress made in the stakeholder discussions in coming months”.

⁴⁴ “Public Systems” for purposes of this proceeding are: Conn. Mun. Elec. Energy Coop. (“CMEEC”), Mass. Mun. Wholesale Elec. Co. (“MMWEC”), New Hampshire Elec. Coop. (“NHEC”), and Vermont Public Power Supply Authority (“VPPSA”).

- **DASI Proposal (ER24-275)**

As previously reported, ISO-NE and NEPOOL jointly filed changes to the Tariff to establish a jointly optimized Day-Ahead Market for Energy and Ancillary Services (“DASI”) on October 31, 2023. The Participants Committee unanimously supported DASI by way of the August 3, 2023 Consent Agenda (Item # 1). Comments were due on or before November 21, 2023, with generally supporting the DASI proposal filed by [LS Power](#), [NEPGA](#), [NESCOE](#), [EPSA](#), the [National Hydropower Association](#), and the ISO-NE [IMM](#) and [EMM](#). Doc-less interventions only were filed by: Brookfield, Calpine, Constellation, CPV Towantic, Dominion, ENE, Eversource, FirstLight, HQ US, LS Power, MA AG, National Grid, NRG, Public Systems,⁴⁵ Shell, MA DPU, and Public Citizen. On December 6, 2023, ISO-NE filed an answer to certain comments made regarding compensation in light of the Forward Reserve Market’s elimination and the mitigation framework, as well as the specific request by commenters for ISO-NE to develop additional types of operating reserve products. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **ISO/RTO Credit-Related Information Sharing (ER24-138)**

As previously reported, in response to the requirements of *Order 895*, ISO-NE and NEPOOL jointly filed, on October 18, 2023, changes to the Information Policy to (i) permit ISO-NE to share Market Participant, Transmission Customer and Applicant (collectively, “Participants”) credit-related information with other ISO/RTOs; (ii) permit ISO-NE to use credit-related information received from other ISO/RTOs to the same extent and for the same purposes as ISO-NE is permitted under the Tariff with respect to its Participants; and (iii) require ISO-NE to keep such received credit-related information confidential in accordance with the Tariff, in each case for the purpose of credit risk management and mitigation (the “Credit Info Sharing Changes”). The Credit Info Sharing Changes were supported by the Participants Committee by way of the October 5, 2023 Consent Agenda (Item # 6). Comments on the Credit Info Sharing Changes were due on or before November 8, 2023; none were filed. National Grid intervened doc-lessly. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **Effective Date Deferral Request – Binary Storage Facility DARD Regulation (ER24-115)**

On October 16, 2023, ISO-NE asked that the FERC defer the effective date of *Order 841*-related changes that would permit Binary Storage Facilities to offer Regulation when acting as a Dispatchable Asset Related Demand (“DARD”) in New England Markets (the “Binary Storage Facility DARD Changes”). The Binary Storage Facility DARD Changes are currently scheduled to become effective on January 1, 2024. Instead, ISO-NE asked that the effective date be deferred until such time as there is market interest in Binary Storage Facility DARD Regulation. ISO-NE stated that “Market Participants that operate the existing Binary Storage Facilities do not currently have the physical capability to provide Regulation when participating as a DARD, have not represented any immediate plans to develop that capability, and do not oppose the effective date deferral.” ISO-NE further stated that the deferral would allow internal resources to be reallocated and focus on other pressing project priorities. Comments on the Deferral request were due on or before November 6, 2023; none were filed. NEPOOL, Calpine and National Grid intervened doc-lessly. This matter is pending before the FERC. If you have any questions or concerns regarding this proceeding, please contact Rosendo Garza (860-275-0660; rgarza@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”).⁴⁶ 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

⁴⁵ “Public Systems” for purposes of this proceeding are, again, CMEEC, MMWEC, NHEC, and VPPSA.

⁴⁶ *ISO New England Inc. and New England Power Pool Participants Comm.*, 184 FERC ¶ 61,082 (Aug. 4, 2023) (“*IEP Parameter Updates Order*”).

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 Denied by Operation of Law; Allegheny Notice. As previously reported, Public Interest Organizations (“PIOs”)⁴⁷ requested rehearing of the *IEP Parameter Updates Order*. On October 6, 2023, the FERC issued a “Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration”.⁴⁸ That Notice confirmed that the 60-day period during which a petition for review of the *IEP Parameter Updates 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 *IEP Parameter Updates Order*. As of the date of this Report, there is no evidence that any party has petitioned a federal court for review of the *IEP Parameters Update 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.”

Order Addressing Arguments on Rehearing; IEP Parameter Updates Allegheny Order. On November 30, 2023, the FERC issued an order addressing the PIO’s arguments raised on rehearing.⁴⁹ The FERC modified the discussion in, but reached the same result as, the *IEP Parameter Updates Order*. In the *IEP Parameter Updates Allegheny Order*, the FERC continued to find that (i) “ISO-NE met its burden to show that the proposed Tariff revisions represent a just and reasonable means of updating the program payment rates to ensure that the [IEP] provides appropriate incentives and compensation for market participants to participate in the program”; and (ii) “ISO-NE’s proposed indexed rates are expected to change market participants’ behavior in the manner intended by the [IEP] and are a just and reasonable means of addressing the “misaligned incentives” problem that persists in New England. The FERC further explained why it was not persuaded by PIOs’ arguments on rehearing.

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

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

In a lengthy compliance Order⁵⁰ 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 filing⁵¹ (“*Order 2222 Compliance*

⁴⁷ “PIOs” are for purposes of this proceeding: the Sierra Club and Conservation Law Foundation (“CLF”).

⁴⁸ *ISO New England Inc. and New England Power Pool Participants Comm.*, 185 FERC ¶ 62,009 (Oct. 6, 2023) (“*IEP Parameter Updates Allegheny Notice*”).

⁴⁹ *ISO New England Inc. and New England Power Pool Participants Comm.*, 185 FERC ¶ 61,151 (Nov. 30, 2023) (“*IEP Parameter Updates Allegheny Order*”).

⁵⁰ 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.”

⁵¹ 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.

Order”).⁵² 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).** The FERC accepted ISO-NE’s 30-Day compliance filings (the first, a compliance filing to explain how current Tariff capacity market mitigation rules would apply to Distributed Energy Capacity Resources (“DECR”) participating in FCA18; the second, an informational filing that provided an update on implementation timeline milestones associated with DECR participation in FCA18 and the other markets) on October 25, 2023.⁵³
- **60-Day Compliance Filing (-004).** On November 2, 2023, the FERC conditionally accepted⁵⁴ ISO-NE’s 60-day compliance filing,⁵⁵ subject to a further 90-day compliance filing, and granted in part ISO-NE’s request for an extension of time to address directives in the *First Order 2222 Compliance Order*. In the *Order 2222 60-Day Compliance Filing Order*, the FERC, unpersuaded by Protestors’ concerns,⁵⁶ found that ISO-NE complied with the *First Order 2222 Compliance Order*’s directives (i) to explain why its proposal to require measurement of behind-the-meter DERs not participating solely as demand response at the Retail Delivery Point, unless the Assigned Meter Reader can accommodate submetering or parallel metering of the DER, is just and reasonable and does not pose an unnecessary and undue barrier to individual DERs joining an aggregation; and (ii) to discuss the steps contemplated and the less burdensome alternative approaches considered. Although the FERC found that ISO-NE satisfied these aspects of its compliance requirements, it nevertheless encouraged ISO-NE to continue to work with stakeholders to consider additional metering options in the future, including for DERAs to utilize alternative submetering configurations.⁵⁷

However, the FERC found that ISO-NE only partially complied with the requirement to revise the Tariff to establish Market Rules that address metering requirements necessary for DERAs. Specifically, the FERC found that the Tariff appears to lack a deadline for meter data submission for settlements. Accordingly, the FERC directed ISO-NE to revise its Tariff to include the meter

⁵² *ISO New England Inc. and New England Power Pool Participants Comm.*, 182 FERC ¶ 61,137 (Mar. 1, 2023) (“*First Order 2222 Compliance Order*”).

