

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of May 1, 2024

The following activity, as more fully described in the attached Litigation Report, has occurred since the report dated April 3, 2024 (“last Report”) was circulated. New matters/proceedings since the last Report are preceded by an asterisk ‘*’. Page numbers precede the matter description.

FERC Administrative Developments

FERC Commissioner Nominee
Congressional Hearings

The FERC Commissioner nominations of **Judy W. Chang, David Rosner, and Lindsay S. See** remain pending

I. Complaints/Section 206 Proceedings

No Activities to Report

II. Rate, ICR, FCA, Cost Recovery Filings

5	FCA18 Results Filing (ER24-1290)	Apr 5-15	NCNG and 26 private citizens file comments protesting FCA18
6	Mystic 8/9 COSA (ER18-1639)		
7	(-027) Second CapEx Info Filing Settlement Proceedings	Apr 11 Apr 19 Apr 22	Settlement Judge French issues 2 nd status report 3 rd settlement conference held Settlement Judge French schedules 4 th settlement conference for May 17, 2024
8	(-028) Second CapEx Info Filing - Request for Rehearing	Apr 4	Mystic appeals to DC Circuit <i>Second CapEx Info Filing Order Allegheny Notice</i>

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

* 10	FCA19 2-Year Delay (ER24-1710)	Apr 5 Apr 9-22 Apr 22-23	ISO-NE and NEPOOL jointly file revisions to delay FCA19 until Feb 2028 Avangrid, Brookfield, Calpine, Dominion, Enel, LS Power, National Grid, MAAG, NH OCA, NEPGA, NRG, Vistra, EPSA, MADPU, Public Citizen intervene IMM, EMM, NESCOE, Public Systems file comments supporting the FCA19 2-Year Delay Revisions
11	Waiver Request: Interconnection Request Deposit Refund Deadline (Moscow Dev. Co.) (ER24-1295)	Apr 25	FERC denies waiver request
12	FRM Offer Cap and Data Publication Timeline Changes (ER24-1245)	Apr 12	FERC accepts FRM Revisions, <i>eff. Apr 15, 2024</i>
12	New England’s Order 2222 Compliance Filings (ER22-983)	Apr 11	FERC conditionally accepts compliance filing; further compliance filing deadline Jun 10, 2024

IV. OATT Amendments / TOAs / Coordination Agreements

No Activities to Report

V. Financial Assurance/Billing Policy Amendments

No Activities to Report

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

- * 14 Schedule 20A-NEP (ER24-1805); Schedule 21-NEP (ER24-1808) Apr 22 NEP files updates to reflect its revised Creditworthiness Policy; comment deadline **May 13, 2024**
- * 16 Schedule 21-VEC and 20-VEC: Annual Informational Filing (ER10-1181) Apr 30 VEC submits its annual update to its Schedule 21-VEC and 20-VEC formula rates covering the Jul 1, 2023 – Jun 30, 2024 period

VII. NEPOOL Agreement/Participants Agreement Amendments

- * 16 135th Agreement; PA13 (Unused Provisional Member Voting Share Allocation Changes) Apr 19 Agreements approved in balloting; changes to be filed in May

VIII. Regional Reports

- 17 Capital Projects Report - 2023 Q4 (ER24-1229) Apr 9 FERC accepts 2023 Q4 Capital Projects Report, *eff. Jan 1, 2024*
- * 17 LFTR Implementation Quarterly Status Report (ER07-476) Apr 15 ISO-NE files its 62nd quarterly report
- * 17 Reserve Market Compliance (36th) Semi-Annual Report (ER06-613) Apr 18 ISO-NE submits 36th semi-annual report and requests termination of its reporting obligation; comment deadline **May 9, 2024**
- * 17 Independent Auditors' Report (ZZ24-1) Apr 23 ISO-NE files Independent Auditors' Report regarding its 2022 and 2023 FERC Form 1s.
- * 18 ISO-NE 2023 FERC Form 582 (not docketed) Apr 16 ISO-NE submits 2023 annual report of total MWh of transmission service (approx. 113.46 million MWhs) (roughly 11.6 million MWh less than 2022)
- * 18 ISO-NE 2023 Q4 FERC Form 3Q (not docketed) Apr 16 ISO-NE submits its 2023 Q4 FERC Form 3Q

IX. Membership Filings

- * 18 May 2024 Membership Filing (ER24-1895) Apr 30 **New Members:** Comity Inc.; Earthjustice; Gunvor USA LLC; MFT Energy US POWER LLC; and Viridon New England LLC; and **Termination of Participant status:** Paper Birch Energy, LLC; comment deadline **May 21, 2024**
- 18 Mar 2024 Membership Filing (ER24-1369) Apr 29 FERC accepts (i) the membership of DRW Energy Trading LLC, Innovo Markets Inc., OW North America LLC and Trailstone Renewables, LLC; (ii) the termination of the Participant status of Transource New England, LLC; and (iii) the name change of Canal Marketing LLC, Excelsior Billerica, LLC, Excelsior Bondsville, LLC and Excelsior Lexington, LLC
- * 19 Suspension Notice – Hydroland, Inc. (not docketed) Apr 24 ISO-NE files notice of *Apr 22, 2024* suspension of Hydroland, Inc. from the New England Markets

