

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of January 30, 2024

The following activity, as more fully described in the attached Litigation Report, has occurred since the report dated January 11, 2024 ("last Report") was circulated. New matters/proceedings since the last Report are preceded by an asterisk '*'. Page numbers precede the matter description.

I. Complaints/Section 206 Proceedings

1	206 Proceeding: ISO Market Power Mitigation Rules (EL23-62)	Jan 29	ISO-NE requests continued abeyance of this proceeding, to Aug 30, 2024 , pending completion of the stakeholder process
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II. Rate, ICR, FCA, Cost Recovery Filings

5	ICR-Related Values and HQICCs – Annual Reconfiguration Auctions (ER24-528)	Jan 23	FERC accepts ICR-Related Values for the 3 rd ARA for the 2024-25 Capability Year, the 2 nd ARA for the 2025-26 Capability Year, and the 1 st ARA for the 2026-27 Capability Year, <i>eff. Jan 29, 2024</i>
5	FCA18 Qualification Info. Filing (ER24-476)	Jan 22	FERC accepts FCA18 Qualification Info. Filing, as amended; directs ISO-NE to use certain corrected Qualified Capacity values identified in its Jan 10, 2024 Errata Filing; FCA18 to begin Feb 5, 2024
6	Mystic 8/9 COSA (ER18-1639)		
7	Mystic's Request for Reh'g of the <i>Second CapEx Info Filing Order</i> (-028)	Jan 19	ENECOS answer Mystic's request for clarification and/or reh'g of the <i>Second CapEx Info Filing Order</i>
9	Transmission Rate Annual (2023) Update/Informational Filing (ER20-2054)	Jan 31	MOPA files formal challenge to the 2023 Annual Update
11	ISO Securities: Authorization for Future Drawdowns (ES24-18)	Jan 22	FERC authorizes ISO-NE drawdowns under a \$40 million Revolving Credit Line and a \$4 million line of credit supporting the Payment Default Shortfall Fund, <i>eff. Feb 1, 2024 through Jan 31, 2026</i>

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

11	IEP Compliance Filing (ER24-492)	Jan 18	FERC accepts IEP Compliance Filing, <i>eff. Aug 2, 2023</i>
11	DECR FCM Qualification Revisions (ER24-484)	Jan 24	FERC accepts Revisions, <i>eff. Mar 1, 2024</i>
11	Waiver Request: OP-14 Solar Dispatch Point Requirements (Galt Power) (ER24-478)	Jan 24	FERC denies waiver
12	Downward De-List Bid Price Flexibility (ER24-420)	Jan 11	FERC accepts changes, <i>eff. Mar 1, 2024</i>
12	DASI Proposal (ER24-275)	Jan 29	FERC accepts DASI Proposal, <i>eff. Mar 1, 2025</i>
13	New England's <i>Order 2222</i> Compliance Filings (ER22-983)	Jan 31	ISO-NE submits compliance filing; Participants Committee to consider supporting the compliance filing changes at its Feb 1, 2024 meeting

IV. OATT Amendments / TOAs / Coordination Agreements

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| 14 | Attachment F App. A PBOP Fixed Expense Revisions (CMP; UI) (ER24-774; ER24-775) | Jan 19 | MPUC intervenes in CMP proceeding (ER24-774) |
| 15 | Eversource Attach. F App. A PBOP Collections Report (ER24-696) | Jan 25 | FERC accepts report showing over-collections for each of the Eversource PTOs, <i>eff. Feb 16, 2024</i> |
| 15 | Order 676-J Compliance Filings Part II Further Compliance Filings (ER23-1771; ER23-1782) | Jan 30 | FERC accepts New England Schedule 24 and Versant MPD OATT further compliance changes, <i>eff. Feb 1, 2024</i> |

V. Financial Assurance/Billing Policy Amendments*No Activities to Report***VI. Schedule 20/21/22/23 Changes & Agreements**

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| * 17 | Schedule 21-GMP: 2024 True Up Calc. Forecast Info Rpt (ER12-2304) | Jan 16 | GMP supplements 2024 forecasted rates info filing |
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VII. NEPOOL Agreement/Participants Agreement Amendments*No Activities to Report***VIII. Regional Reports**

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| * 18 | Transmission Projects Annual Info Filing (ER13-193) | Jan 30 | ISO-NE files annual informational filing of projects on the RSP project list that had a year of need 3 years or less from the completion of the Needs Assessment as required under OATT § 4.1(j)(iii) |
| * 18 | LFTR Implementation: 61 st Quarterly Status Report (ER07-476) | Jan 12 | ISO-NE files its 61st quarterly report |
| * 18 | IMM Quarterly Markets Reports - 2023 Fall (ZZ24-5) | Jan 25 | IMM files Fall 2023 Report; to be reviewed at Feb 7, 2024 Markets Committee meeting |

IX. Membership Filings

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| * 18 | Feb 2024 Membership Filing (ER24-1024) | Jan 31 | New Members: Agile Energy Trading; Command Power Corp.; Eagle Creek Renewable Energy Holdings; Ocean State Power; and
Termination of Participant status: Community Eco Power; MPower Energy; Pixelle Energy Services; Power Ledger Pty Ltd; Union Atlantic Electricity; Utility Services of VT; comment deadline Feb 21, 2024 |
| 19 | Dec 2023 Membership Filing (ER24-512) | Jan 26 | FERC accepts (i) the memberships of Citadel Energy Marketing LLC; Downeast Wind, LLC; JGT2 Energy LLC; and Qnti.fyi Inc.; and (ii) the termination of the Participant status of Sam Mintz |

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

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| 19 | Revised Reliability Standard: PRC-023-6 (RD23-5) | Jan 26 | FERC approves PRC-023-6 |
| 20 | Order 901: IBR Reliability Standards (RM22-12) | Jan 17 | NERC submits Order 901 Work Plan; to be kept up-to-date on NERC website |

XI. Misc. - of Regional Interest

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| * 21 | IA Cancellation Versant / PERC (ER24-965) | Jan 22 | Versant files a notice of cancellation of an IA between itself and Penobscot Energy Recovery Co.; comment deadline Feb 12, 2024 |
| 22 | E&P Agreement, 2d Amendment: Seabrook / NECEC Transmission (ER24-508) | Jan 26 | Seabrook files a amendment to correct the eTariff record of the Amended E&P Agreement; comment deadline Feb 16, 2024 |

XII. Misc. - Administrative & Rulemaking Proceedings

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| 22 | Reliability Technical Conference (AD23-9) | Jan 16-22
Jan 25 | FERC Commissioners post
Additional members of Congress submit comments |
| 23 | Joint Federal-State Task Force on Electric Transmission (AD21-15) | Jan 23 | NARUC nominates Chair Mary Throne of the Wyoming PSC to represent the Western Conf. of Public Service Commissioners region |
| 23 | RTO/ISO Common Performance Metrics (AD19-16) | Jan 31 | FERC Staff issues Report on performance metrics data on RTOs/ISOs activities and data related to RTO/ISO administrative functions, energy markets, and capacity markets for the 2019 to 2022 reporting period |
| 27 | Transmission NOPR (RM21-17) | Jan 19
Jan 22 | Members of Congress file comments urging FERC to strengthen and finalize the Transmission NOPR
Clean Energy Buyers Assoc. files comments |

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

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| 33 | Order 2222 Compliance Orders (23-1167 et al.)(consolidated) | Jan 22 | FERC proposes continued abeyance until expiration of period for filing petitions for review of the FERC's forthcoming order on rehearing of the <i>Order 2222 60-Day Compliance Filing Order</i> |
| 34 | Seabrook Dispute Order (23-1094, 23-1215) (consol.) | | Oral argument scheduled for Feb 6, 2024 and will be heard by Judges Millet, Katsas and Rao |
| 35 | Mystic II (ROE & True-Up) | Jan 25
Jan 26 | Constellation proposes continued abeyance for an additional 90 days
Court orders cases to remain in abeyance; parties directed to file motions to govern future proceedings by Apr 24, 2024 |

M E M O R A N D U M

TO: NEPOOL Participants Committee Members and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: January 31, 2024

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 January 31, 2024. If you have questions, please contact us.

I. Complaints/Section 206 Proceedings

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

As previously reported, this Section 206 proceeding is being held in abeyance.² This proceeding was 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.³ Parties to this proceeding include: NEPOOL, Calpine, Connecticut Office of Consumer Counsel ("CT OCC"), Massachusetts ("MA") Attorney General ("MA AG"), New England Power Generators Association ("NEPGA"), New England States Committee On Electricity ("NESCOE"), Public Systems,⁴ Electric Power Supply Association ("EPSA"), MA Department of Public Utilities ("MA DPU"), Maine Public Utilities Commission ("MPUC"), and Public Citizen.

ISO-NE Request for Continued Abeyance. On January 29, 2024, ISO-NE requested that this proceeding continue to be held in abeyance, through **August 30, 2024**, "pending completion of the stakeholder process through which further revisions to [the Tariff] are being proposed and vetted."⁵ As previously reported, changes in response to some of the requirements of the *Dynegy Mitigation Order* ("Upward Mitigation Revisions") were

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 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 **Feb. 1, 2024**.

³ *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.

⁴ "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").