⁵³ *ISO New England Inc.*, Docket Nos. ER22-983-003 and ER22-983-005 (Oct. 25, 2023) (unpublished letter order) (“*October Order 2222 Compliance Order*”).

⁵⁴ *ISO New England Inc.*, 185 FERC ¶ 61,095 (Nov. 2, 2023) (“*Order 2222 60-Day Compliance Filing Order*”).

⁵⁵ The FERC ordered ISO-NE in its 60-day compliance filing 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.

⁵⁶ Protestors (AEU/PowerOptions/SEIA) asserted that ISO-NE failed to make any adjustments to facilitate participation by DERs located behind a customer meter, and failed to justify the metering and telemetry provisions as directed by the FERC.

⁵⁷ *Order 2222 60-Day Compliance Filing Order* at P 77.

data submission deadline for settlement or explain why such Tariff revisions are not necessary. That further compliance filing is due on or before **January 31, 2024**.⁵⁸

ISO-NE's request for an extension of time to address directives in the First Order 2222 Compliance Order regarding submission of DERA meter data. In the *Order 2222 60-Day Compliance Filing Order*, the FERC directed ISO-NE to submit a further compliance filing, on or before **January 31, 2024**, to comply with the directives of the First Compliance Order regarding the submission of DERA meter data. Specifically, the FERC directed ISO-NE to revise the Tariff to designate the DER Aggregator as the entity responsible for providing any required metering information to ISO-NE, and to require that each DER Aggregator maintain and submit aggregate settlement data for the DERA, so that ISO-NE can regularly settle with the DER Aggregator for its market participation. To the extent that ISO-NE proposes in that further compliance filing that metering data come from or flow through distribution utilities, the FERC directed ISO-NE to coordinate with distribution utilities and relevant electric retail regulatory authorities to establish protocols for sharing such metering data, and explain how such protocols minimize costs and other burdens and address concerns raised with respect to privacy and cybersecurity.⁵⁹

- **180-Day Compliance Filing (-005).** The FERC accepted the Mitigation Compliance Revisions (an explanation of how the current Tariff capacity market mitigation rules would apply to DECRs participating in FCA19 and beyond and proposal that March 1, 2024 be the effective date for the rules allowing DECRs to participate in the FCM) in the *October Order 2222 Compliance Order*.

Request for Rehearing of Order 2222 60-Day Compliance Filing Order (-006). On December 4, 2023, AEU requested rehearing of the *Order 2222 60-Day Compliance Filing Order*. AEU asserted that the *Order 2222 60-Day Compliance Filing Order* is arbitrary and capricious because (i) it concludes, contrary to substantial record evidence, that ISO-NE's metering configurations do not pose an undue barrier to participation for most behind-the-meter DERs, and as such, are consistent with Order No. 2222; (ii) it fails to respond meaningfully to the arguments and record evidence submitted by AEU; (iii) it concludes that "ISO-NE satisfactorily discusses the steps that it contemplated and the less burdensome alternative approaches it considered" in connection with its metering proposal; (iv) it concludes that ISO-NE's description of submetering requirements for DERAs participating as Alternative Technology Regulation Resources ("ATRR") conforms to the FERC's orders; and (v) it concludes that ISO-NE's proposal to extend its existing requirements for Binary Storage Facilities ("BSF") and Continuous Storage Facilities ("CSF") to DERAs seeking to provide withdrawal service are consistent with *Order 2222*. The FERC must take action on AEU's request for rehearing by **January 3, 2024**, or the AEU request will be deemed denied by operation of law.

Federal Court (DC Circuit) Appeals. As previously reported, 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 are 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).

⁵⁸ *Id.* at P 79.

⁵⁹ *Id.* at P 34.

IV. OATT Amendments / TOAs / Coordination Agreements

- **UI Attachment F App. D Depreciation Rate Changes (ER24-272)**

On October 31, 2023, UI filed changes to Appendix D of Attachment F to the ISO-NE OATT to incorporate the revised transmission plant depreciation and general plant depreciation rates used to calculate UI's annual transmission revenue requirements. Comments on this filing were due on or before November 21, 2023; none were filed. Bridgeport Energy filed a doc-less intervention. 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).

- **National Grid Attachment F Appendix A PBOP Fixed Expense Revisions (ER24-125)**

On December 5, 2023, the FERC accepted revisions filed by National Grid to Appendix A to Attachment F to the ISO-NE OATT.⁶⁰ The revisions update NEP's fixed expense amount for transmission-related post-retirement benefits other than pensions ("PBOPs") to more accurately reflect the going forward expense level and allow the existing income statement credit incurred under the current formula rate to be refunded to customers. The revisions were accepted effective *January 1, 2024*. Unless the December 5 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).

- **Attachment F Corrections & Updates (ER23-2940)**

On November 22, 2023, the FERC accepted revisions to Attachment F of the OATT filed by the PTO AC to correct minor errors in certain worksheets of the "Formula Rate Template" contained in Appendices A and B to Attachment F.⁶¹ As previously reported, the PTO AC stated that the filing was limited to proposed Tariff revisions that fall within Moratorium Exception (i) subpart (o) of Attachment F and that the corrections and updates would not result in any additional costs being paid by New England ratepayers. The revisions were accepted effective as of *November 28, 2023*. Unless the November 22 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

As previously reported, the FERC issued orders conditionally accepting the Schedule 24⁶² and Versant's MPD-OATT⁶³ Order 676-J Compliance Filings Part II, effective *February 1, 2024*, requiring in each case ISO-NE/NEPOOL⁶⁴ and Versant⁶⁵ to revise its tariff record to include the citation to its order granting the waivers requested. Versant submitted its changes to the MPD OATT on November 13, 2023; ISO-NE submitted the Schedule 24 changes on November 17, 2023. Comments on the compliance filings were due December 4, 2023 in the MPD OATT proceeding (none were filed) and are due **December 8, 2023** in the Schedule 24 proceeding. If there are questions on any of these filings, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

⁶⁰ *ISO New England Inc. and New England Power Co.*, Docket No. ER24-125-000 (Dec. 5, 2023) (unpublished letter order).

⁶¹ *ISO New England Inc.*, Docket No. ER23-2940-000 (Nov. 22, 2023) (unpublished letter order).

⁶² *ISO New England Inc.*, 185 FERC ¶ 61,065 (Oct. 26, 2023) ("*ISO-NE/NEPOOL Order 676-J Compliance II Order*").

⁶³ *Versant Power*, 185 FERC ¶ 61,065 (Oct. 26, 2023) ("*Versant Order 676-J Compliance II Order*").

⁶⁴ The FERC granted ISO-NE's request for continued waivers of the NAESB Business Practice Standards in WEQ-001 and WEQ-008 and new waivers of the new standards in WEQ-001, 001-13.2 through 13.2.4.2, 001-20.4, 001-26 through 001-26.7, 001-27 through 001-27.4.3, 001-28 through 001-28.1.3.1. *ISO-NE/NEPOOL Order 676-J Compliance II Order* at P 10.

⁶⁵ The FERC granted Versant's request for continued waivers of the NAESB Business Practice Standards in continued waivers of the NAESB Business Practice Standards in WEQ-001-101 through WEQ-001-107; WEQ-002-101 through WEQ-002-107; WEQ-013-101 through WEQ-013-106; and WEQ-001-23. *Versant Order 676-J Compliance II Order* at P 9.