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

- 19 Revised Glossary Terms (RD24-6) Apr 29 FERC accepts the proposed and modified Glossary terms, *eff. July 1, 2025*
- 19 Revised Reliability Standard: EOP-012-2 (RD24-5) Apr 4, 5
Apr 16
Apr 22 NERC, TAPS answer IRC Protest
IRC answers Apr 5 NERC answer
TAPS answers IRC Apr 16 Answer
- * 21 NERC Reserve Policy Revisions (RR24-1) Apr 5 FERC approves revisions to Policy

XI. Misc. - of Regional Interest

22	PURPA Enforcement Petition – Allco Finance Ltd (EL24-95)	Apr 2 Apr 17	Eversource intervenes CT DEEP protests Allco petition
23	SGIA – NEP/Ampersand Gillman (ER24-1851)	Apr 26	NEP files non-conforming SGIA to govern the interconnection of Ampersand Gilman’s 5.05 MW facility; comment deadline May 17, 2024
23	LGIA – ISO-NE/NEP/SouthCoast Wind (ER24-1840)	Apr 25	ISO-NE, NEP file a non-conforming LGIA to govern the interconnection SouthCoast Wind’s 14.7 MW facility; comment deadline May 16, 2024
23	LGIA – ISO-NE/NSTAR/MMWEC (ER24-1238)	Apr 5	ISO-NE/NSTAR supplement Feb 12 filing
24	RFA – PSNH/NECEC (ER24-1210)	Apr 5	FERC accepts RFA, <i>eff. Feb 9, 2024</i>
24	CMP ESF Service Rate (ER24-1177)	Apr 9	Chief ALJ designates Judge Jeremy Hessler as Settlement Judge, 1 st status report deadline Jun 10, 2024 ; Versant Power intervenes (out-of-time)

XII. Misc. - Administrative & Rulemaking Proceedings

29	NOPR: Compensation for Reactive Power Within the Standard Power Factor Range (RM22-2)	Apr 25 Apr 30	Indicated Energy Trade Associations request extension of comment deadline until 45 days after the DC Circuit issues its decision on pending petitions for review in <i>Capital Power Corp. v. FERC</i> , Case Nos. 23-1134, et al., which raise many of the same issues as the NOPR ACPA/SEIA, Vistra/Dynegy, Renewable Generation Companies support extension request; Joint Customer oppose request
30	Transmission NOPR (RM21-17)		FERC to address <i>Transmission NOPR</i> at special May 13, 2024 meeting on transmission matters

XIII. FERC Enforcement Proceedings

Electric-Related Enforcement Actions

32	Ketchup Caddy and Philip Mango (IN23-14)	Apr 10	OE Litigation Staff moves for summary disposition of these matters
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XIV. Natural Gas Proceedings

No Activity to Report

XV. State Proceedings & Federal Legislative Proceedings

No Activity to Report

XVI. Federal Courts

35	Mystic Second CapEx Info Filing - Request for Rehearing (24-1077)	Apr 3	Mystic files appeal in D.C. Cir.
36	Order 2023 (23-1282 et al) (consolidated)	Apr 2-24 Apr 9-10 Apr 16 Apr 24	FirstEnergy, Dominion, Exelon, MISO TOs and NY TOs amend petitions to include <i>Order 2023-A</i> FPL requests to dismiss case, the Court grants request FERC files 2nd abeyance request PacifiCorp files petition for review of <i>Order 2023-A</i> , Court consolidates case with 23-1282
37	Mystic II (ROE & True-Up)	Apr 22-24	Court orders cases remain in abeyance and parties to submit motions to govern future proceedings by Jul 23, 2024

MEMORANDUM

TO: NEPOOL Participants Committee Members and Alternates

FROM: Pat Gerity and Teresa Chen, NEPOOL Counsel

DATE: May 1, 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 May 1, 2024. If you have questions, please contact us.

I. Complaints/Section 206 Proceedings

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

This Section 206 proceeding is being held in abeyance. As previously reported, 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.² Changes in response to some of the requirements of the *Dynegy Mitigation Order* (“Upward Mitigation Revisions”) were supported by the Participants Committee, jointly filed with ISO-NE, accepted by the FERC,³ and became effective as of *December 12, 2023*. On January 29, 2024, ISO-NE requested that this proceeding continue to be held in abeyance,⁴ through **August 30, 2024**, “pending completion of the stakeholder process through which further revisions to [the Tariff] are being proposed and vetted.”⁵ The FERC granted ISO-NE’s motion on February 7, 2024, stating that it would not take any action on this 206 proceeding before **August 30, 2024**. If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **RENEW Network Upgrades O&M Cost Allocation Complaint (EL23-16)**

The December 13, 2022 complaint by RENEW Northeast, Inc. (“RENEW”) against ISO-NE and the Participating Transmission Owners (“PTOs”), which seeks changes to the ISO-NE Tariff (Schedules 11 and 21) that would eliminate the direct assignment of Network Upgrade Operations and Maintenance (“O&M”) costs to

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

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

³ *ISO New England Inc.*, Docket No. ER24-324-000 (Dec. 12, 2023) (unpublished letter order).

⁴ 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.

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.