⁵ ISO-NE identified as additional topics not fully addressed by the Upward Mitigation Revisions the following: (1) whether the duration of general threshold energy mitigation is appropriate; and (2) whether a Resource should be permitted to submit multiple fuel price adjustments that reflect the cost of fuel for segments of its Supply Offer that exceed a Resource's Day-Ahead Energy Market awards.

supported by the Participants Committee, jointly filed with ISO-NE, accepted by the FERC,⁶ and became effective as of *December 12, 2023*. The request for further abeyance updates a statement in the Upward Mitigation Revisions filing that ISO-NE would “be in a position to provide the Commission with its next filing no later than April 2024, rather than in February 2024.” The motion for further abeyance is pending before the FERC.

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

- **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,⁷ 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 again 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.

- **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,⁸ 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*

⁶ *ISO New England Inc.*, Docket No. ER24-324-000 (Dec. 12, 2023) (unpublished letter order).

⁷ 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.

⁸ The TOs’ 11.14% pre-existing Base ROE was established in *Opinion 489. Bangor Hydro-Elec. Co.*, Opinion No. 489, 117 FERC ¶ 61,129 (2006), *order on reh’g*, 122 FERC ¶ 61,265 (2008), *order granting clarif.*, 124 FERC ¶ 61,136 (2008), *aff’d sub nom.*, Conn. Dep’t of Pub. Util. Control v. FERC, 593 F.3d 30 (D.C. Cir. 2010) (“*Opinion 489*”).

531-A).⁹ However, the FERC's orders were challenged, and in *Emera Maine*,¹⁰ 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)¹¹ and third (EL14-86)¹² 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.¹³ 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 proceeding¹⁴ also went to hearing before an Administrative Law Judge ("ALJ"), Judge Glazer, who issued his initial decision on March 27, 2017.¹⁵ The *Base ROE IV Initial Decision* concluded that the currently-filed base ROE of 10.57%, which may reach a maximum ROE of 11.74% with incentive adders, was **not** unjust and unreasonable for the Complaint IV period, and hence was not unlawful under Section 206 of the FPA.¹⁶ 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*.

⁹ *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*").

¹⁰ *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).

¹¹ 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%.

¹² 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.

¹³ *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*").

¹⁴ 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.

¹⁵ *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 162 FERC ¶ 63,026 (Mar. 27, 2018) ("*Base ROE Complaint IV Initial Decision*").

¹⁶ *Id.* at P.2.; Finding of Fact (B).

October 16, 2018 Order Proposing Methodology for Addressing ROE Issues Remanded in Emera Maine and Directing Briefs. On October 16, 2018, the FERC, addressing the issues that were remanded in *Emera Maine*, proposed a new methodology for determining whether an existing ROE remains just and reasonable.¹⁷ 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*¹⁸ (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.¹⁹

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%.²⁰ The new ROE would be effective as of the date of *Opinion 531-A*, or October 16, 2014. Accordingly, the issue to be addressed in the Base ROE Complaint II proceeding is whether the ROE established on remand in the first complaint proceeding remained just and reasonable based on financial data for the six-month period September 2013 through February 2014 addressed by the evidence presented by the participants in the second proceeding. Similarly, briefing in the third and fourth complaints will have to address whether whatever ROE is in effect as a result of the immediately preceding complaint proceeding continues to be just and reasonable.

The FERC directed participants in the four proceedings to submit briefs regarding the proposed approaches to the FPA section 206 inquiry and how to apply them to the complaints (separate briefs for each

¹⁷ *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (Oct. 18, 2018) (“*Order Directing Briefs*” or “*Coakley*”).

¹⁸ *Ass’n of Bus. 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*.

¹⁹ *Id.* at P 19.

²⁰ *Id.* at P 59.

proceeding). Additional financial data or evidence concerning economic conditions in any proceeding must relate to periods before the conclusion of the hearings in the relevant complaint proceeding. Following a FERC notice granting a request by the TOs and Customers²¹ 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*²² 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 January 23, 2024, the FERC accepted 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.²³ The ICR-Related Values were accepted effective as of *January 29, 2024*, as requested. Unless the January 23 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).

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

On January 22, 2024, the FERC accepted²⁴ ISO-NE’s informational filing, as amended on January 10, 2024,²⁵ for qualification for FCA18 (the “FCA18 Informational Filing”). As previously reported, the FCA18 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 competing with 4,108 MW of new capacity under a Net ICR of 30,550 MW (ICR minus HQICCs). ISO-NE

²¹ For purposes of the motion seeking clarification, “Customers” are CT PURA, MA AG and EMCOS.

²² *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).

²³ *ISO New England Inc. and New England Power Pool Participants Comm.*, Docket No. ER24-528-000 (Jan. 23, 2024) (unpublished letter order).

²⁴ *ISO New England Inc.*, 186 FERC ¶ 61,060 (Jan. 22, 2024) (“*FCA18 Info. Filing Order*”).

²⁵ ISO-NE amended the FCA18 Information Filing on Jan. 10, 2024, with corrected Qualified Capacity values, and the aggregate numbers using those values, of three resources (44587 (4.875 MW corrected to 3.625 MW); 44601 (4.950 MW corrected to 3.300 MW) and 44728 (4.998 MW corrected to 3.240 MW)), who’s values were calculated and filed based on an intermittent, rather than a non-intermittent, status (“Errata Filing”). ISO-NE asked the FERC, in its order on the FCA18 Informational Filing, to direct ISO-NE to correct those values.

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. As requested, the FERC directed ISO-NE to run FCA18 using the corrected values for the three resources identified in its Errata Filing. FCA18 is scheduled to begin on **February 5, 2024**. If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **Mystic COS Agreement Updates to Reflect Constellation Spin Transaction²⁶ (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.²⁷ 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, 2022,²⁸ 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). Mystic's compliance filing was accepted on October 27, 2023,²⁹ concluding 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, 2022³⁰ 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*.

Third CapEx Info Filing (-000). 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.

Second CapEx Info Filing (-018). On December 5, 2023, the FERC issued an order³¹ on the formal challenges to Mystic's September 15, 2022 "Second CapEx Info Filing".³² As previously reported, formal challenges to the Second CapEx Info Filing were submitted by NESCOE and ENECOS³³ (with ENECOS challenges supported

²⁶ 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.

²⁷ *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,081 (May 2, 2022) ("May 2, 2022 Order").

²⁸ *Constellation Mystic Power, LLC*, 181 FERC ¶ 61,099 (Nov. 2, 2022).

²⁹ *Constellation Mystic Power, LLC*, Docket No. ER22-1192-003 (Oct. 27, 2023) (unpublished letter order).

³⁰ *Constellation Mystic Power, LLC v. FERC*, 45 F.4th 1028 (D.C. Cir. 2022) ("Mystic I Remand Order").

³¹ *Constellation Mystic Power, LLC*, 185 FERC ¶ 61,170 (Dec. 5, 2023) ("Second CapEx Info Filing Order").

³² 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").

³³ 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

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.

Second CapEx Info Filing Order (-026). 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).

Second CapEx Info Filing Settlement Proceedings (-027). 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. As directed, the Chief ALJ appointed a settlement judge, Judge Patricia M. French, to assist participants in settling the issues in this proceeding, and deemed the settlement proceedings continued without further action. Judge French was directed to submit her first report on or before **February 12, 2024**, and to submit a report every 60 days thereafter as to the parties' progress toward settlement. Judge French convened a first settlement conference on January 4, 2024, and scheduled a second settlement conference for **March 20, 2024**.

(-028) Mystic's Request for Rehearing of the Second CapEx Info Filing Order. On January 4, 2024, Mystic requested clarification, and in the alternative rehearing, of the *Second CapEx Info Filing Order*.³⁴ Specifically, Mystic requested clarification and/or rehearing of (i) the FERC's ruling on ENECOS's Formal Challenge No. 7 related to Everett's projected 2023 capital expenditures, (ii) that the FERC denied the accounting argument that ENECOS included in their Formal Challenge No. 1; and (iii) the FERC's rulings related to capital costs incurred prior to the start of the term of the COS Agreement (its grant in part of ENECOS's Formal Challenge No. 1 on the basis that Mystic did not adequately "support" Mystic 8&9 capital costs between July 2004 and December 31, 2017 ("Pre-2018 Rate Base"), and its grant of ENECOS's Formal Challenges Nos. 2 and 6). On January 19, 2024, ENECOS answered Mystic's request. The FERC must take action on Mystic's request for rehearing by **February 5, 2024**, or the request will be deemed denied by operation of law.

Deemed Denied by Operation of Law - ENECOS Request for Rehearing of Mystic I Order on Remand Modification Order (-026). On November 6, 2023, ENECOS requested rehearing of the *Mystic I Order on Remand Modification Order*.³⁵ Specifically, ENECOS requested that the FERC both (i) reinstate its conclusions as to 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.

³⁴ *Constellation Mystic Power, LLC*, 185 FERC ¶ 61,170 (Dec. 5, 2023) ("*Second CapEx Info Filing Order*").