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

As previously reported, the FERC conditionally accepted the proposed revisions to the OATT in response to the requirements of *Order 881*⁶⁶ (“OATT *Order 881* Compliance Changes”) on June 15, 2023.⁶⁷ 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) 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. On December 4, 2023, the FERC accepted the *Order 881* 60-Day Compliance Changes, effective *July 12, 2025*, as requested.⁶⁸

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

No Activities to Report

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

- **Schedule 21-VP: Versant/Jonesboro LSA (ER24-24)**

As previously reported, ISO-NE and Versant Power (“Versant”) filed, on October 4, 2023, a Local Service Agreement (“LSA”) by and among Versant, ISO-NE, NE Renewable Power, and Jonesboro, LLC (“Jonesboro”).⁶⁹ The filing parties stated that the LSA conforms to the *pro forma* LSA contained in the ISO-NE Tariff and reflects a discounted rate. The LSA was filed separately out of an abundance of caution as it was executed more than 30 days after commencement of service. The filing parties asked that the LSA be

⁶⁶ *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*”).

⁶⁷ *ISO New England Inc.*, 183 FERC ¶ 61,180 (June 15, 2023) (“*New England Order 881 Compliance Order*”).

⁶⁸ *ISO New England Inc.*, Docket No. ER22-2357-001 (Dec. 4, 2023) (unpublished letter order).

⁶⁹ The LSA was designated as Service Agreement No. LSA-ISONE/VERSANT-23-01 under the ISO-NE OATT.

accepted for filing effective December 2, 2022.⁷⁰ Comments on the LSA filing were due on or before November 2, 2023; none were filed.

LSA Accepted; Waiver of Prior Filing Requirement Denied; Time Value Refunds Ordered. On November 30, 2023, the FERC accepted the LSA for filing, effective *December 4, 2023*, but denied waiver of the FERC's 60-day prior notice requirement for the filing.⁷¹ The FERC found that the Filing Parties did not make the required showing of extraordinary circumstances to warrant waiver of the prior filing requirement. Accordingly, the FERC directed the Filing Parties (i) to refund the time value of revenues collected for the time period the rate was collected without FERC authorization, with refunds limited so as not to cause Filing Parties to operate at a loss ("Time Value Refunds") on or before **January 2, 2024**; and (ii) to file a refund report, including information supporting calculation of the Time Value Refunds, on or before **February 1, 2024**.

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

- **Schedule 21-ES: Eversource/Great Lakes Hydro IA Termination (ER24-17)**

On November 30, 2023, the FERC accepted Eversource's notice of termination of the Interconnection Agreement ("IA") between PSNH and Great Lakes Hydro American LLC ("Great Lakes Hydro").⁷² Eversource stated that the IA has been replaced by a standard LGIA that will be reported in ISO-NE's electric quarterly reports ("EQRs"). Eversource further stated that PSNH had finalized all billing and invoices and no further work was being done or service being provided under the IA. The notice of termination was accepted effective as of *October 5, 2023*, as requested. Unless the November 30 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-GMP: National Grid/Green Mountain Power LSA (ER23-2804)**

As previously reported, ISO-NE and New England Power ("National Grid", and together with ISO-NE, the "Filing Parties") filed on September 11, 2023, a 20-year LSA by and among National Grid, ISO-NE and Green Mountain Power ("GMP").⁷³ The Filing Parties stated that the LSA conformed to the *pro forma* LSA contained in the ISO-NE Tariff and superseded and replaced another conforming LSA among ISO-NE, National Grid, and GMP that listed an expiration date of September 30, 2022 (TSA-NEP-25). The Parties requested that the FERC grant waiver of its notice requirement⁷⁴ to the extent necessary to permit a requested October 21, 2022 effective date. The LSA was filed separately given that requested effective date.

LSA Accepted; Waiver of Prior Filing Requirement Denied; Time Value Refunds Ordered. Similar to the Versant/Jonesboro proceeding (see ER24-24 above), the FERC accepted the National Grid/GMP LSA for filing, effective *November 11, 2023*, but denied waiver of the FERC's 60-day prior notice requirement for the

⁷⁰ See 18 CFR § 35.11 (which permits, upon application and for good cause shown, the FERC to allow a rate schedule, tariff, service agreement, or a part thereof, to become effective as of a date prior to the date of filing or the date such change would otherwise become effective in accordance with the FERC's rules (e.g. 60 days after filing)). FERC policy is to deny waiver of the prior notice requirement when an agreement for new service is filed on or after the date that services commence, absent a showing of extraordinary circumstances.

⁷¹ *ISO New England Inc.*, Docket No. ER24-24-000 (Nov. 30, 2023) (unpublished letter order).

⁷² *Public Service Co. of New Hampshire*, Docket No. ER24-17-000 (Nov. 30, 2023) (unpublished letter order).

⁷³ The LSA was designated as Service Agreement No. TSA-NEP-114 under the ISO-NE OATT.

⁷⁴ 18 CFR § 35.11 (which permits, upon application and for good cause shown, the FERC to allow a rate schedule, tariff, service agreement, or a part thereof, to become effective as of a date prior to the date of filing or the date such change would otherwise become effective in accordance with the FERC's rules (e.g. 60 days after filing)). FERC policy is to deny waiver of the prior notice requirement when an agreement for new service is filed on or after the date that services commence, absent a showing of extraordinary circumstances.

filing.⁷⁵ The FERC found that the Filing Parties did not make the required showing of extraordinary circumstances to warrant waiver of the prior filing requirement. Accordingly, the FERC directed the Filing Parties to make Time Value Refunds. On December 4, 2023, Filing Parties requested, and on December 6, 2023 the FERC granted, a 45-day extension of time (to **January 22, 2024**) to make the Time Value Refunds, with the corresponding refund report to be filed no later than **February 21, 2024**.

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 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”).⁷⁶ 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 Time Value Refund requirement.⁷⁷ On August 29, 2023, Versant Power submitted a Refund Report detailing the Time Value Refunds it paid to Black Bear Hydro Partners, LLC and Black Bear SO, LLC on August 18, 2023. Comments on the Refund Report were due on or before September 19, 2023; none were filed. The Refund Report remains pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Schedule 21-VP: 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 were due on or before September 19, 2023; none were filed. MPUC intervened doc-lessly on September 15, 2023. This matter remains pending before the FERC. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activities to Report

VIII. Regional Reports⁷⁸

- **Capital Projects Report - 2023 Q3 (ER24-94)**

On December 5, 2023, the FERC accepted ISO-NE’s Capital Projects Report and Unamortized Cost Schedule covering the third quarter (“Q3”) of calendar year 2023 (the “Q3 Report”).⁷⁹ As previously reported,

⁷⁵ *ISO New England Inc.*, Docket No. ER23-2804-000 (Nov. 7, 2023) (unpublished letter order).

⁷⁶ *ISO New England Inc.*, Docket No. ER23-2035-000 (July 28, 2023) (“*Versant Black Bear LSAs Order*”).

⁷⁷ 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 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.

⁷⁸ Reporting on the *Opinion 531* Refund Reports (EL11-66) has been suspended and will be continued if and when there is new activity to report.

⁷⁹ *ISO New England Inc.*, Docket No. ER24-94 (Dec. 5, 2023) (unpublished letter order).

Q3 Report highlights included the following new projects: (i) DASI (\$9.125 million); (ii) Operating System Server Upgrade Phase I (\$2.383 million); (iii) nGEM Quarterly Production Release 2-2023 Integration (\$265,000); and (iv) Offer-Prioritized Mitigation Enhancement (\$140,000). Projects with a significant changes (with amounts returned to the Emerging Work Fund following in parentheses) were (i) Web to Cloud Migration (\$350,000); (ii) MOPR Elimination (\$88,000); and (iii) Control Room Voice Recorder Upgrade (\$71,600). The Q3 Report was accepted effective *October 1, 2023*, as requested. Unless the December 5 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).