Interconnection Customers,⁶ remains pending before the FERC. As previously reported, the proposed revisions to Schedule 11 of the Tariff were voted by the Transmission Committee at its October 26, 2021 meeting, and were discussed at the Participants Committee's November 3, 2021 meeting. RENEW asked the FERC to issue an order granting the Complaint by April 14, 2023 (approximately 60 days prior to the June 15, 2023 deadline for the NE PTOs to publish a draft of the Annual Update to the data used in the transmission formula rate). Both of those dates have long 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, CMEEC, 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,⁷ set the TOs' Base ROE at 10.57% (reduced from 11.14%), capped the TOs' total ROE (Base ROE *plus* transmission incentive adders) at 11.74%, and required implementation effective as of October 16, 2014 (the date of *Opinion 531-A*).⁸ However, the FERC's orders were challenged, and in *Emera Maine*,⁹ the U.S. Court of Appeals for the D.C. Circuit ("DC Circuit") vacated the FERC's prior orders, and remanded the case for further proceedings consistent with its order. The FERC's determinations in *Opinion 531* are thus no longer precedential, though the FERC remains free to re-adopt those determinations on remand as long as it provides a reasoned basis for doing so.

⁶ RENEW also requested (i) that it be considered an Interested Party or afforded a adequate opportunity to participate and access transmission rate information under the PTOs' Formula Rate Protocols and (ii) the PTOs be directed to provide greater transparency regarding O&M costs in the interconnection process.

⁷ The TOs' 11.14% pre-existing Base ROE was established in *Opinion 489*. *Bangor Hydro-Elec. Co.*, Opinion No. 489, 117 FERC ¶ 61,129 (2006), *order on reh'g*, 122 FERC ¶ 61,265 (2008), *order granting clarif.*, 124 FERC ¶ 61,136 (2008), *aff'd sub nom.*, Conn. Dep't of Pub. Util. Control v. FERC, 593 F.3d 30 (D.C. Cir. 2010) ("*Opinion 489*").

⁸ *Coakley Mass. Att'y Gen. v. Bangor Hydro-Elec. Co.*, 147 FERC ¶ 61,234 (2014) ("*Opinion 531*"), *order on paper hearing*, 149 FERC ¶ 61,032 (2014) ("*Opinion 531-A*"), *order on reh'g*, 150 FERC ¶ 61,165 (2015) ("*Opinion 531-B*").

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

- **Base ROE Complaints II & III (EL13-33 and EL14-86) (consolidated).** The second (EL13-33)¹⁰ and third (EL14-86)¹¹ ROE complaint proceedings were consolidated for purposes of hearing and decision, though the parties were permitted to litigate a separate ROE for each refund period. After hearings were completed, ALJ Sterner issued a 939-paragraph, 371-page *Initial Decision*, which lowered the base ROEs for the EL13-33 and EL14-86 refund periods from 11.14% to 9.59% and 10.90%, respectively.¹² The *Initial Decision* also lowered the ROE ceilings. Parties to these proceedings filed briefs on exception to the FERC, which has not yet issued an opinion on the ALJ's *Initial Decision*.
- **Base ROE Complaint IV (EL16-64).** The fourth and final ROE proceeding¹³ also went to hearing before an Administrative Law Judge ("ALJ"), Judge Glazer, who issued his initial decision on March 27, 2017.¹⁴ The *Base ROE IV Initial Decision* concluded that the currently-filed base ROE of 10.57%, which may reach a maximum ROE of 11.74% with incentive adders, was **not** unjust and unreasonable for the Complaint IV period, and hence was not unlawful under Section 206 of the FPA.¹⁵ Parties in this proceeding filed briefs on exception to the FERC, which has not yet issued an opinion on the *Base ROE IV Initial Decision*.

October 16, 2018 Order Proposing Methodology for Addressing ROE Issues Remanded in Emera Maine and Directing Briefs. On October 16, 2018, the FERC, addressing the issues that were remanded in *Emera Maine*, proposed a new methodology for determining whether an existing ROE remains just and reasonable.¹⁶ The FERC indicated its intention that the methodology be its policy going forward, including in the four currently pending New England proceedings (*see, however, Opinion 569-A*¹⁷ (EL14-12; EL15-45) in

¹⁰ The 2012 Base ROE Complaint, filed by Environment Northeast (now known as Acadia Center), Greater Boston Real Estate Board, National Consumer Law Center, and the NEPOOL Industrial Customer Coalition ("NICC", and together, the "2012 Complainants"), challenged the TOs' 11.14% ROE, and seeks a reduction of the Base ROE to 8.7%.

¹¹ The 2014 Base ROE Complaint, filed July 31, 2014 by the Massachusetts Attorney General, together with a group of State Advocates, Publicly Owned Entities, End Users, and End User Organizations (together, the "2014 ROE Complainants"), seeks to reduce the current 11.14% Base ROE to 8.84% (but in any case no more than 9.44%) and to cap the Combined ROE for all rate base components at 12.54%. 2014 ROE Complainants state that they submitted this Complaint seeking refund protection against payments based on a pre-incentives Base ROE of 11.14%, and a reduction in the Combined ROE, relief as yet not afforded through the prior ROE proceedings.

¹² *Environment Northeast v. Bangor Hydro-Elec. Co. and Mass. Att'y Gen. v. Bangor Hydro-Elec. Co.*, 154 FERC ¶ 63,024 (Mar. 22, 2016) ("*2012/14 ROE Initial Decision*").