³⁵ *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

scope of customer scrutiny of formula rate inputs under the COSA set forth in its March 28, 2023 *Mystic I Order on Remand*³⁶ 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. On December 7, 2023, the FERC issued an "Allegheny Notice",³⁷ noting that ENECOS request for rehearing may be deemed to have been denied by operation of law, but noting that ENECOS' request will be addressed in a future order.³⁸

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".³⁹

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.⁴⁰ In addition, the Order also denied Public Systems'⁴¹ 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").⁴²

(-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*.⁴³ The sixth compliance filing revised (i) the Cost

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".

³⁶ *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).

³⁷ The FERC issues an "Allegheny Notice" when it does not act within 30 days after receiving a challenge (a request for clarification and/or rehearing) to a FERC order. An Allegheny Notice confirms that the request is deemed denied by operation of law (see *Allegheny Def. Project v. FERC*, 964 F.3d 1, 2020 WL 3525547 (D.C. Cir. June 30, 2020)) and the FERC order is final and ripe for appeal. The FERC has the right, up to the point when the record in a proceeding is filed with the court of appeals, to modify or set aside, in whole or in part, any finding or order made or issued by it. The FERC's intention to avail itself of its right and to issue a further order addressing the issues raised in the request (a "merits order") is signaled by the phrase "and providing for Further Consideration"; the absence of that phrase signals that the FERC does not intend to issue a merits order in response to the rehearing request.

³⁸ *Constellation Mystic Power, LLC*, 185 FERC ¶ 62,120 (Dec. 7, 2023) ("*Mystic I Order on Remand Modification Order Allegheny Notice*").

³⁹ *Mystic I Order on Remand Allegheny Notice*.

⁴⁰ *Constellation Mystic Power, LLC*, 185 FERC ¶ 61,016 (Oct. 6, 2023) ("*Mystic I Order on Remand Modification Order*").

⁴¹ "Public Systems" for these purposes are: MMWEC, CMEEC, NHEC, VPPSA, the Eastern New England Consumer-Owned Systems ("ENECOS"), and Energy New England, LLC ("ENE").

⁴² 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).

⁴³ 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

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.

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*,⁴⁴ 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

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.

⁴⁴ *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).

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 were required to make a good faith effort to respond to any Informal Challenges no later than December 15, 2023. Interested Parties had until January 31, 2024 to file a Formal Challenge with the FERC.

Formal Challenge by MOPA. On January 31, 2024, the Maine OPA filed a formal challenge to the 2023 Annual Update. MOPA asserted that, with respect to the cost of asset condition projects placed into service in 2022, the NETOs have refused to answer questions regarding investment policies and practices related to prudence of these investments and asserts that the NETOs' decision not to respond to these questions violates their obligation under the OATT's Protocols.

- **Versant MPD OATT 2023 Annual Update Settlement Agreement (ER20-1977-006)**

On January 5, 2024, Versant submitted a Joint Offer of Settlement ("Versant MPD OATT 2023 Annual Update Settlement Agreement") between itself and the Eastern Maine Electric Cooperative, Inc. ("EMEC") 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 2023 annual update to the transmission charges under the MPD OATT. Comments on the Versant MPD OATT 2023 Annual Update Settlement Agreement were due on or before January 26, 2024; none were filed. The Versant MPD OATT 2023 Annual Update Settlement Agreement is pending before the FERC. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **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 Filing⁴⁵ 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

⁴⁵ 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.

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 (ES24-18)**

On January 22, 2024, the FERC authorized ISO-NE 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.⁴⁶ As previously reported, each of the Credit Lines are with TD Bank, are for a term of three years ending June 30, 2027, and replace similar arrangements that will expire June 30, 2024.⁴⁷ The order is effective from *February 1, 2024 through January 31, 2026*. Unless the *2024 Authorization Order* is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbval@daypitney.com).

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

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

On January 18, 2023, the FERC accepted the changes that make eligible to participate in the IEP pumped storage resources participating as Electric Storage Facilities in the New England Markets.⁴⁸ As previously reported, those changes had been directed by the FERC.⁴⁹ The changes were accepted effective as of *August 2, 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 January 24, 2024, the FERC accepted 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.⁵⁰ Unless the January 24 order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

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

On January 24, 2024, the FERC denied the waiver requested by Galt Power, Inc. and GSRP Pipeline Acquisition I LLC (together, "Galt Power").⁵¹ As previously reported, Galt Power had requested a waiver of the

⁴⁶ *ISO New England Inc.*, 186 FERC ¶ 62,024 (Jan. 22, 2024) ("2024 Authorization Order") (order authorizing securities issuances).

⁴⁷ 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 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) and 2023, *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).

⁴⁸ *ISO New England Inc.*, Docket No. ER24-492-000 (Jan. 18, 2024) (unpublished letter order) (accepting IEP Compliance Filing changes).

⁴⁹ *Brookfield Renewable Trading and Marketing LP v. ISO New England Inc.*, 184 FERC ¶ 61,169 (Sep. 21, 2023) ("Brookfield IEP Complaint Order").

⁵⁰ *ISO New England Inc.*, Docket No. ER24-484-000 (Jan. 24, 2024) (unpublished letter order) (accepting DEC R Qualification Revisions).

⁵¹ *GSRP Pipeline Acquisition I LLC and Galt Power, Inc.*, 186 FERC ¶ 61,057 (Jan. 24, 2024) ("Order Denying Galt Waiver").

requirements for solar resources to receive and respond to Do Not Exceed (“DNE”) Dispatch Points⁵² for certain of its resources (the “FR/SR Facilities”).⁵³ 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.” ISO-NE opposed the Galt Power request. In denying the requested waiver, the FERC found Galt Power had “failed to demonstrate that the[] waiver request is limited in scope,”⁵⁴ one of the four required prongs of the FERC’s test for granting waivers.⁵⁵ Unless the *Order Denying Galt Waiver* is challenged, with any challenges due on or before **February 23, 2024**, this proceeding will be concluded. 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 January 11, 2024, the FERC accepted 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”).⁵⁶ The changes were accepted effective as of *March 1, 2024*, as requested. Unless the January 11 order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

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

On January 29, 2024, the FERC accepted the changes to the Tariff to establish a jointly optimized Day-Ahead Market for Energy and Ancillary Services (“DASI”) (jointly filed by ISO-NE and NEPOOL (“Filing Parties” on October 31, 2023)).⁵⁷ The DASI Proposal was accepted effective *March 1, 2025*. In accepting the DASI Proposal, the FERC found that the Filing Parties demonstrated (i) that the DASI Proposal “will procure and compensate the resources ISO-NE relies on in its next day Operating Plan in an efficient, transparent, and cost-effective manner based on the distinct set of services ISO-NE requires”; (ii) that “DASI’s jointly optimized clearing structure will result in Day-Ahead awards that achieve a reliable next-day Operating Plan in a more cost-efficient manner than the status quo”; and (iii) that the use of a fixed \$10/MWh strike price adder is appropriate.⁵⁸ The FERC further found: (i) LS Power’s assertions that eliminating the FRM will result in significant retirements for certain resource types were unsupported in the record; (ii) unpersuasive LS Power’s assertion that DASI’s market design imposes a *de facto* must-offer requirement; and (iii) beyond the scope of the proceeding requests from several parties for ISO-NE to continue to review its market design and consider additional ancillary service products.⁵⁹ Unless the *DASI Order* is challenged, with any challenges due on or before *February 28, 2024*, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

⁵² 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).

⁵³ as those requirements apply to nine sub-transmission solar projects, roughly 12 MW total nameplate capacity, that have been in operation since 2017.

⁵⁴ *Id.* at P. 30.

⁵⁵ The FERC will grant waiver of tariff provisions where each of the following four prongs are met: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.

⁵⁶ *ISO New England Inc.*, Docket No. ER24-420-000 (Jan. 11, 2024) (unpublished letter order) (accepting Downward De-List Bid Price Flexibility Changes).

⁵⁷ *ISO New England Inc.*, 186 FERC ¶ 61,076 (Jan. 29, 2024) (“*DASI Order*”).

⁵⁸ *Id.* at PP 34-36.

⁵⁹ *Id.* at PP 37-39.

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

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

In a lengthy compliance Order⁶⁰ 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 filing⁶¹ (“*Order 2222 Compliance Order*”).⁶² 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*. As previously reported, the FERC has accepted the 30- and 180-day compliance filings.⁶³

The 60-day compliance filing was conditionally accepted,⁶⁴ 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*.⁶⁵ In the *Order 2222 60-Day Compliance Filing Order*, the FERC directed ISO-NE to submit a

⁶⁰ 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.”

⁶¹ 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.

⁶² *ISO New England Inc. and New England Power Pool Participants Comm.*, 182 FERC ¶ 61,137 (Mar. 1, 2023) (“*First Order 2222 Compliance Order*”).

⁶³ *ISO New England Inc.*, Docket Nos. ER22-983-003 and ER22-983-005 (Oct. 25, 2023) (unpublished letter order) (“*30/180-Day Order 2222 Compliance Order*”). The 30-Day compliance filings explained how current Tariff capacity market mitigation rules would apply to DECRs participating in FCA18 and provided an update on implementation timeline milestones associated with DECR participation in FCA18 and the other markets. The 180-Day compliance filing explained how the current Tariff capacity market mitigation rules would apply to DECRs participating in FCA19 and beyond and the Mar. 1, 2024 effective date for the rules allowing DECRs to participate in the FCM).