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

On November 14, 2023, ISO-NE filed, as required,⁸⁰ public and confidential⁸¹ versions of its Interconnection Study Metrics Processing Time Exceedance Report (the “Exceedance Report”) for the Third Quarter of 2023 (“2023 Q3”). ISO-NE reported that, with respect to:

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

- All 7 2023 Q3 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).
- 17 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 383 days (roughly 200 days longer than in 2023 Q2).

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

- All 3 of the SIS Reports delivered to Interconnection Customers were delivered later than the best efforts completion timeline of 270 days.
- 24 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 631 days (an increase of roughly 250 days from 2023 Q2).

- ♦ **Facility Study Reports**

- The 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 205 days (up 24 days from 2023 Q2 mean).

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

⁸⁰ 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.

⁸¹ 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.

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/Q3) (not docketed)**

On November 21, 2023, ISO-NE submitted its 2023/Q3 FERC Form 3Q (Quarterly financial report of electric utilities, licensees, and natural gas companies). FERC Form 3-Q is a quarterly regulatory requirement which supplements the annual FERC Form 1 financial reporting requirement. These filings are not noticed for comment.

IX. Membership Filings

- **December 2023 Membership Filing (ER24-512)**

On November 30, 2023, NEPOOL requested that the FERC accept: (i) the following Applicants' membership in NEPOOL: Citadel Energy Marketing LLC (Supplier Sector); Downeast Wind, LLC [Related Person to Kleen Energy (Generation Sector)]; JGT2 Energy LLC (Generation Sector); and Qnti.fyi Inc. (Supplier Sector); and (ii) the termination of the Participant status of Sam Mintz (End User Sector). Comments on this filing, if any, are due on or before **December 21, 2023**.

- **November 2023 Membership Filing (ER24-276)**

On October 31, 2023, NEPOOL requested that the FERC accept: (i) the following Applicants' membership in NEPOOL: BlueWave Public Benefit Corp. (AR Sector, DG Sub-Sector); Flatiron Energy Capital [Related Person to Pawtucket Power Holding (Generation Sector)]; Glenvale (AR Sector, RG Sub-Sector, Large Group Member); New England Power and Light (Supplier Sector); Precept Power (Supplier Sector); and Wallingford Energy [Related Person to Jericho Power et al. (AR Sector, RG Sub-Sector)]; and (ii) the name changes of Blueprint Power Technologies LLC (f/k/a Blueprint Power Technologies Inc.) and PSE US Holdings Inc. (f/k/a AMP Solar US Holdings Inc.). Comments on this filing were due on or before November 21, 2023; none were filed. This matter is pending before the FERC.

- **October 2023 Membership Filing (ER23-2966)**

On November 22, 2023, the FERC accepted: (i) the following Applicants' membership in NEPOOL: KCE CT 10, LLC and KCE CT 11, LLC [Provisional Members, Related Persons to KCE CT 5, LLC et al. (AR Sector, Distributed Generation Sub-Sector)]; and Sierra Club (effective *December 1, 2023*, End User Sector); and (ii) the termination of the Participant status of BP Energy Holding Company [Related Person to BP Energy Company et al. (Supplier Sector)].⁸²

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).

- **Report on 2022 Winter Storm Elliott (AD23-8)**

On November 7, 2023, the FERC posted a report on the "Inquiry into Bulk-Power System Operations During December 2022 Winter Storm Elliott" undertaken by FERC, NERC and Regional Entity ("RE") Staff. The report describes how the December 21-26, 2022 extreme cold weather event ("Winter Storm Elliott")⁸³ impacted the reliability of the Bulk Electric System ("BES"), the supporting natural gas infrastructure in the U.S. Eastern

⁸² *New England Power Pool Participants Comm.*, Docket No. ER23-2966-000 (Nov. 22, 2023) (unpublished letter order).

⁸³ Winter Storm Elliott was the fifth event in the past 11 years in which unplanned cold weather-related generation outages jeopardized grid reliability, and had the largest controlled firm load shed recorded in the history of the Eastern Interconnection (more than 5,400 MW).

Interconnection, and service to consumers. This report makes recommendations designed to address matters identified in the report that call for improvement.

- **Revised Reliability Standard: PRC-023-6 (RD23-5)**

On November 3, 2023, NERC filed for FERC approval an amended petition for the approval of PRC-023-6 (Transmission Relay Loadability). NERC stated that PRC-023-6 would retire “redundant and unnecessary language that has contributed to confusion regarding the proper application of the PRC-023 standard to out-of-step blocking relays.” Comments on the amended petition were due on or before November 27, 2023; none were filed. PRC-023-6 is pending before the FERC.

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

As directed by the FERC’s December 15, 2022 order,⁸⁴ 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 were invited to file post-technical conference comments to address issues raised during the technical conference. Those submitting comments included: [AEP](#), [PJM](#), [EEL](#), [Electricity Canada](#), [EPSA](#), [Foundation for resilient Societies \(“FRS”\)](#), [Criticality Services](#), [Grid Coalition](#), [ITC](#), [North American Transmission Forum \(“NATF”\)](#), [Secure the Grid](#), [L. Fitzgerald](#), [T. Holiday](#), [S. Naumann](#), and [T. Holiday](#). On October 3, the FERC posted in eLibrary a final transcript of the August 10 joint technical conference.

- **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”),⁸⁵ NERC filed on November 14, 2023, its second 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 register owners and operators of non-BES IBRs that, in the aggregate, have a material impact on BPS reliability.

- **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

⁸⁴ N. Amer. Elec. Rel. Corp., 181 FERC ¶ 61,230 (Dec. 15, 2022).

⁸⁵ 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).

development project (Project 2016-02 – Modifications to CIP Standards (“Project 2016-02”))⁸⁶ on September 15, 2023. Project 2016-02 focuses on modifications to the CIP Reliability Standards to incorporate applicable protections for virtualized environments. In the September 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 November 2023, NERC Board of Trustees Adoption in December 2023 and filing of the revised standards with the FERC in January 2024.

- **Order 901: IBR Reliability Standards (RM22-12)**

On October 19, 2023, the FERC issued a final rule⁸⁷ directing NERC to develop new or modified Reliability Standards that address reliability gaps related to inverter-based resources (“IBR”) in the following areas: data sharing; model validation; planning and operational studies; and performance requirements. The FERC directed NERC to submit an informational filing on or before **January 19, 2024** that includes a detailed, comprehensive standards development plan providing that all new or modified Reliability Standards necessary to address the IBR-related reliability gaps identified in *Order 901* be submitted to the FERC by **November 4, 2026**.

- **Changes to NERC ROPs (RR23-4)**

On November 28, 2023, the FERC approved revisions to NERC’s Rules of Procedure (“RoPs”) regarding Reliability Standards (specifically, Section 300 (Reliability Standards Development) and Appendix 3A (Standard Processes Manual)).⁸⁸ As previously reported, the proposed revisions include new rules and authorities by which the NERC Board of Trustees may direct the development of needed Reliability Standards on its own initiative, subject to FERC approval. The proposed revisions also include streamlined comment and ballot procedures for draft Reliability Standards, as well as revisions that would both allow NERC the flexibility to implement the streamlined comment and ballot procedures proposed in the petition and consider other streamlining enhancements that may be appropriate and consistent with a fair and open process in the future. In approving the revisions, the FERC also directed NERC “to submit an informational filing no later than 18 months after the date of this order that discusses the effectiveness of the revised standards development process”.⁸⁹

XI. Misc. - of Regional Interest

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

On July 28, 2023, the FERC authorized⁹⁰ 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

⁸⁶ The other project which had been addressed in prior updates, Project 2019-02, has concluded, and the FERC approved in RD21-6 the Reliability Standards revised as part of that project (CIP-004-7 and CIP-011-3) on Dec. 7, 2021.