¹³ The 4th ROE Complaint asked the FERC to reduce the TOs' current 10.57% return on equity ("Base ROE") to 8.93% and to determine that the upper end of the zone of reasonableness (which sets the incentives cap) is no higher than 11.24%. The FERC established hearing and settlement judge procedures (and set a refund effective date of April 29, 2016) for the 4th ROE Complaint on September 20, 2016. Settlement procedures did not lead to a settlement, were terminated, and hearings were held subsequently held December 11-15, 2017. The September 26, 2016 order was challenged on rehearing, but rehearing of that order was denied on January 16, 2018. *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 156 FERC ¶ 61,198 (Sep. 20, 2016) ("*Base ROE Complaint IV Order*"), *reh'g denied*, 162 FERC ¶ 61,035 (Jan. 18, 2018) (together, the "*Base ROE Complaint IV Orders*"). The *Base ROE Complaint IV Orders*, as described in Section XVI below, have been appealed to, and are pending before, the DC Circuit.

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

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

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

¹⁷ *Ass'n of 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

Section XI below). The FERC established a paper hearing on how its proposed methodology should apply to the four pending ROE proceedings.¹⁸

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

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

The FERC provided preliminary analysis of how it would apply the proposed methodology in the Base ROE I Complaint, suggesting that it would affirm its holding that an 11.14% Base ROE is unjust and unreasonable. The FERC suggested that it would adopt a 10.41% Base ROE and cap any preexisting incentive-based total ROE at 13.08%.¹⁹ The new ROE would be effective as of the date of *Opinion 531-A*, or October 16, 2014. Accordingly, the issue to be addressed in the Base ROE Complaint II proceeding is whether the ROE established on remand in the first complaint proceeding remained just and reasonable based on financial data for the six-month period September 2013 through February 2014 addressed by the evidence presented by the participants in the second proceeding. Similarly, briefing in the third and fourth complaints will have to address whether whatever ROE is in effect as a result of the immediately preceding complaint proceeding continues to be just and reasonable.

The FERC directed participants in the four proceedings to submit briefs regarding the proposed approaches to the FPA section 206 inquiry and how to apply them to the complaints (separate briefs for each proceeding). Additional financial data or evidence concerning economic conditions in any proceeding must relate to periods before the conclusion of the hearings in the relevant complaint proceeding. Following a FERC notice granting a request by the TOs and Customers²⁰ for an extension of time to submit briefs, the latest date for filing initial and reply briefs was extended to January 11 and March 8, 2019, respectively. On January 11, initial briefs were filed by EMCOS, Complainant-Aligned Parties, TOs, Edison Electric Institute (“EEI”), Louisiana PSC, Southern California Edison, and AEP. As part of their initial briefs, each of the Louisiana PSC, SEC and AEP also moved to intervene out-of-time. Those interventions were opposed by the TOs on January 24, 2019. The Louisiana PSC answered the TOs’ January 24 motion on February 12. Reply briefs were due March 8, 2019 and were submitted by the TOs, Complainant-Aligned Parties, EMCOS, and FERC Trial Staff.

Opinion 569; and (iv) calculating the zone of reasonableness in equal thirds, instead of using the quartile approach that was applied in *Opinion 569*.

¹⁸ *Id.* at P 19.

¹⁹ *Id.* at P 59.

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

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

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

II. Rate, ICR, FCA, Cost Recovery Filings

- **FCA18 Results Filing (ER24-1290)**

On February 21, 2024, ISO-NE filed the results of the eighteenth Forward Capacity Auction ("FCA18") held February 5, 2024 for the June 1, 2027 - May 31, 2028 Capacity Commitment Period ("CCP"). ISO-NE reported the following highlights:

- ◆ FCA18 Capacity Zones were the Northern New England ("NNE") Capacity Zone (the Maine, New Hampshire and Vermont Load Zones), the Maine Capacity Zone (the Maine Load Zone) and the Rest-of-Pool ("ROP") Capacity Zone (the Southeastern Massachusetts, Rhode Island, Northeastern Massachusetts/Boston, Connecticut and Western/Central Massachusetts Load Zones). NNE was modeled as an export-constrained Capacity Zone. The Maine Load Zone was modeled as a separate nested export-constrained Capacity Zone within NNE.
- ◆ FCA18 commenced with a starting price of \$14.52/kW-mo. and concluded for all Capacity Zones after four rounds.
- ◆ Capacity Clearing Prices were the same, \$3.58/kw-mo, for all Capacity Zones and imports over the external interfaces.²²
- ◆ There were no active demand bids for the substitution auction and, accordingly, the substitution auction was not conducted.
- ◆ No resources cleared as Conditional Qualified New Generating Capacity Resources.
- ◆ No Long Lead Time Generating Facilities secured a Queue Position to participate as a New Generating Capacity Resource.
- ◆ No De-List Bids were rejected for reliability reasons.

ISO-NE asked the FERC to accept the FCA18 rates and results, effective June 20, 2024. Comments on this filing were due on or before April 8, 2024. Adverse comments (though not on the basis of incorrect application of Tariff rules) were filed by the No Coal No Gas Campaign ("NCNG") and by 26 private citizens.²³ Doc-less interventions were filed by NEPOOL, Calpine, National Grid, NEPGA, and Public Citizen. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

²¹ *Ass'n of Buss. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569, 169 FERC ¶ 61,129 (Nov. 21, 2019) ("*MISO ROE Order*"), *order on reh'g*, Opinion No. 569-A, 171 FERC ¶ 61,154 (May 21, 2020).

²² 123 MW over the NY AC Ties, 70 MW over the New Brunswick external interface, 18.17 MW over the HQ Highgate external interface, and 253.78 MW over the Phase I/II HQ Excess external interface.