⁶⁴ *ISO New England Inc.*, 185 FERC ¶ 61,095 (Nov. 2, 2023) (“*Order 2222 60-Day Compliance Filing Order*”).

⁶⁵ 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

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.⁶⁶ At its January 9-11, 2024 meeting, the Markets Committee recommended Participants Committee support for the ISO-NE's proposed further compliance changes. Those further compliance changes will be considered by the Participants Committee at its February 1 meeting.

Request for Rehearing of Order 2222 60-Day Compliance Filing Order Deemed Denied By Operation of Law (-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*. On January 4, 2024, the FERC issued an Allegheny Notice, noting that AEU's request for rehearing may be deemed to have been denied by operation of law, but noting that AEU's request will be addressed in a future order.⁶⁷

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).

IV. OATT Amendments / TOAs / Coordination Agreements

- **Avangrid (CMP/UI) Attachment F Appendix A PBOP Collections Reports (ER24-774; ER24-775)**

On December 29, 2023, CMP and UI (the "Avangrid Companies") filed a report identifying planned collection activity related to the recovery of post-retirement benefits other than pensions ("PBOP") under Appendix A to Attachment F to the ISO-NE OATT. A report was required to be filed with the FERC because the difference between each of the Avangrid Companies' actual PBOP expense and its fixed PBOP expense exceeded the threshold identified in OATT Attachment F.⁶⁸ No changes to the filed rate were sought. For CMP

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.

⁶⁶ 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. *Id.* at P 34.

⁶⁷ *ISO New England Inc.*, 186 FERC ¶ 62,002 (Jan. 4, 2023) ("*Order 2222 60-Day Compliance Filing Order Allegheny Notice*").

⁶⁸ A Report is required when "the absolute value of [(Cumulative Under/(Over) Recovery, including Current Year interest)] is greater than \$100,000 and the absolute value of [(Cumulative Under/(Over) recovery, including Current Year interest, as a per cent of transmission-related PBOP expense)] is greater than 20%. See ISO-NE OATT, Attachment F, Appendix A, Worksheet 9, Note (j).

(ER24-774), the report shows an under-recovery, after interest, of \$300,133; for UI (ER24-775), an over-recovery of \$275,075. If accepted, the PBOP figures will be used in the Avangrid Companies' 2024 Annual Updates. Comments on these filings were due on or before January 19, 2024; none were filed. The MPUC filed a doc-less intervention in the CMP proceeding only. The Avangrid Reports are pending before the FERC. If you have any questions concerning these proceedings, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Eversource Attachment F Appendix A PBOP Collections Report (ER24-696)**

On January 25, 2024, the FERC accepted Eversource's report identifying planned collection activity related to the recovery of PBOP under Appendix A to Attachment F to the ISO-NE OATT.⁶⁹ A report was required to be filed with the FERC because the difference between each of the Eversource PTOs' (CL&P, NSTAR East and West, and PSNH) actual PBOP expense and its fixed PBOP expense exceeded the threshold identified in OATT Attachment F. No changes to the filed rate were sought. The report showed an over-recovery, after interest, for each of the Eversource PTOs as follows: CL&P - \$1,013,183; NSTAR East - \$3,278,312; NSTAR West - \$184,895; and PSNH - \$224,086. The PBOP report was accepted effective *February 16, 2024* and the PBOP figures will be used as the basis for refunds in the Eversource TOs' 2024 Annual Updates. Unless the January 25 order is challenged, this proceeding will be concluded. If you have any questions concerning these proceedings, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **FG&E Attachment F App. D Depreciation Rate Changes (ER24-684)**

On December 15, 2023, Fitchburg Gas & Electric Company ("FG&E") filed changes to FG&E Appendix D to Attachment F of the ISO-NE OATT to correct the depreciation rates identified in the Tariff sheets (as approved in Docket No. ER20-2215, but not reflected in the ISO-NE Tariff sheets). Comments on this filing were due on or before January 5, 2024; 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).

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

On January 30, 2024, the FERC accepted the compliance filings submitted by ISO-NE (with changes to New England's Schedule 24) and by Versant (with changes to the MPD OATT).⁷⁰ As previously reported, the FERC issued orders conditionally accepting the Schedule 24⁷¹ and Versant's MPD-OATT⁷² *Order 676-J Compliance Filings Part II*, effective *February 1, 2024*, requiring in each case ISO-NE/NEPOOL⁷³ and Versant⁷⁴ to revise its tariff record to include the citation to its order granting the waivers requested. The compliance changes were accepted effective *February 1, 2024*, as requested. Unless the January 30 orders are challenged, these proceedings will be concluded. If there are questions on either of these proceedings, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

⁶⁹ *ISO New England Inc. and Eversource Energy Service Co.*, Docket No. ER24-696-000 (Jan. 25, 2024) (unpublished letter order) (accepting Eversource PTOs' PBOP report).

⁷⁰ *ISO New England Inc.*, Docket No. ER23-1771-001 (Jan. 30, 2024) (unpublished letter order) (accepting ISO-NE/NEPOOL's Order 676-J further compliance II filing); *Versant Power*, Docket No. ER23-1782-001 (Jan. 30, 2024) (unpublished letter order) (accepting Versant's Order 676-J further compliance II filing).

⁷¹ *ISO New England Inc.*, 185 FERC ¶ 61,065 (Oct. 26, 2023) ("*ISO-NE/NEPOOL Order 676-J Compliance II Order*").

⁷² *Versant Power*, 185 FERC ¶ 61,065 (Oct. 26, 2023) ("*Versant Order 676-J Compliance II Order*").

⁷³ 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.

⁷⁴ 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.

V. Financial Assurance/Billing Policy Amendments**• FCM Delivery FA Calculation Changes (ER24-661)**

On December 14, 2023, ISO-NE and NEPOOL jointly filed changes to the FCM Delivery Financial Assurance (“FA”) calculation (“Changes”) in the Financial Assurance Policy (“FAP”). Specifically, the Changes are designed to reduce the risk of collateral shortfalls from defaulting Market Participants with Capacity Supply Obligations (“CSOs”) that incur net payment obligations (i.e., penalties) under FCM’s pay for performance (“PFP”) construct. The Changes were supported by the Participants Committee at its December 7, 2023 Annual Meeting (Agenda Item #8A). ISO-NE requested a March 1, 2024 effective date for the Changes. Comments on the Changes were due on or before January 4, 2024; none were filed. Calpine, Dominion, National Grid, and NRG intervened doc-lessly. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

VI. Schedule 20/21/22/23 Changes & Agreements**• Schedule 21-VP: Versant/Jonesboro LSA (ER24-24)**

As previously reported, the FERC accepted for filing a Local Service Agreement (“LSA”) by and among Versant, ISO-NE, NE Renewable Power, and Jonesboro, LLC (“Jonesboro”), effective *December 4, 2023*, but denied waiver of the FERC’s 60-day prior notice requirement for the 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 (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”); and (ii) to file a refund report, including information supporting calculation of the Time Value Refunds.

Time Value Refunds Report. On December 18, 2023, Versant Power filed a refund report (“Report”) detailing the Time Value Refunds it paid to NE Renewable Power and Jonesboro on December 15, 2023. Comments on the Report were due on or before January 8, 2024; none were filed. The Report is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

• Schedule 21-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”).⁷⁶ 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 requirement⁷⁷ 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

⁷⁵ ISO New England Inc., Docket No. ER24-24-000 (Nov. 30, 2023) (unpublished letter order).

⁷⁶ The LSA was designated as Service Agreement No. TSA-NEP-114 under the ISO-NE OATT.

⁷⁷ 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.⁷⁸ 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”).⁷⁹ 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.⁸⁰ 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).

- **Schedule 21-GMP Annual True Up Calculation Forecast Info Report (ER12-2304)**

On January 16, 2024, pursuant to Section 4 of Schedule 21-GMP, Green Mountain Power supplemented its annual informational filing containing the forecast of its costs for the January 1, 2024 through December 31, 2024 time period. The supplement does not change the 2024 forecasted rates previously filed. The FERC will not notice this filing for public comment, and absent further activity, no further FERC action is expected. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activities to Report

⁷⁸ *ISO New England Inc.*, Docket No. ER23-2804-000 (Nov. 7, 2023) (unpublished letter order).

⁷⁹ *ISO New England Inc.*, Docket No. ER23-2035-000 (July 28, 2023) (“*Versant Black Bear LSAs Order*”).

⁸⁰ 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.

VIII. Regional Reports⁸¹

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

On January 30, 2024, ISO-NE filed, as required under Section 4.1(j)(iii) of the OATT, its annual informational filing of projects on the Regional System Plan (“RSP”) project list that had a year of need three years or less from the completion of the Needs Assessment. The list of prior year designations is maintained on the ISO-NE website at <https://www.iso-ne.com/search?query=Prior%20Year%20List%20of%20Projects%20Designated%20to%20the%20PTOs>. This filing will not be noticed for public comment by the FERC.

- **LFTR Implementation: 61st Quarterly Status Report (ER07-476; RM06-08)**

ISO-NE filed the 61st of its quarterly status reports regarding LFTR implementation on January 12, 2024. ISO-NE reported that it implemented monthly reconfiguration auctions (accepted in ER12-2122) beginning with the month of October 2019. ISO-NE further reported that, while it will continue to evaluate its as-filed LFTR design and financial assurance issues, including an ongoing evaluation of the FTR market and risk associated with FTRs and LFTRs, it is currently focused on higher priority market-design initiatives. ISO-NE concluded its report by describing the 18-month implementation that would be required once the LFTR financial assurance issues are resolved. These status reports are not noticed for public comment.