⁸⁷ *Reliability Standards to Address Inverter-Based Resources*, Order No. 901, 185 FERC ¶ 61,042 (Oct. 19, 2023) (“*Order 901*”).

⁸⁸ *N. Amer. Elec. Rel. Corp.*, 185 FERC ¶ 61,146 (Nov. 28, 2023).

⁸⁹ *Id.* at PP 1, 28.

⁹⁰ *Three Corners Solar, LLC and Three Corners Prime Tenant, LLC*, 184 FERC ¶ 62,060 (Jul. 28, 2023).

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 (“OH OCC”), and Monitoring Analytics, LLC (the PJM IMM). Public Citizen filed a doc-less intervention. 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.

Deficiency Letter. On August 17, 2023, the FERC issued a deficiency letter identifying the additional information that it needs to process the application. Vistra and Energy Harbor responded to the deficiency letter on September 18, 2023 (“Deficiency Letter Response”). The Deficiency Letter Response constituted an amendment to the application. Comments on the Deficiency Letter Response were due on or before October 10, 2023. Comments were filed by NOPEC, OH OCC, and the PJM IMM. On October 20, Vistra and Energy Harbor answered the OH OCC and PJM IMM comments.

Tolling Order. On October 13, 2023, the FERC issued a notice that it requires additional time to “fully analyze the Application” and tolled the deadline to act on the Application until **April 11, 2024**.⁹¹

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

- **E&P Agreement 2d Amendment: Seabrook/NECEC Transmission (ER24-508)**

On November 30, 2023, NextEra Energy Seabrook, LLC (“Seabrook”) filed a second amendment to the Engineering and Procurement (“E&P”) Agreement between Seabrook and NECEC Transmission LLC (“NECEC”) (the “A&R E&P Agreement”). The A&R E&P Agreement covers the final engineering drawings through the procurement and delivery of the 24.5 kV generator circuit breaker and ancillary equipment to Seabrook Station in advance of the Fall 2024 outage. The second amendment seeks approximately \$2 million in additional funding to cover higher engineering costs as well as changes to the scope of work related to a hydraulic controller, the generator breaker monitoring system, and other items. Comments on this filing are due on or before **December 21, 2023**. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **IA Cancellation Meco / Dichotomy Collins Hydro (ER24-353)**

On November 3, 2023, Massachusetts Electric Company (“Meco”) filed a notice of cancellation of an Interconnection Agreement (“IA”) with Dichotomy Collins Hydro LLC (“DCH”), successor in interest to Swift River Company. The IA was superseded by a new SGIA between NEP and DCH filed with and accepted by the FERC.⁹² Meco requested an effective date of *January 3, 2024* for the notice of cancellation. Comments on this filing were due on or before November 24, 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).

- **CL&P / WE 400 Groton Road D&E Agreement (ER24-303)**

On November 1, 2023, Eversource Energy, on behalf of The Connecticut Light & Power Company (“CL&P”), filed a Design & Engineering (“D&E”) Agreement that sets forth the terms and conditions under which CL&P will perform necessary engineering, procurement and design services in connection with the interconnection of WE 400 Groton Road’s 50 MW-load data center to CL&P’s North Bloomfield 2A 115 kV substation. An effective date of November 2, 2023 was requested. Comments on this filing were due on or before November 22, 2023; none were

⁹¹ *Energy Harbor Corp. and Vistra Corp.*, 185 FERC ¶ 61,024 (Oct. 13, 2023).

⁹² See *New Eng. Power Co.*, Docket No. ER23-888-001 (June 12, 2023) (unpublished letter order).

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).

- **NSTAR-ENE Use Rights Transfer Agreement (ER24-269)**

On October 31, 2023, NSTAR filed for acceptance an Agreement for the Transfer of Use Rights on the Phase I/II HVDC Transmission Facilities (“Transfer Agreement”) between itself and ENE. An effective date of November 26, 2023 was requested. Comments on this filing were due on or before November 20, 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).

- **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, 2023,⁹³ 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.

Amendments. On October 23, 2023, RIE filed amendments to the LSAs to incorporate the information and challenge procedures contained in Attachment F, Appendix C to the ISO-NE OATT. Those procedures would replace the section O (Audit Provisions) from Schedule II-B of NEP Tariff No. 1 that RIE proposed to incorporate in its Deficiency Response. In filing the Amendments, ISO-NE and RI Energy asked that the FERC no longer hold these proceedings in abeyance. Comments on the Amendments were due on or before November 13, 2023; none were filed. This matter is pending before the FERC. If you have any questions, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

XII. Misc. - Administrative & Rulemaking Proceedings⁹⁴

- **ACPA Petition for Capacity Accreditation Technical Conference (AD23-10)**

On August 22, 2023, the American Clean Power Association (“ACPA”) asked the FERC to convene a technical conference “to explore ways to improve the accreditation of resources’ capacity value in ISO/RTO regions with and without capacity markets, as well as in non-ISO/RTO regions. Comments on the ACPA request were due on or before October 2, 2023. The [IRC](#) opposed the ACPA request. Comments supporting, or not opposing, a technical conference were filed by, among others: [ACRE](#), [AEU](#), [Calpine](#), [Colorado PUC](#), [EPSA](#), [NYU Law School Policy Integrity Institute](#), [Pine Gate Renewables](#), [SCE](#), [SEIA](#), [Sierra Club](#), [UCS](#), and [University of Chicago Law School](#). Both [ACPA](#) and the [PJM IMM](#) answered the October 2 comments. This matter is pending before the FERC.

⁹³ *ISO New England Inc.*, Docket No. ER23-1003-000 (Mar. 31, 2023) (unpublished letter order).

⁹⁴ Reporting on the following Administrative proceeding has been suspended since the last Report and will be continued if and when there is new activity to report: Interregional Transfer Capability Transmission Planning & Cost Allocation Requirements (AD23-3).

- **Reliability Technical Conference (AD23-9)**

On November 9, 2023, the FERC convened its annual Reliability Technical Conference. The purpose of the Conference was to discuss policy issues related to the reliability and security of the Bulk-Power System (“BPS”). The Conference also discussed the impact on electric reliability of the Environmental Protection Agency’s (“EPA”) proposed rule under section 111 of the Clean Air Act. The conference included the following Commissioner-led and staff-led panels: Morning Panel 1: State of Bulk Power System Reliability with a Focus on the Changing Resource Mix and Resource Adequacy (Commission Led); Morning Panel 2: CIP Reliability Standards and the Evolving Grid (Commission Led); Afternoon Panel 1: EPA Presentation of EPA Section 111 Proposed Rule (Commission Led); and Afternoon Panels 2 (Electric Industry Stakeholders Panel) and 3 (Regional, State, and Local Regulatory Entities Panel): Discussion of the Proposed Rule (Staff Led). For further information, please see the FERC’s October 30, 2023 [Second Supplemental Notice of Technical Conference](#). Speaker materials have been posted to FERC’s eLibrary.

On November 14, 2023, the FERC invited all interested persons to file post-technical conference comments addressing issues raised during the Reliability Technical Conference and identified in the Second Supplemental Notice. Those comments are currently due on or before **December 14, 2023**.⁹⁵ Thus far, comments have been submitted by [Reliable Energy Analytics](#), [US EPA Office of Air and Radiation](#), and [Sue Tierney](#) (who attached her prepared statement from the technical conference and her recently-prepared report on the same issues).

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

Joint statement of FERC Chairman Willie Phillips and NERC CEO James Robb. On November 6, 2023, FERC Chairman Phillips and NERC CEO Robb issued a [joint statement](#) regarding the potential loss of the Everett Marine Terminal and the consequences that it might have for the reliability and affordability of New England’s energy supplies.