²³ The private citizens filing comments included: [Montserrat Archbald](#), [Rebecca Beaulieu](#), [Judith Black](#), [Sonja Birthisel](#), [Steven Botkin](#), [Olivia Chatfield](#), [Susan L. Durling](#), [Robert Feder](#), [Kendra Ford](#), [John Hanson](#), [Drew Hudson](#), [David Hughes](#), [Nastasia Lawton-Sticklor](#), [Lucy Lee](#), [Ellanora Lerner](#), [Julie C. Macuga](#), [James C. Mulloy](#), [Isaac B. Petersen](#), [Nathan G. Phillips](#), [Mary Raven](#) (ER23-1435), [Siobhan Senior](#), [Paul Shorb](#), [Regine Spector](#), [Leif Taranta](#), [Sabine von Mering](#) (ER23-1435), and [Linda M. Walsh](#).

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

Mystic I Remand. As previously reported, the DC Circuit issued a decision on August 23, 2022²⁴ 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*.

(-000) Third CapEx Info Filing. On September 15, 2023, Mystic submitted, as required by orders in this proceeding and Sections I.B.1.i. and II.6. of Schedule 3A of the COS Agreement ("Protocols") its "Third CapEx Info Filing" to provide support for the capital expenditures and related costs that Mystic projects will be collected as an expense between January 1, 2024 to May 31, 2024 ("2024 CapEx Projects"). This filing was not noticed for public comment by the FERC.

(-018) Second CapEx Info Filing. On December 5, 2023, the FERC issued an order²⁵ on the formal challenges to Mystic's September 15, 2022 "Second CapEx Info Filing".²⁶ As previously reported, formal challenges to the Second CapEx Info Filing were submitted by NESCOE and ENECOS²⁷ (with ENECOS challenges supported separately by MMWEC/NHEC). Several rounds of answers, described in previous reports, followed. In February 2023, Mystic asked that the Formal Challenges to the Second CapEx Info Filing be held in abeyance pending submission of a settlement agreement to resolve challenges to the First CapEx Info Filing. ENECOS protested that request, identifying issues in their challenges to the Second CapEx Info Filing that would not be resolved by a First CapEx Settlement Agreement. The First CapEx Settlement Agreement was filed and approved, leaving for resolution certain of ENECOS' challenges.

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

(-026) Allegheny Order Addressing ENECOS' Request for Rehearing of Order on Remand Modification Order. On November 6, 2023, ENECOS requested rehearing of the *Mystic I Order on Remand Modification Order*.²⁸

²⁴ *Constellation Mystic Power, LLC v. FERC*, 45 F.4th 1028 (D.C. Cir. 2022) ("*Mystic I Remand Order*").

²⁵ *Constellation Mystic Power, LLC*, 185 FERC ¶ 61,170 (Dec. 5, 2023) ("*Second CapEx Info Filing Order*").

²⁶ 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").

²⁷ ENECOS Formal Challenges included failures by Mystic: (1) to adequately support its July 1, 2004 – Dec. 31, 2017 Rate Base on Attachment B to Mystic 8&9 Schedule D (with the majority of the cost appearing to O&M expenses that should have been expensed prior to the term); (2) to adequately support its Jan. 1, 2018 – May 31, 2022 Rate Base in line with the requirements of Schedule 3A and the Methodology of the Mystic COSA; (3-5) to prove that certain costs under Mystic's 2022 CapEx Projects - specifically, its Campus Segregation Project and comprehensive rotor inspections - are necessary to meet the reliability need of the Mystic COSA and the least-cost commercially reasonable option consistent with Good Utility Practice; (6) to sufficiently support Everett's Nov. 1, 2018 – May 31, 2022 Rate Base in Attachment B; (7) to properly classify certain of Everett's 2022 and 2023 CapEx Projects costs (some of which should have been characterized as maintenance expenses charged before the term of the Mystic COSA); and (8) to include costs of firm interstate and intrastate pipeline transportation reservations in Everett Schedule B of the populated template.

²⁸ *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

Specifically, ENECOS requested that the FERC both (i) reinstate its conclusions as to the scope of customer scrutiny of formula rate inputs under the COSA set forth in its March 28, 2023 *Mystic I Order on Remand*²⁹ 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", 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.³⁰ On February 15, 2024, the FERC issued that order, modifying the discussion in the *Mystic I Order on Remand Modification Order* but reaching the same result.³¹ On February 29, 2024, ENECOS amended their petition for review before the DC Circuit (Case No. 24-1018) to include the *Mystic I Order on Remand Modification Order Allegheny Order* (see Section XVI below),

Recall that, as previously reported with respect to this aspect of the Mystic proceeding, 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".³² 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.³³ In addition, the *Order* also denied Public Systems³⁴ 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").³⁵

(-027) Second CapEx Info Filing Settlement Proceedings. 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

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".

²⁹ *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).

³⁰ *Constellation Mystic Power, LLC*, 185 FERC ¶ 62,120 (Dec. 7, 2023) ("*Mystic I Order on Remand Modification Order Allegheny Notice*").

³¹ *Constellation Mystic Power, LLC*, 186 FERC ¶ 61,103 (Feb. 15, 2024) ("*Mystic I Order on Remand Modification Order Allegheny Order*").

³² *Mystic I Order on Remand Allegheny Notice*.