- **IMM Quarterly Markets Reports – Fall 2023 (ZZ24-5)**

On January 29, 2024, the IMM filed with the FERC its Fall 2023 report of “market data regularly collected by [the IMM] in the course of carrying out its functions under ... Appendix A and analysis of such market data,” as required pursuant to Section 12.2.2 of Appendix A to Market Rule 1. These filings are not noticed for public comment by the FERC. The Fall 2023 Report will be discussed with the Markets Committee at the February 7, 2024 Markets Committee meeting.

IX. Membership Filings

- **February 2024 Membership Filing (ER24-1024)**

On January 31, 2024, NEPOOL requested that the FERC accept: (i) the following Applicants’ membership in NEPOOL: Bristol BESS, LLC and Frankland Road Solar, LLC [Related Persons to the Agilitas Companies (AR Sector, DG Sub-Sector)]; Dare US LLC (Supplier Sector); Eoch Energy LLC (Supplier Sector); and Phillips 66 Energy Trading LLC (Supplier Sector); and (ii) the termination of the Participant status of Community Eco Power, LLC (AR Sector, RG Sub-Sector, Small RG Group Seat); MPower Energy LLC (Supplier Sector); Pixelle Energy Services LLC (Generation Sector); Power Ledger Pty Ltd (GIS-Only Member); Union Atlantic Electricity (Supplier Sector); and Utility Services of Vermont LLC [Related Person to ENE (Publicly Owned Entity Sector)]. Comments on this filing, if any, are due on or before **February 21, 2024**.

- **January 2024 Membership Filing (ER24-769)**

On December 28, 2023, NEPOOL requested that the FERC accept: (i) the following Applicants’ membership in NEPOOL: Bristol BESS, LLC and Frankland Road Solar, LLC [Related Persons to the Agilitas Companies (AR Sector, DG Sub-Sector)]; Dare US LLC (Supplier Sector); Eoch Energy LLC (Supplier Sector); and Phillips 66 Energy Trading LLC (Supplier Sector); and (ii) the termination of the Participant status of Astral Energy LLC (Supplier Sector). Comments on this filing were due on or before January 18, 2024; none were filed. This matter is pending before the FERC.

⁸¹ 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.

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

On January 26, 2024, the FERC accepted: (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).⁸² Unless the January 26 order is challenged, this proceeding will be concluded.

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).

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

On January 24, 2024, the FERC approved, effective January 24, 2024, an amended petition for the approval of PRC-023-6 (Transmission Relay Loadability).⁸³ 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." Unless the January 24 order is challenged, this proceeding will be concluded.

- **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.

- **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

⁸² *New England Power Pool Participants Comm.*, Docket No. ER24-524-000 (Jan. 26, 2024).

⁸³ *N. Amer. Elec. Rel. Corp.*, Docket No. RD23-5-000 (Jan. 24, 2024) (unpublished letter order) (approving PRC-023-6).

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

development project (Project 2016-02 – Modifications to CIP Standards (“Project 2016-02”))⁸⁵ on December 15, 2023. Project 2016-02 focuses on modifications to the CIP Reliability Standards to incorporate applicable protections for virtualized environments. In the December 15 report, NERC reported that the schedule for Project 2016-02 has been further revised and now calls for final balloting of revised standards in March 2024, NERC Board of Trustees Adoption in May 2024 and filing of the revised standards with the FERC in **June 2024**.

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

On October 19, 2023, the FERC issued a final rule⁸⁶ 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 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*. NERC submitted its “*Order 901 Work Plan*” on January 17, 2024. NERC submitted the *Order 901 Work Plan* for informational purposes only and it will not be noticed by the FERC for public comment. NERC committed to maintain an up-to-date copy of the *Order 901 Work Plan* on the NERC website.

- **2024 Reliability Standards Development Plan (RM05-17 et al.)**

On December 15, 2023, NERC submitted its 2024–2026 Reliability Standards Development Plan (“2024 Development Plan”) in accordance with Section 310 of the NERC Rules of Procedure. The 2024 Development Plan provides a status update on active development projects, a forecast of future work to be undertaken by NERC and its stakeholders throughout the upcoming year, and a progress report comparing results achieved to the prior year’s Reliability Standards Development Plan. The NERC Board of Trustees approved the 2024 Development Plan on December 12, 2023. NERC submitted this filing and the attached 2024 Development Plan for informational purposes only and it will not be noticed by the FERC for public comment.

XI. Misc. - of Regional Interest

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

On July 28, 2023, the FERC authorized⁸⁷ the disposition and consolidation of jurisdictional facilities and the lease of an existing generation facility that will result from the commencement of a master lease agreement (“Lease”) between Three Corners Solar, LLC (“Lessor”) and Three Corners Prime Tenant, LLC (“Lessee”) pursuant to which Lessee will lease, operate, and control an approximately 112 MWac solar photovoltaic (“PV”) electric generation facility owned by Lessor in Kennebec County, Maine (the “Transaction”). Pursuant to the July 28 order, Lessor and Lessee must file a notice within 10 days of consummation of the transaction, which as of the date of this Report has not yet occurred. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

On April 17, 2023, Energy Harbor Corp., on behalf of Energy Harbor, LLC and Energy Harbor Nuclear Generation LLC (collectively, the “Energy Harbor Public Utilities”), and Vistra Corp. (“Vistra”), requested FERC authorization for a proposed transaction pursuant to which the Energy Harbor Public Utilities and certain Vistra subsidiaries that are public utilities will become indirectly owned by a newly-formed subsidiary holding company of Vistra – Vistra Vision. Comments on this 203 application were due on or before June 23, 2023. Protests and comments were filed by Northeast Ohio Public Energy Council (“NOPEC”), Office of the Ohio Consumers’ Counsel (“OH OCC”), and Monitoring Analytics, LLC (the PJM IMM). Public Citizen filed a doc-less intervention. Vistra and

⁸⁵ 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.

⁸⁶ *Reliability Standards to Address Inverter-Based Resources*, Order No. 901, 185 FERC ¶ 61,042 (Oct. 19, 2023) (“*Order 901*”).

⁸⁷ *Three Corners Solar, LLC and Three Corners Prime Tenant, LLC*, 184 FERC ¶ 62,060 (Jul. 28, 2023).

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, 2023.

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**.⁸⁸

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

- **IA Cancellation Versant / PERC (ER24-965)**

On January 22, 2024, Versant filed a notice of cancellation of an Interconnection Agreement ("IA") between itself and Penobscot Energy Recovery Company ("PERC"). Versant reported that PERC discontinued operations of an approximately 25 MW solid waste-fired generating facility that interconnected to its Orrington Substation. The facility was later sold to C&M Faith Holdings LLC, and is no longer connected or operating. Comments on the notice of cancellation are due on or before **February 12, 2024**. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Viridon Incentive Rate Treatments (ER24-771)**

On December 26, 2023, Viridon New England LLC ("Viridon"), an affiliate of Blackstone Inc., requested authorization to utilize three incentive rate treatments – (i) a regulatory asset incentive, (ii) a hypothetical capital structure incentive, and (iii) an RTO participation incentive⁸⁹ – for the development of transmission projects within the New England region. Viridon also asked the FERC to authorize any Viridon subsidiaries created to own or develop specific transmission assets in New England to use the same rate incentives without re-litigation. Costs for any Viridon project would flow through ISO-NE transmission rates once Viridon becomes a New England Transmission Owner. Viridon stated that it will request that ISO-NE file any required conforming changes to incorporate the Viridon rate incentives approved in this docket into the OATT formula rate before collecting revenue requirements through the OATT. Comments on this filing were due on or before January 16, 2024; 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).

⁸⁸ *Energy Harbor Corp. and Vistra Corp.*, 185 FERC ¶ 61,024 (Oct. 13, 2023).

⁸⁹ Specifically, the incentive rate treatments for which authorization is sought are (i) recovery of all prudently incurred pre-commercial, start-up and formation costs, and establishment of a regulatory asset that will include all expenses that are incurred prior to the rate year in which Viridon's costs are first flowed through to customers under the Tariff, including authorization to accrue carrying charges and to amortize the regulatory asset over five years for cost recovery purposes ("Regulatory Asset Incentive"); (ii) use of a hypothetical capital structure of 40% debt and 60% equity until the first transmission project awarded to Viridon achieves commercial operation ("Hypothetical Capital Structure Incentive"); and (iii) inclusion of a 50 basis-point return on equity ("ROE") adder to the base ROE ("RTO Participation Incentive") in recognition that Viridon has committed to turn over functional control of all transmission assets it develops and owns to ISO-NE. Viridon states that it will become a transmission-owning member of ISO-NE at the earliest possible date permitted under the Tariff and governing documents and will transfer functional control of any transmission project to ISO-NE once such project is placed in service.