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 Envir. 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 First 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

⁹⁵ EEI, supported by NRDC and the Clean Air Task Force (“CATF”), requested an extension of time, to **Dec. 20, 2023**, to submit their comments.

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.

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

As previously reported, a transcript of the last (7th) meeting⁹⁶ of the FERC-established Joint Federal-State Task Force on Electric Transmission (“Transmission Task Force” or “JFSTF”) is posted in eLibrary.⁹⁷ 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.⁹⁸ Since the last Report, the FERC confirmed⁹⁹ that PA PUC Vice Chair Kimberly Barrow will serve out the remainder of the one-year term created by the passing of NJ BPU President Joseph L. Fiordaliso.

- **NOPR: EQR Filing Process and Data Collection (RM23-9)**

On October 19, 2023, the FERC issued a NOPR¹⁰⁰ proposing various changes to current Electric Quarterly Report (“EQR”) filing requirements, including both the method of collection and the data being collected. The proposed changes are designed to update the data collection, improve data quality, increase market transparency, decrease costs, over time, of preparing the necessary data for submission, and streamline compliance with any future filing requirements. Among other things, the FERC proposes to implement a new collection method for EQR reporting based on the eXtensible Business Reporting Language-Comma-Separated Values standard; amend its regulations to require ISO/RTOs to produce reports containing market participant transaction data; and modify or clarify EQR reporting requirements. Requests for additional time to comment on the *EQR NOPR* were filed by EEI/EPSA, the IRC, and the Bonneville Power Administration (“BPA”). Those requests are pending before the FERC.

⁹⁶ Summaries of the first – sixth meetings of the Transmission Task Force can be found in previous Reports.

⁹⁷ *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).

⁹⁸ 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).

⁹⁹ *Joint Federal-State Task Force on Electric Transmission*, 185 FERC ¶ 61,104 (Nov. 6, 2023).

¹⁰⁰ *Revisions to the Filing Process and Data Collection for the Electric Quarterly Report*, 185 FERC ¶ 61,043 (Oct. 19, 2023) (“*EQR NOPR*”).

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

On July 28, 2022, the FERC issued a NOPR¹⁰¹ 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 Associations¹⁰² requested an additional month to submit comments.¹⁰³ 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 requirement¹⁰⁴ that directs transmission providers to file a one-time informational report describing their current or planned policies and processes for conducting extreme weather vulnerability assessments¹⁰⁵ (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 was required to file the one-time informational report required by *Order 897* on or before October 25, 2023.¹⁰⁶ ISO-NE and the TOs submitted their 51-page [Report](#) on October 25, 2023.

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

On July 28, 2023, the FERC issued *Order 2023*,¹⁰⁷ 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

¹⁰¹ *Duty of Candor*, 180 FERC ¶ 61,052 (July 28, 2022) (“*Duty of Candor NOPR*”).

¹⁰² “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”).

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

¹⁰⁴ *One-Time Informational Reports on Extreme Weather Vulnerability Assessments; Climate Change, Extreme Weather, and Elec. Sys. Rel.*, Order No. 897, 183 FERC ¶ 61,192 (June 15, 2023) (“*Order 897*”).

¹⁰⁵ 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.

¹⁰⁶ *Order 897* was published in the *Fed. Reg.* on June 27, 2023 (Vol. 88, No. 122) pp. 41,477-41,499.

¹⁰⁷ *Improvements to Generator Interconnection Procedures and Agreements*, Order No. 2023, 184 FERC ¶ 61,054 (July 28, 2023) (“*Order 2023*”).

reforms to: (i) implement a first-ready, first-served cluster study process;¹⁰⁸ (ii) increase the speed of interconnection queue processing;¹⁰⁹ and (iii) incorporate technological advancements into the interconnection process.¹¹⁰ Many of the reforms adopted in *Order 2023* closely track the reforms set out in the FERC's Notice of Proposed Rulemaking.¹¹¹ However, the FERC did revise aspects of the reforms.¹¹² *Order 2023* will become effective November 6, 2023,¹¹³ which is 60 days from the September 6, 2023 publication of *Order 2023* in the *Federal Register* ("Publication Date").

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.

¹⁰⁸ 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.

¹⁰⁹ 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.

¹¹⁰ 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.

¹¹¹ *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.

¹¹² 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.

¹¹³ *Order 2023* was published in the Fed. Reg. on Sep. 6, 2023 (Vol. 88, No. 171) pp. 61,041-61,349.

Requests for Clarification and/or Rehearing. 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.

Requests for Clarification and/or Rehearing Denied by Operation of Law. On September 28, 2023, the FERC issued a "Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration".¹¹⁴ The *Order 2023 Allegheny Notice* confirmed that the 60-day period during which a petition for review of *Order 2023* 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 *Order 2023* within the required 30-day period. The Notice also indicated that the FERC would address, as is its right, the rehearing request in a future order, and may modify or set aside its order, in whole or in part, "in such manner as it shall deem proper." Several parties submitted petitions in Federal Court challenging *Order 2023*. Developments in those federal court proceedings will be summarized in Section XVI below.

October 25, 2023 Order Extending Compliance Deadline. On October 25, 2023, the FERC issued an order modifying the discussion in *Order 2023* and setting aside the *Order*, in part, to extend the deadline to submit compliance filings to **April 3, 2024** (210 days after the publication of *Order 2023* in the *Federal Register*).¹¹⁵ The FERC clarified that its Order does not change or modify any other determination or other deadlines established by *Order 2023*, including the deadline for eligibility for interconnection customers to opt to proceed with a transitional serial study (for those interconnection customers tendered a facilities study agreement) or transitional cluster study (for those interconnection customers assigned a queue position) or to withdraw their interconnection requests without penalty (i.e., 30 calendar days after the transmission provider submits its initial compliance filing (or **May 3, 2024**)).¹¹⁶ A revised stakeholder schedule for consideration of New England's *Order 2023* compliance filing was discussed at the November 9, 2023 Transmission Committee meeting.

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.¹¹⁷ *Order 895* will not permit information sharing to be

¹¹⁴ *Improvements to Generator Interconnection Procedures and Agreements*, 184 FERC ¶ 62,163 (Sep 28, 2023) ("*Order 2023 Allegheny Notice*").

¹¹⁵ *Improvements to Generator Interconnection Procedures and Agreements*, 185 FERC ¶ 61,063 (Oct. 25, 2023).

¹¹⁶ *Id.* at P 11.

¹¹⁷ *Credit-Related Info. Sharing in Organized Wholesale Elec. Mkts*, Order No. 895, 183 FERC ¶ 61,193 (June 15, 2023) ("*Order 895*").

conditioned on the specific consent of the market participant, would permit the receiving ISO/RTO to use market participant credit-related information received from another ISO/RTO to the same extent and for the same purposes that the receiving ISO/RTO may use credit-related information collected from its own market participants, and would not change the existing discretion an ISO/RTO has to act on credit-related information, regardless of the source of that information. The FERC stated that the ability of ISO/RTOs to share credit-related information among themselves will improve their ability to accurately assess market participants' credit exposure and risks related to their activities across organized wholesale electric markets and should also enable ISOs/RTOs to respond to credit events more quickly and effectively, minimizing the overall credit-related risks of unexpected defaults by market participants in organized wholesale electric markets. *Order 895* became effective *August 21, 2023*.¹¹⁸ ISO-NE's proposed compliance changes were supported via the October 5 Consent Agenda (Item # 6), filed, and are pending before the FERC (see Section III above).