³³ *Constellation Mystic Power, LLC*, 185 FERC ¶ 61,016 (Oct. 6, 2023) ("*Mystic I Order on Remand Modification Order*").

³⁴ "Public Systems" for these purposes are: MMWEC, CMEEC, NHEC, VPPSA, the Eastern New England Consumer-Owned Systems ("ENECOS"), and Energy New England, LLC ("ENE").

³⁵ 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 [Dec. 5, 2023]." (P 13).

deemed the settlement proceedings continued without further action. Judge French convened a first settlement conference on January 4, 2024, a second settlement conference on March 20, 2024, a third settlement conference on April 19, 2024 and scheduled a fourth settlement conference for **May 17, 2024**. Judge French submitted her second report on April 11, 2024, recommending that the settlement process continue.

(-028) Second CapEx Info Filing Order - Mystic's Request for Rehearing Deemed Denied by Operation of Law. On January 4, 2024, Mystic requested clarification, and in the alternative rehearing, of the *Second CapEx Info Filing Order*.³⁶ 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. On February 5, 2024, 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 On April 3, 2024, Mystic appealed to the DC Circuit the *Second CapEx Info Filing Order Allegheny Notice* (Case No. 24-1077) (See Section XVI below).

(-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*.³⁹ The sixth compliance filing revised (i) the Cost of Common Equity figures from 9.33% to 9.19%, for both Mystic 8&9 and Everett Marine Terminal ("Everett"), and (ii) the stated Annual Fixed Revenue Requirements for both the 2022/23 and 2023/24 Capacity Commitment Periods. Comments on the sixth compliance filing were due on or before January 10, 2022; none were filed. The Sixth Compliance Filing remains pending before the FERC.

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*,⁴⁰ 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

³⁶ *Constellation Mystic Power, LLC*, 185 FERC ¶ 61,170 (Dec. 5, 2023) ("*Second CapEx Info Filing Order*").

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*, 186 FERC ¶ 62,048 (Feb. 5, 2024) ("*Second CapEx Info Filing Order Allegheny Notice*").

³⁹ An "Allegheny Order" is a merits rehearing order issued on or after the 31st day after receipt of a rehearing request, reflecting the FERC's authority to "modify or set aside, in whole or in part," its order until it files the record on appeal with a reviewing federal court. An Allegheny Order will use "modifying the discussion" if the FERC is providing a further explanation, but is not changing the outcome, of the underlying order; or "set aside" if the FERC is changing the outcome of the underlying order. Aggrieved parties have 60 days after a deemed denial to file a review petition, even if FERC has announced its intention to issue a further merits order.

⁴⁰ *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).

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 remains 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; mzczepiel@daypitney.com).

- **Transmission Rate Annual (2023-24) Update/Informational Filing (ER20-2054-003)**

Formal Challenge by MOPA. On January 31, 2024, the Maine OPA (“MOPA”) filed a formal challenge (“MOPA Formal Challenge”) to the 2023-24 Annual Update.⁴¹ 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. Comments on the MOPA Formal Challenge were due on or before February 21, 2024 and were filed by Consumer Advocates⁴² (who supported MOPA’s attempt to discover the information requested in its September 15, 2023 requests and agreed that policies, processes, and procedures related to ACP costs are discoverable pursuant to the Protocols) and Identified TOs⁴³ (who urged the FERC to reject the MOPA Formal Challenge as baseless and misguided). On March 4, 2024, MOPA answered Identified TOs’ comments. Identified TOs answered MOPA’s March 4 answer on March 15 (as corrected on March 18, 2024). This matter is pending before the FERC. If there are questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **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

⁴¹ 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 “2023-24 Annual Update”). 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 stated that the annual updates result in a Pool “postage stamp” RNS Rate of \$154.35/kW-year effective Jan. 1, 2024, an increase of \$12.71 /kW-year from the charges that went into effect on Jan. 1, 2023. In addition, the filing included updates to the revenue requirements for Scheduling, System Control and Dispatch Services (the Schedule 1 formula rate), which result in a Schedule 1 charge of \$1.95 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.

⁴² For purposes of this proceeding, “Consumer Advocates” are the MA AG, CT OCC, NH OCA and RI Division.

⁴³ “Identified TOs” are the New England Transmission Owners with asset condition projects that are the focus of the MOPA Formal Challenge: CL&P, Maine Electric Power Company (“MEPCO”), NSTAR (East & West), National Grid, Public Service Company of New Hampshire (“PSNH”), Rhode Island Energy (“RI Energy”), and Vermont Transco LLC (“VTransco”).

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 Filing⁴⁴ remains pending before the FERC. In the Challenge, RENEW asserted that (i) the TOs failed to provide adequate rate input information in the Annual Informational Filing and in the Information Exchange Period under the Interim Formula Rate Protocols regarding inclusion or exclusion of “O&M costs” on Network Upgrades that the TOs directly assign to Interconnection Customers (and thereby failing to demonstrate that such O&M costs are not being double counted in transmission rates); and (ii) the TO’s Interpretation of “Interested Party” to exclude RENEW violated the Interim Formula Rate Protocols. RENEW thus asked that the FERC (a) require the TOs to show the calculation of the annual O&M charges with sources of data inputs and show how such O&M charges are not being double recovered in transmission rates, and (b) determine that an entity such as RENEW is an Interested Party under the Interim Formula Rate Protocols and that its Information Requests seeking rate inputs and support for the O&M charges on Network Upgrades are within the scope of the Interim Formula Rate Protocols process. Comments on RENEW’s Challenge were due on or before March 16, 2023. Comments and protests were filed by: [Avangrid](#), [Eversource](#), [National Grid](#), [Public Systems](#), [RI Energy](#), [Unitil](#), [Versant Power](#), [VTransco/GMP](#). On March 31, 2023, RENEW answered the comments and protests to its Challenge. Subsequently, on April 14, 2023, 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).