- **D&E Agreement 2d Amendment: NSTAR/Park City Wind (ER24-747)**

On December 21, 2023, NSTAR filed a second amendment to the Design & Engineering (“D&E”) Agreement between NSTAR and Park City Wind LLC (“Park City Wind”) (the “Park City Wind D&E Agreement”). The second amendment to the Park City Wind D&E Agreement further extends the term and amends the scope of work under the Agreement to (i) address the risks and impacts of new milestone revisions under consideration; (ii) conduct engineering associated with an additional 115 kV breaker at West Barnstable Station; and (iii) conduct engineering to support foundation expansion and line exists at NSTAR’s West Barnstable and Bourne Stations. Comments on this filing were due on or before January 11, 2024; 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).

- **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 the November 30 filing were due on or before December 21, 2023; none were filed. Avangrid and National Grid submitted doc-less interventions only. Since the last Report, Seabrook filed an amendment to correct the eTariff record of the Amended A&R E&P Agreement by submitting a complete eTariff record. Additional comments are due on or before **February 16, 2024**. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

XII. Misc. - Administrative & Rulemaking Proceedings⁹⁰

- **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.

- **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

⁹⁰ 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).

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. Post technical conference comments were filed by: [Constellation](#), [NRDC](#), [ACPA](#), [ACRE](#), [AEP](#), [American Forest & Paper Assoc.](#), [American Municipal Power](#), [America's Power](#), [Duke](#), [Earthjustice](#), [EEI 1](#), [EEI 2](#), [Energy Strategy Coalition](#), [Energy Transfer](#), [Florida Municipal Power Agency](#), [INGA](#), [ITC](#), [LPPC](#), [OH Fed. Energy Advocate](#), [PJM Cities and Communities Coalition](#), [Southern Company Services](#), [TAPS](#), [US Chamber of Commerce](#), [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). Since the last Report, each of the three FERC commissioners posted responses to members of Congress who had commented or had inquired about the Technical Conference. In addition, on January 25, 2024, a group of Senators, including a few from the New England delegation, filed comments. This matter is pending before the FERC.

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

An eighth meeting of the FERC-established Joint Federal-State Task Force on Electric Transmission ("Transmission Task Force" or "JFSTF")⁹¹ will be held on Wednesday, **February 28, 2024**, from approximately 1:30 pm to 4:00 pm Eastern time, at the Westin Washington in Washington, DC.⁹² All interested persons were invited to file comments in this docket suggesting agenda items by January 8, 2024. Comments were filed by [American Council on Renewable Energy \("ACRE"\)](#), [AEP](#), [Harvard Electricity Law Initiative](#), [Invenergy Transmission](#), [Rocky Mountain Institute](#), and [Thomas Donahue](#). Since the last Report, NARUC nominated Chair Mary Throne of the Wyoming Public Service Commission to represent the Western Conference of Public Service Commissioners region for the remainder of the one-year term of Chair Thad LeVar, who recently resigned his position at the Utah Public Service Commission.

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

On January 31, 2024, FERC Staff issued its summary of its review of performance metrics data on RTOs/ISOs activities and data related to RTO/ISO administrative functions, energy markets, and capacity markets for the 2019 to 2022 reporting period. The data collection consisted of, and the discussion is organized by 29 Common Metrics divided into 3 groups from the 6 RTO/ISOs;⁹³ no non-RTO/ISO responded. As previously

⁹¹ *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).

⁹² Summaries of the first – seventh meetings of the Transmission Task Force can be found in previous Reports.

⁹³ There are seven **Group 1 metrics**: Reserve Margins, Average Heat Rates, Fuel Diversity, Capacity Factor by Technology Type, Energy Emergency Alerts ("EEA") Level 1 or Higher, Performance by Technology Type during EEA Level 1 or Higher, and Resource Availability (Equivalent Forced Outage Rate Demand ("EFORD")). There are 12 **Group 2 metrics**: Number and Capacity of Reliability Must-Run Units, Reliability Must-Run Contract Usage, Demand Response Capability, Unit Hours Mitigated, Wholesale Power Costs by Charge Type, Price Cost Markup, Fuel Adjusted Wholesale Energy Price, Energy Market Price Convergence, Congestion Management, Administrative Costs, New Entrant Net Revenues, and Order No. 825 Shortage Intervals and Reserve Price Impacts; There are 10 **Group 3 metrics**: Net Cost of New Entry ("Net CONE") Value, Resource Deliverability, New Capacity (Entry), Capacity Retirement (Exit), Forecasted Demand, Capacity Market Procurement and Prices, Capacity Obligations and Performance Assessment Events, Capacity Over-Performance, Capacity Under-Performance, and Total Capacity Bonus Payments and Penalties. The update metrics eliminate previously-collected metrics on reliability, RTO/ISO billing controls and customer satisfaction, interconnection and transmission processes, and system lambda.

reported, ISO-NE submitted its Form 922 on April 24, 2023. The metrics included in the 2023 Report are identical to the metrics from the 2021 Report.

- **Order 903: 2024 Civil Monetary Penalty Inflation Adjustments (RM24-3)**

On January 5, 2024, the FERC issued *Order 903*⁹⁴ to amend its regulations governing the maximum civil monetary penalties assessable for violations of statutes, rules, and orders within FERC's jurisdiction. The FERC is required to update each such civil monetary penalty on an annual basis every January 15.⁹⁵ Of particular interest is the increase in potential civil penalties for market manipulation, which were increased from \$1,496,035 to \$1,544,521 per violation, per day. *Order 903* became effective *January 9, 2024*.⁹⁶

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

On October 19, 2023, the FERC issued a NOPR⁹⁷ 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 ("XBRL")-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/EPISA, the IRC and the Bonneville Power Administration ("BPA"). On December 7, 2023, the FERC extended the deadline for submitting comments to and including **February 26, 2024**. Thus far, one set of comments was filed by [XBRL US](#).

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

On July 28, 2022, the FERC issued a NOPR⁹⁸ 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

⁹⁴ *Civil Monetary Penalty Inflation Adjustments*, Order No. 903, 186 FERC ¶ 61,017 (Jan. 5, 2024) ("*Order 903*").

⁹⁵ See Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701, Pub. L. 114-74, 129 Stat. 584, 599. The FERC made its first adjustment under the Act in July 2016. See *Civil Monetary Penalty Inflation Adjustments*, Order No. 826, 81 FR 43937 (July 6, 2016), FERC Stats. & Regs. ¶ 31,386 (2016). The second adjustment was made January 9, 2017. *Civil Monetary Penalty Inflation Adjustments*, Order No. 834, 158 FERC ¶ 61,170 (Jan. 9, 2017). The third adjustment was made January 8, 2018. *Civil Monetary Penalty Inflation Adjustments*, Order No. 839, 162 FERC ¶ 61,010 (Jan. 8, 2018). The fourth adjustment was made January 9, 2019. *Civil Monetary Penalty Inflation Adjustments*, Order No. 853, 166 FERC ¶ 61,041 (Jan. 8, 2019). The fifth adjustment was made January 14, 2020. *Civil Monetary Penalty Inflation Adjustments*, Order No. 865, 170 FERC ¶ 61,001 (Jan. 2, 2020). The sixth adjustment was made January 8, 2021. *Civil Monetary Penalty Inflation Adjustments*, Order No. 875, 174 FERC ¶ 61,015 (Jan. 8, 2021). The seventh adjustment was made January 7, 2022. *Civil Monetary Penalty Inflation Adjustments*, Order No. 882, 178 FERC ¶ 61,008 (Jan. 7, 2022). The eighth adjustment was made January 12, 2023. *Civil Monetary Penalty Inflation Adjustments*, Order No. 886, 178 FERC ¶ 61,002 (Jan. 6, 2023).

⁹⁶ *Order 903* was published in the *Fed. Reg.* on Jan. 9, 2024 (Vol. 89, No. 6) pp. 1,025-1,029.

⁹⁷ *Revisions to the Filing Process and Data Collection for the Electric Quarterly Report*, 185 FERC ¶ 61,043 (Oct. 19, 2023) ("*EQR NOPR*").

⁹⁸ *Duty of Candor*, 180 FERC ¶ 61,052 (July 28, 2022) ("*Duty of Candor NOPR*").

markets. It further indicated that its proposed due 'diligence standard' and other limitations are intended to minimize the additional burdens to industry that come with the new Duty of Candor Requirements.

On September 1, 2022, Joint Associations⁹⁹ requested an additional month to submit comments.¹⁰⁰ 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](#), [EEL](#), [Energy Trade Associations](#), [INGA](#), [NGSA](#), [Nodal Exchange](#), [NRECA](#), [State Agencies](#), [US Chamber of Commerce](#), [DE Riverkeeper Network](#), [New Civil Liberties Alliance](#), and [Nodal Exchange](#). The [US Chamber of Commerce](#) filed reply comments on December 12, 2022. There was no activity in the proceeding since the last Report. This matter is pending before the FERC.

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

On July 28, 2023, the FERC issued *Order 2023*,¹⁰¹ its final rule on proposed reforms to the *pro forma* Large Generator Interconnection Procedures ("LGIP"), *pro forma* Small Generator Interconnection Procedures ("SGIP"), *pro forma* Large Generator Interconnection Agreement ("LGIA"), and *pro forma* SGIA to address interconnection queue backlogs, improve certainty, and prevent undue discrimination for new technologies. *Order 2023* adopts reforms to: (i) implement a first-ready, first-served cluster study process;¹⁰² (ii) increase the speed of interconnection queue processing;¹⁰³ and (iii) incorporate technological advancements into the interconnection process.¹⁰⁴ Many of the reforms adopted in *Order 2023* closely track the reforms set out in the FERC's Notice of

⁹⁹ "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").