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

On December 15, 2022, the FERC issued a NOPR¹¹⁹ 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, comments on the *Transmission Siting NOPR* were due on or before May 17, 2023. Comments were filed by [CLF](#), [ALPSC](#), [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](#). Commissioner Phillips' and each of the Commissioners' responses to Senator Schumer's and Senator Barrasso's letters have been posted to eLibrary. This matter is pending before the FERC.

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

Following its ANOPR process,¹²⁰ the FERC issued on April 21, 2022 a NOPR¹²¹ 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;

¹¹⁸ *Order 895* was published in the Fed. Reg. on June 22, 2023 (Vol. 88, No. 119) pp. 40,696-28,125.

¹¹⁹ *Applications for Permits to Site Interstate Electric Transmission Facilities*, 181 FERC ¶ 61,205 (Dec. 15, 2022) ("*Transmission Siting NOPR*").

¹²⁰ 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](#), [MAAG](#), [MMWEC](#), [National Grid](#), [NECOS](#), [NESCOE](#), [NextEra](#), [NRDC](#), [Orsted](#), [Shell](#), [UCS](#), [VELCO](#), [Vistra](#), [Potomac Economics](#), [ACORE](#), [ACPA/ESA](#), [APPA](#), [EEI](#), [ELCON](#), [Industrial Customer Orgs](#), [LPPC](#), [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: [CTAG](#), [Acadia Center/CLF](#), [CTAG](#), [Dominion](#), [Enel](#), [Eversource](#), [LS Power](#), [MAAG](#), [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](#).

¹²¹ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 179 FERC ¶ 61,028 (Apr. 21, 2022) ("*Transmission NOPR*").

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

In addition, the *Transmission NOPR* would not permit public utility transmission providers to take advantage of the construction-work-in-progress (“CWIP”) incentive for regional transmission facilities selected for purposes of cost allocation through long-term regional transmission planning and would permit the exercise of federal rights of first refusal (“ROFR”) for transmission facilities selected in a regional transmission plan for purposes of cost allocation, conditioned on the incumbent transmission provider with the federal ROFR for such regional transmission facilities establishing joint ownership of the transmission facilities. While the ANOPR sought comment on reforms related to cost allocation for interconnection-related network upgrades, interconnection queue processes, interregional transmission coordination and planning, and oversight of transmission planning and costs, the *Transmission NOPR* does not propose broad or comprehensive reforms directly related to these topics. The FERC indicated that it would continue to review the record developed to date and expects to address possible inadequacies through subsequent proceedings that propose reforms, as warranted, related to these topics.

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

Comments. Following a number of requests for extensions of time, comments on the *Transmission NOPR* were due August 17, 2022.¹²² 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](#), [EEL](#), [EPSA](#), [Industrial Customer Organizations](#), [LPPC](#), [NASUCA](#), [NRECA](#), [Public Interest Organizations](#), [SEIA](#), [TAPS](#), [WIRES](#), [Harvard Electricity Law Initiative](#), [New England for Offshore Wind](#), and the [R Street Institute](#).

Reply Comments. 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](#), [EEL](#), [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.

¹²² 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.

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

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

XIII. FERC Enforcement Proceedings

- **2023 FERC Enforcement Staff Report (AD07-13-017)**

On November 16, 2023, staff of FERC’s Office of Enforcement (“OE”) issued its annual report summarizing the 2023 activities of OE and its three divisions (Investigations, Audits and Accounting, and Analytics and Surveillance). The report provides information regarding the nature of non-public OE activities, the administration of the audit, accounting and OE surveillance programs, and pointers to help companies enhance compliance programs.

Electric-Related Enforcement Actions

- **Black Hills Corp., et al. (IN23-10)**

On December 5, 2023, the FERC approved a Stipulation and Consent Agreement with Black Hills Corporation (“BHC”), as the corporate parent of, and on behalf of its three electric public utility subsidiaries, Black Hills Power, Inc. (“BHP”), Cheyenne Light, Fuel and Power Company (“Cheyenne Light”), Black Hills Colorado Electric, LLC (“Black Hills Colorado Electric”) (together, “Black Hills”). Following a self-report, OE determined that Black Hills violated FPA section 205 and Part 35 of the FERC’s regulations by commencing jurisdictional service, and entering into associated agreements, without providing the requisite notice or filing of the agreements. Under the Stipulation and Consent Agreement, Black Hills agreed to pay a **\$150,000 civil penalty**, and to submit compliance monitoring reports for 2 years. 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,¹²³ 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,¹²⁴ which (i) directed the Chief ALJ to reassign this proceeding to another ALJ not previously involved in the proceeding (i.e., designate a new presiding officer) once the *June 14 Order* takes effect; (ii) held that the *June 14 Order* will take effect once the Northern District clarifies or lifts its stay for the limited purpose of allowing the *June 14 Order* to take effect or the stay is lifted or dissolved such that hearing procedures may resume; and (iii) stated that this proceeding otherwise

¹²³ 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.

¹²⁴ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 183 FERC ¶ 61,190 (June 14, 2023) (“*June 14 Order*”).

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 order¹²⁵ 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,¹²⁶ 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;¹²⁷ (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.¹²⁸ 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 order¹²⁹ 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 2012.¹³⁰

The FERC also directed TGPNA to show cause why it should not be required to disgorge unjust profits of **\$9.18 million**, plus interest; TGPNA, Tran and Hall to show cause why they should not be assessed civil penalties (TGPNA - **\$213.6 million**; Hall - **\$1 million** (jointly and severally with TGPNA); and Tran - **\$2 million** (jointly and severally with TGPNA)). In addition, the FERC directed TGPNA's parent company, Total, S.A. ("Total"), and TGPNA's affiliate, Total Gas & Power, Ltd. ("TGPL"), to show cause why they should not be held liable for TGPNA's, Hall's, and Tran's conduct, and be held jointly and severally liable for their disgorgement and civil penalties based

¹²⁵ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 177 FERC ¶ 61,182 (Dec. 16, 2021) ("*Rover/ETP Tuscarawas River HDD Show Cause Order*").

¹²⁶ *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").

¹²⁷ 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.

¹²⁸ *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.

¹²⁹ *Total Gas & Power North America, Inc.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) ("*TGPNA Show Cause Order*").

¹³⁰ 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.

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.¹³¹ On July 27, 2021, Chief Judge Cintron designated Judge Suzanne Krolikowski as the Presiding ALJ and established an extended Track III Schedule for the proceeding.

Discovery in this case closed on December 2, 2022. On December 16, 2022, Respondents filed for a preliminary injunction in the US District Court for the Southern District of Texas ("Southern District"). In order to allow for briefing and a decision on that motion, the FERC placed this proceeding in abeyance.¹³²

On June 14, 2023, the Commission issued an Order on Presiding Officer Reassignment,¹³³ which (i) directed the Chief ALJ to reassign this proceeding to another ALJ not previously involved in the proceeding (i.e., designate a new presiding officer) once the *TGPNA Presiding Officer Reassignment Order* takes effect; (ii) held that the *TGPNA Presiding Officer Reassignment Order* will take effect once the Southern District clarifies or lifts its stay for the limited purpose of allowing the *TGPNA Presiding Officer Reassignment Order* to take effect or the stay is lifted or dissolved such that hearing procedures may resume; (iii) stated that this proceeding otherwise remains suspended until the Southern District's stay is lifted or dissolved such that hearing procedures may resume; and (iv) provided procedural guidance to the new presiding officer. On July 18, Judge Patricia M. French was substituted as Presiding Judge (relieving Judge Krolikowski of all of her duties with respect to this proceeding).