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

- **FCA19 2-Year Delay (ER24-1710)**

On April 5, 2024, ISO-NE and NEPOOL jointly filed revisions to delay New England’s nineteenth Forward Capacity Auction (“FCA19”) until Feb 2028, maximizing the opportunity for ISO-NE and regional stakeholders to fully design and implement a prompt and seasonal capacity market framework, and to further refine the approach to capacity accreditation based on a resource’s Marginal Reliability Impact (“FCA19 2-Year Delay Revisions”). Specifically, the FCA19 2-Year Delay Revisions (i) delay FCA19 and related market activities by two additional years

⁴⁴ 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.

beyond the revised timeline already accepted by the FERC;⁴⁵ (ii) extend the interim balancing (or reconfiguration) auction qualification process by two additional years; and (iii) augment the auction schedule for subsequent auctions beyond FCA19 to ensure an orderly return to a forward market in the unlikely case that future events necessitate such a return. The FCA19 2-Year Delay Revisions were supported by the Participants Committee at its April 4, 2024 meeting (Agenda Item #6). Comments on the FCA19 2-Year Delay Revisions were due on or before April 22, 2024. ISO-NE's IMM, EMM, NESCOE, and Public Systems⁴⁶ filed comments supporting the FCA19 2-Year Delay Revisions. Avangrid, Brookfield, Calpine, Dominion, Enel, LS Power, National Grid, MA AG, NH OCA, NEPGA, NRG, Vistra, EPSA, MA DPU, Public Citizen filed doc-less interventions only. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **Waiver Request: Withdrawal from IEP and Return of IEP Net Revenues Received (Canal Marketing/ Canal 3) (ER24-1407)**

On March 4, 2024 (as amended and supplemented on March 8 and March 22, 2024), Canal Marketing LLC (f/k/a Stonepeak Kestrel Energy Marketing LLC) ("CM") requested a one-time waiver of the provisions of Appendix K to Market Rule 1 (Inventoried Energy Program (the "IEP")) so as to permit CM to (i) withdraw CM's participation in the IEP on behalf of Canal 3 Generating LLC ("Canal 3")⁴⁷ for Winter 2023-24 and (ii) to return to ISO-NE the net revenues, with applicable interest, that CM received on behalf of Canal 3 for Canal 3's participation in the IEP for Winter 2023-2024 because Canal 3's return from a forced outage was delayed beyond the end of the IEP's Winter 2023-24 period.⁴⁸ CM explained that, when it elected to participate in the IEP on behalf of Canal 3 on September 21, 2023, CM anticipated that the Canal 3 Facility would be back in service by December 18, 2023, and would be available for the remainder of the IEP's Winter 2023-24 period. However, the actual return-to-service date for the Canal 3 Facility was delayed beyond the end of the IEP's Winter 2023-24 period and Canal 3 was not able to perform during the Winter 2023-24 period. CM seeks the requested waiver because no provision in Appendix K nor any other provision of the Tariff was identified as providing a mechanism for a Participant to withdraw from the IEP or to return IEP revenues to ISO-NE. Comments on the CM Waiver Request were due on or before March 25, 2024. The IMM submitted comments supporting the CM Waiver Request insofar as it requests the prompt repayment of the revenues received on behalf of Canal 3 under the IEP and, if determined to be warranted by the FERC, net of Program charges. NEPOOL (out-of-time) and National Grid intervened doc-lessly. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Waiver Request: OATT Schedule 22 § 3.4.1 (Interconnection Request Deposit Refund Deadline) (Moscow Dev. Co.) (ER24-1295)**

On April 25, 2024, the FERC denied Moscow Development Company, LLC's ("MDC")⁴⁹ request for a one-time waiver of the 10-Business Day deadline in OATT Schedule 22 §3.4 (Valid Interconnection Request) to withdraw an Interconnection Request following its Scoping Meeting with ISO-NE (and then be entitled to the

⁴⁵ *ISO New England Inc. and NEPOOL Participants Comm.*, 186 FERC ¶ 61,001 (Jan. 2, 2024, 2024) (accepting Initial FCA19 Delay Filing).

⁴⁶ "Public Systems" for purposes of this proceeding are: Conn. Municipal Elec. Energy Coop. ("CMEEC"), Mass. Municipal Wholesale Electric Co. ("MMWEC"), New Hampshire Electric Coop., Inc. ("NHEC"), and Vermont Public Power Supply Authority ("VP PSA").

⁴⁷ Canal 3 is an approximately 333 MW (summer rating) gas- and oil-fired generation facility. Canal 3 has been on forced outage since Feb. 3, 2023, when a blade on the turbine wheel broke off and caused catastrophic damage to the gas turbine, which significantly impacted the compressor blades and bearings. As a result, the full train was disassembled and shipped to General Electric ("GE"), its manufacturer, for repair. GE initially provided a repair schedule that contemplated Canal 3's return to service by Dec. 15, 2023.