¹⁰⁰ The *Duty of Candor* NOPR was published in the *Fed. Reg.* on Aug. 12, 2022 (Vol. 87, No. 155) pp. 49,784-49,793.

¹⁰¹ *Improvements to Generator Interconnection Procedures and Agreements*, Order No. 2023, 184 FERC ¶ 61,054 (July 28, 2023) ("*Order 2023*").

¹⁰² 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.

¹⁰³ 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.

¹⁰⁴ 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.

Proposed Rulemaking.¹⁰⁵ However, the FERC did revise aspects of the reforms.¹⁰⁶ *Order 2023* became effective November 6, 2023¹⁰⁷ (60 days from its publication 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.

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”.¹⁰⁸ 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

¹⁰⁵ *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.

¹⁰⁶ 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.

¹⁰⁷ *Order 2023* was published in the Fed. Reg. on Sep. 6, 2023 (Vol. 88, No. 171) pp. 61,041-61,349.

¹⁰⁸ *Improvements to Generator Interconnection Procedures and Agreements*, 184 FERC ¶ 62,163 (Sep 28, 2023) (“*Order 2023 Allegheny Notice*”).

compliance filings to **April 3, 2024** (210 days after the publication of *Order 2023* in the *Federal Register*).¹⁰⁹ 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**)).¹¹⁰ 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).

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

On December 15, 2022, the FERC issued a NOPR¹¹¹ 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](#), [AL PSC](#), [National Wildlife Federation Action Fund](#), [National Wild Life Federation and State-Affiliated Organizations](#), [AEU](#), [CLF \(May 16\)](#), [NESCOE](#), [ACPA](#), [ACRE](#), [Clean Energy Buyers Assoc.](#), [EDF](#), [EEI/WIRES](#), [Joint Consumer Advocates](#), [Public Interest Organizations](#), [SEIA](#), and [US Chamber of Commerce](#). 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,¹¹² the FERC issued on April 21, 2022 a NOPR¹¹³ 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;

¹⁰⁹ *Improvements to Generator Interconnection Procedures and Agreements*, 185 FERC ¶ 61,063 (Oct. 25, 2023).

¹¹⁰ *Id.* at P 11.

¹¹¹ *Applications for Permits to Site Interstate Elec. Transmission Facilities*, 181 FERC ¶ 61,205 (Dec. 15, 2022) ("*Transmission Siting NOPR*").

¹¹² 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](#).

¹¹³ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 179 FERC ¶ 61,028 (Apr. 21, 2022) ("*Transmission NOPR*").

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

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, 2022.¹¹⁴ Nearly 200 sets of comments were filed, including comments by [NEPOOL](#), [ISO-NE](#), [Acadia/CLF](#), [Anbaric](#), [AEU](#), [Avangrid](#), [BP](#), [Dominion](#), [Enel](#), [Engie](#), [Eversource](#), [Invenergy](#), [LSP Power](#), [MOPA](#), [MMWEC/CMEEC/NHEC/VPPSA](#), [National Grid](#), [NECOES](#), [NESCOE](#), [NextEra](#), [NRG](#), [Onward Energy](#), [Orsted](#), [PPL](#), [Shell](#), [Transource](#), [VELCO](#), [Vistra](#), [ISO/RTO Council](#), [NERC](#), [US DOJ/FTC](#), [MA AG](#), [State Agencies](#), [VT PUC/DPS](#), [Potomac Economics](#), [ACPA](#), [ACRE](#), [APPA](#), [EEI](#), [EPSA](#), [Industrial Customer Organizations](#), [LPPC](#), [NASUCA](#), [NRECA](#), [Public Interest Organizations](#), [SEIA](#), [TAPS](#), [WIRES](#), [Harvard Electricity Law Initiative](#), [New England for Offshore Wind](#), and the [R Street Institute](#).

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

¹¹⁴ 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.

stated demonstrates that competitive transmission solicitations can provide significant value to consumers. In December 2022, the [Harvard Electricity Law Initiative](#), and [P. Alaama](#) submitted further comments.

LS Power and NRG filed comments in this proceeding, as well as in (Transmission Planning and Cost Management Joint Federal-State Task Force on Electric Transmission) (AD22-8) and JFSTF proceeding (AD21-15). They asserted that the FERC “cannot sufficiently address the transmission planning issues raised in its Transmission NOPR without addressing the intertwined cost management issues raised in AD22-8-000 and during the October 6, 2022 Technical Conference in AD22-8.” Additional comments were filed by [ACRE](#), [Breakthrough Energy](#), [Clean Energy Buyers Association](#), the [Cross Sector Coalition](#), [Developers Advocating Transmission Advancements](#), [Environmental Advocates](#),¹¹⁵ [Institute for Policy Integrity at NYU](#), and [Rocky Mountain Institute](#). Since the last Report, members of Congress (Senators and Congressmen) filed comments urging the FERC to strengthen and finalize the *Transmission NOPR*.

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

XIII. FERC Enforcement Proceedings

Electric-Related Enforcement Actions

- **Linde / NIPSCO (MISO DR Program Violations) (IN24-3)**

On January 4, 2024, the FERC approved a Stipulation and Consent Agreement with Linde Inc. (“Linde”) and Northern Indiana Public Service Company LLC (“NIPSCO”) to resolve OE’s investigation of Linde’s participation, through NIPSCO as its market participant, in MISO’s demand response (“DR”) program.¹¹⁶ OE determined that between August 2017 and July 2022 (“Relevant Period”), Linde planned the sequence and duration of its facility’s load levels so as to artificially inflate its baseline and thereby its DR program payments. It “enhanced” its strategy starting in 2020 by operating certain equipment solely for the purpose of increasing its electricity use and further raising its baseline. OE thus found that Linde did not reduce energy consumption levels when MISO accepted its DR offers; instead, Linde operated at load levels at which it planned to operate. Because NIPSCO was the market participant for Linde’s participation in the DR program, OE concluded that NIPSCO, consistent with the MISO Tariff, was responsible for Linde’s conduct that violated the MISO Tariff.

Under the Stipulation and Consent Agreement, Linde agreed to **disgorge \$48.5 million** it received through its participation in MISO’s DR program during the Relevant Period. Linde also agreed to pay a **civil penalty of \$10.5 million** to the United States Treasury and to a series of training and compliance monitoring steps if it resumes participation in MISO’s DR program prior to January 1, 2027. **NIPSCO agreed to disgorge \$7.7 million** it received in connection with Linde’s DR program participation. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Vitol & F. Corteggiano (CAISO CRR Violations) (IN14-4)**

Also on January 4, 2024, the FERC approved a Stipulation and Consent Agreement with Vitol Inc. (“Vitol”) and Federico Corteggiano (“Corteggiano”) to resolve (i) the FERC’s claim, as described more fully in

¹¹⁵ The “Environmental Advocates” included: AEU, ACPA, Clean Air Task Force, Earthjustice, Environmental Defense Fund, Evergreen Action, Fresh Energy, Interwest Energy Alliance, League of Conservation Voters, National Wildlife Federation, NRDC, Northwest Energy Coalition, Rewiring America, Sierra Club, Southern Environmental Law Center, The Environmental Law & Policy Center, UCS, WE ACT for Environmental Justice, and Western Resource Advocates.

¹¹⁶ *Linde Inc. and Northern Indiana Public Service Company LLC*, 186 FERC ¶61,009 (Jan. 4, 2024).

its 2019 *Vitol Penalties Order*,¹¹⁷ that Vitol and its co-head of FTR trading operations violated the Anti-Manipulation Rule by selling physical power at a loss in CAISO's market in order to eliminate congestion that they expected to cause losses on Vitol's congestion revenue rights ("CRRs"); and (ii) the Federal Court lawsuit that followed,¹¹⁸ initiated by the FERC, for an order affirming the penalties assessed in the *Vitol Penalties Order* following a *de novo* review of the law and the facts involved.

Under the Stipulation and Consent Agreement, Vitol and Corteggiano will pay **civil penalties of \$2.225 million and \$75,000**, respectively (a total of **\$2.3 million**). The FERC agreed to dismiss with prejudice its claims against Vitol and Corteggiano in the Federal Court Lawsuit. 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,¹¹⁹ 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,¹²⁰ which (i) directed the Chief ALJ to reassign this proceeding to another ALJ not previously involved in the proceeding (i.e., designate a new presiding officer) once the *June 14 Order* takes effect; (ii) held that the *June 14 Order* will take effect once the Northern District clarifies or lifts its stay for the limited purpose of allowing the *June 14 Order* to take effect or the stay is lifted or dissolved such that hearing procedures may resume; and (iii) stated that this proceeding otherwise remains suspended until the Northern District's stay is lifted or dissolved such that hearing procedures may resume.