XIV. Natural Gas Proceedings

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

New England Pipeline Proceedings

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

- **Iroquois ExC Project (CP20-48)**
 - ▶ 125,000 Dth/d of incremental firm transportation service to ConEd and KeySpan by building and operating new natural gas compression and cooling facilities at the sites of four existing Iroquois compressor stations in Connecticut (Brookfield and Milford) and New York (Athens and Dover).
 - ▶ Three-year construction project; service request by November 1, 2023.
 - ▶ On March 25, 2022, after procedural developments summarized in previous Reports, the FERC issued to Iroquois a certificate of public convenience and necessity, authorizing it to construct and operate the proposed facilities.¹³⁴ The certificate was conditioned on: (i) Iroquois' completion of construction of the proposed facilities and making them available for service within **three years** of the date of the; (ii) Iroquois' compliance with all applicable FERC regulations under the NGA; (iii) Iroquois' compliance with the environmental conditions listed in the appendix to the order; and (iv) Iroquois' filing written statements affirming that it has executed firm service agreements for volumes and service terms

¹³¹ *Total Gas & Power North America, Inc. et al.*, 176 FERC ¶ 61,026 (July 15, 2021).

¹³² *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).

¹³³ *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*").

¹³⁴ *Iroquois Gas Transmission Sys., L.P.*, 178 FERC ¶ 61,200 (2022) (*Iroquois Certificate Order*).

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.
- ▶ In its September 8, 2023 monthly status report, Iroquois indicated that it is awaiting issuance of air permits from the New York State Department of Environmental Conservation and the Connecticut Department of Energy and Environmental Protection. Iroquois has not yet requested or received authorization to commence construction; accordingly, no construction activities were undertaken in August 2023 and no construction was planned for September.

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,¹³⁵ and that effectively halted construction of the NECEC Project,¹³⁶ 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

¹³⁵ 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?"

¹³⁶ The New England Clean Energy Connect ("NECEC") project (the "NECEC Project") is designed to transmit power generated in Québec through Maine and into Massachusetts. The Project includes a new 145.3-mile, high-voltage direct current ("HVDC") transmission line, proposed to run from the Maine-Québec border in Beattie Township, ME to a new converter station in Lewiston, ME and from there to an existing substation by a new 1.2-mile, high-voltage alternating current transmission line.

NEPOOL has no organizational interest but that may be of interest to Participants. For further information on any of these proceedings, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Order 2023 (23-1282 (AEU); 23-1284 (MISO); 23-1289 (PacificCorp); 23-1293 (FPL); 23-1297 (SPP); 23-1299 (PJM); 23-1305 (FirstEnergy); 23-1310 (NYISO); 23-1312 (Dominion); 23-1313 (Exelon); 23-1320 (MISO TOs); 23-1327 (Avangrid) (consolidated)**

Underlying FERC Proceeding: RM22-14¹³⁷

Petitioners: AEU et al.

Status: Initial Submissions Underway

Several Petitioners have challenged *Order 2023*. Those challenges have now been consolidated, with the AEU docket (23-1282) as the lead docket. Submissions of Statements of Issues and Docketing Statements are underway. The Parties were directed to file motions to govern future proceedings in these consolidated cases by **December 12, 2023**.

- **Order 2222 Compliance Orders (23-1167, 23-1168, 23-1169, 23-1170, 23-1335) (consolidated)**

Underlying FERC Proceeding: ER22-983¹³⁸

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

Status: Being Held In Abeyance; Motions to Govern Future Proceedings Due Jan 24, 2024

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*.¹³⁹ 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. Since the last Report, on October 10, 2023, the FERC asked that the consolidated appeals be held in abeyance for a period of 90 days to allow time for all parties to assess the FERC's recent order and to make further filings either with the FERC or with the Court. On October 12, the Court ordered that the consolidated cases remain in abeyance pending further order of the court. The parties were directed to file motions to govern future proceedings in this case by **January 24, 2024**.

- **Seabrook Dispute Order (23-1094, 23-1215) (consolidated)**

Underlying FERC Proceeding: EL21-6, EL 23-3¹⁴⁰

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

Status: Briefing Completed; Oral Argument Not Yet Scheduled

On April 4, 2023, NextEra Energy Resources, LLC and NextEra Energy Seabrook, LLC (collectively, "NextEra") petitioned the DC Circuit Court of Appeals for review of the FERC's orders related to the Seabrook

¹³⁷ *Improvements to Generator Interconnection Procedures and Agreements*, 184 FERC ¶ 61,054 (July 28, 2023) ("*Order 2023*"); 184 FERC ¶ 62,163 (Sep. 28, 2023) (Notice of Denial of Rehearing by Operation of Law).

¹³⁸ *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*").

¹³⁹ 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.

¹⁴⁰ *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*

Dispute.¹⁴¹ NextEra subsequently petitioned the Court for review of the June 15, 2023 *Seabrook Dispute Allegheny Order*, which was consolidated with Case No. 23-1094. Initial submissions have been filed,¹⁴² as have the Certified Index to the Record, NextEra's Petitioners' Brief, the FERC's Brief (filed on September 28, 2023), Intervenor's Respondent's Joint Brief (October 12, 2023); Petitioners' Reply Brief (October 26, 2023); the Joint Appendix (October 30, 2023) and Final Briefs (November 3, 2023). With Briefing completed, the parties will next be informed of the date of oral argument and the composition of the merits panel.

- **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, -011,¹⁴³ -013¹⁴⁴ -017¹⁴⁵
Petitioners: Mystic, CT Parties,¹⁴⁶ MA AG, ENECOS
Status: Being Held in Abeyance; Motions to Govern Future Proceedings Due Jan 24, 2024

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

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*").

¹⁴¹ 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.

¹⁴² 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).

¹⁴³ *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*).

¹⁴⁴ *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*).

¹⁴⁵ *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*).

¹⁴⁶ In this appeal, "CT Parties" are the CT PURA CT PURA, Connecticut Department of Energy and Environmental Protection ("CT DEEP"), and the CT OCC.

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 October 25, 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 October 26, 2023, the Court issued an order that these cases remain in abeyance and that the parties file motions to govern future proceedings by **January 24, 2024**.

- **CASPR (20-1333, 21-1031) (consolidated)****
Underlying FERC Proceeding: ER18-619¹⁴⁷
Petitioners: Sierra Club, NRDC, RENEW Northeast, and CLF
Status: Being Held in Abeyance (until March 1, 2024)

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

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

- **Opinion 531-A Compliance Filing Undo (20-1329)**
Underlying FERC Proceeding: ER15-414¹⁴⁸
Petitioners: TOs’ (CMP et al.)
Status: Being Held in Abeyance

On August 28, 2020, the TOs¹⁴⁹ 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*¹⁵⁰ 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

¹⁴⁷ *ISO New England Inc.*, 162 FERC ¶ 61,205 (Mar. 9, 2018) (“*CASPR Order*”).

¹⁴⁸ *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) (“*Order Rejecting Filing*”).

¹⁴⁹ 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.

¹⁵⁰ *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) (“*Emera Maine*”).

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

On May 4, 2021, the Court ordered that this case remain in abeyance pending further order of the Court, directing the FERC to file a status report by September 1, 2021 and at 120-day intervals thereafter. The parties were directed to file motions to govern future proceedings in this case within 30 days of the completion of agency proceedings. The FERC's last status report, indicating that the proceedings before the Commission remain ongoing and that this appeal should continue to remain in abeyance, was filed on November 28, 2023.

Other Federal Court Activity of Interest

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

Underlying FERC Proceeding: **CP15-115**¹⁵¹

Petitioners: Sierra Club

Status: Oral Argument Held Sep 18, 2023; Awaiting Decision

On September 6, 2022, the Sierra Club petitioned the DC Circuit for review of *Northern Access Project Add'l Extension Order*. Briefing is complete. Oral argument before Judges Henderson, Pan and Rogers was held on September 18, 2023. This matter is pending before the Court.

¹⁵¹ *National Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 179 FERC ¶ 61,226 (June 29, 2022) ("*Northern Access Project Add'l Extension Order*").

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