¹¹⁷ *Vitol Inc. and Federico Corteggiano*, 169 FERC ¶61,070 (Oct. 25, 2019) ("Vitol Penalties Order"). As previously reported, OE alleged that Vitol and Corteggiano (together, "Vitol") sold physical power at a loss at the Cragview node in CAISO's day-ahead market from Oct. 28 through Nov. 1, 2013, in order to eliminate congestion costs that they expected would negatively affect Vitol's CRRs. On Vitol's behalf, Corteggiano purchased CRRs sourcing at Cragview in CAISO's annual CRR auction for 2013. In mid-October 2013, CAISO derated the Cascade intertie to "0" in only the export direction, while still allowing imports. During the derate, an unusually high LMP appeared at Cragview due to congestion costs. The congestion costs caused Vitol's CRRs to lose money. CAISO announced that identical derates would occur during the week of October 28 through November 1 and on additional dates later in November and in December. Vitol was able to protect against losses on its CRR positions for November and December by buying counter-flow CRRs in the CRR auctions for those months (i.e., "flattening" the CRR position). However, because the monthly CRR auction for October had closed, it was too late for Vitol to flatten its CRR position for the last week of October. Facing over \$1.2 million in potential losses on its CRRs during that week's scheduled partial derate, Vitol imported physical power in the day-ahead market at an offering price of \$1/MWh, which prevented a recurrence of the congestion costs that Vitol had observed during the October 18-19 derate. In the *Vitol Penalties Order*, the FERC assessed civil penalties of \$1,515,738 against Vitol itself and \$1 million against Corteggiano. In addition, the FERC directed Vitol to disgorge unjust profits, plus applicable interest of \$1,227,143.

¹¹⁸ *FERC v. Vitol Inc. and Federico Corteggiano*, Case No.: 2:20-CV-00040-KJM-AC (E.D. Cal.) ("Federal Court Lawsuit").

¹¹⁹ 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.

¹²⁰ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 183 FERC ¶ 61,190 (June 14, 2023) ("June 14 Order").

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

On December 16, 2021, the FERC issued a show cause order¹²¹ 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,¹²² 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;¹²³ (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.¹²⁴ 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 order¹²⁵ 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 2012.¹²⁶

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

¹²¹ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 177 FERC ¶ 61,182 (Dec. 16, 2021) (“*Rover/ETP Tuscarawas River HDD Show Cause Order*”).

¹²² *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*”).

¹²³ 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.

¹²⁴ *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.

¹²⁵ *Total Gas & Power North America, Inc.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) (“*TGPNA Show Cause Order*”).

¹²⁶ 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.

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.¹²⁷ 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.¹²⁸

On June 14, 2023, the Commission issued an Order on Presiding Officer Reassignment,¹²⁹ 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.¹³⁰ The certificate was conditioned on: (i) Iroquois' completion of construction of the proposed facilities and making them available for service within **three years** of the date of the; (ii) Iroquois' compliance with all applicable FERC regulations under the NGA; (iii) Iroquois' compliance with the environmental conditions listed in the appendix to the order; and (iv) Iroquois' filing written statements affirming that it has executed firm service agreements for volumes and service terms equivalent to those in its precedent agreements, prior to commencing construction. The March 25,

¹²⁷ *Total Gas & Power North America, Inc. et al.*, 176 FERC ¶ 61,026 (July 15, 2021).

¹²⁸ *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).

¹²⁹ *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*").

¹³⁰ *Iroquois Gas Transmission Sys., L.P.*, 178 FERC ¶ 61,200 (2022) (*Iroquois Certificate Order*).

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 January 8, 2024 monthly status report, Iroquois indicated that it is still 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 December 2023 and no construction was planned for January.

XV. State Proceedings & Federal Legislative Proceedings

No activities to report.

XVI. Federal Courts

The following are matters of interest, including petitions for review of FERC decisions in NEPOOL-related proceedings, that are currently pending before the federal courts (unless otherwise noted, the cases are before the U.S. Court of Appeals for the District of Columbia Circuit ("DC Circuit")). An "***" following the Case No. indicates that NEPOOL has intervened or is a litigant in the appeal. The remaining matters are appeals as to which NEPOOL has no organizational interest but that may be of interest to Participants. For further information on any of these proceedings, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **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); 23-1330 (Central Hudson); 23-1346 (PacifiCorp)) (consolidated)**
Underlying FERC Proceeding: RM22-14¹³¹

Petitioners: AEU et al.

Status: Being Held In Abeyance; Motions to Govern Future Proceedings Due Feb 16, 2024

Several Petitioners have challenged *Order 2023*. Those challenges have now been consolidated, with the AEU docket (23-1282) as the lead docket. On December 11, 2023, the FERC asked that the consolidated cases be held in abeyance pending further order of the court. In response, on December 12, 2023, the Court suspended the filing deadlines for initial submissions and procedural/dispositive motions and directed the parties to file motions to govern future proceedings by **February 16, 2024**.

- **Order 2222 Compliance Orders (23-1167, 23-1168, 23-1169, 23-1170, 23-1335)(consolidated)**
Underlying FERC Proceeding: ER22-983¹³²

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

Status: Being Held In Abeyance

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*

¹³¹ *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).

¹³² *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*").

Compliance Orders.¹³³ 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, 2023, 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. On January 22, 2024, the FERC filed a request that the consolidated petitions for review continue to be held in abeyance until the expiration of the period for filing petitions for review of the FERC's forthcoming order on rehearing of the *Order 2222 60-Day Compliance Filing Order* (see Section III above). The FERC's request is pending before the Court.

- **Seabrook Dispute Order (23-1094, 23-1215) (consolidated)**
Underlying FERC Proceeding: EL21-6, EL 23-3¹³⁴
Petitioner: NextEra Energy Resources, LLC and NextEra Energy Seabrook, LLC
Status: Briefing Completed; Oral Argument Scheduled for Feb 6, 2024

On April 4, 2023, NextEra Energy Resources, LLC and NextEra Energy Seabrook, LLC (collectively, "NextEra") petitioned the DC Circuit Court of Appeals for review of the FERC's orders related to the Seabrook Dispute.¹³⁵ NextEra subsequently petitioned the Court for review of the June 15, 2023 *Seabrook Dispute Allegheny Order*, which was consolidated with Case No. 23-1094. Briefing is completed. Oral argument has been scheduled for **February 6, 2024** and will be heard by Judges Millett, Katsas and Rao.

¹³³ 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.

¹³⁴ *NextEra Energy Seabrook, LLC and NECEC Transmission LLC and Avangrid, Inc. v. NextEra Energy Resources, LLC and NextEra Energy Seabrook, LLC*, 182 FERC ¶ 61,044 (Feb. 1, 2023) ("*Seabrook Dispute Order*"), *reh'g denied by operation of law*, *NextEra Energy Seabrook, LLC et al.*, 183 FERC ¶ 62,001 (Apr. 3, 2023) ("*Seabrook Dispute Allegheny Notice*"); *NextEra Energy Seabrook, LLC et al.*, 183 FERC ¶ 61,196 (June 15, 2023) ("*Seabrook Dispute Allegheny Order*").

¹³⁵ 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.

- **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, -011,¹³⁶ -013¹³⁷ -017¹³⁸
Petitioners: Mystic, CT Parties,¹³⁹ 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 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 January 24, 2024, 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 **April 24, 2024**.

- **CASPR (20-1333, 21-1031) (consolidated)****
Underlying FERC Proceeding: ER18-619¹⁴⁰
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

¹³⁶ *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).

¹³⁷ *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).

¹³⁸ *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*).

¹³⁹ In this appeal, "CT Parties" are the CT PURA CT PURA, Connecticut Department of Energy and Environmental Protection ("CT DEEP"), and the CT OCC.

¹⁴⁰ *ISO New England Inc.*, 162 FERC ¶ 61,205 (Mar. 9, 2018) ("*CASPR Order*").

dismissed as moot by the Court, referred to the merits panel (Judges Pillard, Katsas and Walker), and is to be addressed by the parties in their briefs.

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

- **Opinion 531-A Compliance Filing Undo (20-1329)**

Underlying FERC Proceeding: ER15-414¹⁴¹

Petitioners: TOs' (CMP et al.)

Status: Being Held in Abeyance

On August 28, 2020, the TOs¹⁴² 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*¹⁴³ decision. On September 22, 2020, the FERC submitted an unopposed motion to hold this proceeding in abeyance for four months to allow for the Commission to "a future order on petitioners' request for rehearing of the order challenged in this appeal, and the rate proceeding in which the challenged order was issued remains ongoing before the Commission." On October 2, 2020, the Court granted the FERC's motion, and directed the parties to file motions to govern future proceedings in this case by February 2, 2021. On January 25, 2021, the FERC requested that the Court continue to hold this petition for review in abeyance for an additional three months, with parties to file motions to govern future proceedings at the end of that period. The FERC requested continued abeyance because of its intention to issue a future order on petitioners' request for rehearing of the order challenged in this appeal, and the rate proceeding in which the challenged order was issued remains ongoing before the FERC. Petitioners consented to the requested abeyance. On February 11, 2021, the Court issued an order that 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.

¹⁴¹ *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) ("Order Rejecting Filing").

¹⁴² 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.

¹⁴³ *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*").

Other Federal Court Activity of Interest

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

Underlying FERC Proceeding: *CP15-115*¹⁴⁴

Petitioner: 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.

¹⁴⁴ *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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