⁴⁸ At the time CM made its IEP election submission, CM anticipated that, based on information provided by GE, Canal 3 would be back on line by Dec. 18, 2023. CM informed ISO-NE in mid-December that forced outage of Canal 3 would continue until near the end of the IEP's Winter 2023-24 period, but no mechanism for a withdrawal from the IEP or the return of IEP payments received was identified.

⁴⁹ MDC is a partnership between Cianbro Development Co., LLC and Patriot Renewables, LLC. MDC is developing its Radar Solar project on property owned by affiliated company Moscow Land Holdings, LLC.

return of any remaining balance of the initial \$50,000 deposit provided).⁵⁰ As previously reported, MDC did not receive complete information at the Scoping Meeting (specifically that development of its project would depend upon completion of the Third Maine Resource Integration Study, a condition that would lead to MDC withdrawing the interconnection request), and was thus not permitted an opportunity to make a timely decision to withdraw its Interconnection Request. In denying the request, the FERC found that waiver requested was retroactive in nature and thus prohibited by the filed rate doctrine, leaving it no discretion to waive or retroactively change or adjust the rate for good cause or for any other equitable considerations.”⁵¹ The FERC noted that it would have preferred to have ordered a refund of the unapplied portion of MDC’s initial deposit, and encouraged ISO-NE to “review its policies and/or Tariff to determine whether there is a way to prevent such an outcome under these or similar facts in the future.”⁵² Unless the *Order Denying MDC Waiver Request* is challenged, with any challenges due on or before May 28, 2024, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FRM Offer Cap and Data Publication Timeline Changes (ER24-1245)**

On April 12, 2024, the FERC accepted changes to Market Rule 1 to (i) update the Forward Reserve Offer Cap to \$7,100/MW-mo. and (ii) delay FRM Offer Data publication for one year after each procurement period begins (together, the “FRM Revisions”).⁵³ The FRM Revisions were accepted effective as of *April 15, 2024*, as requested. Unless the *FRM Revisions 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).

- **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. There were no developments in this proceeding since the last Report and 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 Order⁵⁴ 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 filing⁵⁵ (“*Order 2222 Compliance*”).

⁵⁰ *Moscow Development Co., LLC*, 187 FERC ¶ 61,040 (Apr. 25, 2024) (“*Order Denying MDC Waiver Request*”).

⁵¹ *Order Denying MDC Waiver Request* at P 13.

⁵² *Id.* at n. 18.

⁵³ *ISO New England Inc.*, 187 FERC ¶ 61,019 (Apr. 12, 2024) (“*FRM Revisions Order*”).

⁵⁴ 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.”

⁵⁵ 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

Order”).⁵⁶ 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 accepted the 30-, 60- and 180-day compliance filings.⁵⁷ In the order conditionally accepting the 60-day compliance filing,⁵⁸ the FERC directed ISO-NE to submit a further compliance filing, on or before January 31, 2024, to comply with the directives of the *First Compliance Order* regarding the submission of DERA meter data.⁵⁹ The FERC also granted in part ISO-NE’s request for an extension of time to address directives in the *First Order 2222 Compliance Order*.⁶⁰

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 (“ATTR”) 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 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.

⁵⁶ *ISO New England Inc. and New England Power Pool Participants Comm.*, 182 FERC ¶ 61,137 (Mar. 1, 2023) (“*First Order 2222 Compliance Order*”).

⁵⁷ *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).

⁵⁸ *ISO New England Inc.*, 185 FERC ¶ 61,095 (Nov. 2, 2023) (“*Order 2222 60-Day Compliance Filing Order*”).

⁵⁹ 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 cyber security. *Id.* at P 34.

⁶⁰ The FERC ordered ISO-NE in its 60-day compliance filing to revise the Tariff to: (1) have RERRA make the determination of whether to allow customers of small utilities to participate in ISO-NE’s markets through aggregation; (2) require that each DER Aggregator maintain and submit aggregate settlement data for the DERA; (3) designate the DER Aggregator as the entity responsible for providing any required metering information to ISO-NE, and if necessary, establish protocols for sharing meter data that minimize costs and other burdens and address concerns raised with respect to privacy and cybersecurity; (4) designate the DER Aggregator as the entity responsible for providing any required metering information to ISO-NE; and (5) add specificity regarding existing resource non-performance penalties that would apply to a DERA when a Host Utility overrides ISO-NE dispatch instructions. ISO-NE was also directed to: (1) identify the existing rules requiring a Market Participant that provides energy withdrawal service to be a load serving entity that is billed for energy withdrawal (“LSE Requirement”) and explain whether the LSE Requirement is required of all resources seeking to provide wholesale energy withdrawal service in the energy market; (2) explain why its proposed metering and telemetry requirements were just and reasonable and did not pose an unnecessary and undue barrier to individual DERs joining a DERA; (3) establish protocols for sharing metering data that minimize costs and other burdens and address privacy and cybersecurity concerns; and (4) address how ISO-NE will resolve disputes that are within its authority and subject to its Tariff, regardless of whether there is an available dispute resolution process established by the RERRA.

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.⁶¹

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](#).

Further Compliance Changes (-007). On April 11, 2024, the FERC conditionally accepted ISO-NE's January 31 Further Compliance Filing, subject to a further 60-day compliance filing.⁶² In the *Further Order 2222 Compliance Filing Order*, the FERC found that ISO-NE complied with *Order 2222 60-Day Compliance Filing Order's* directive to (i) designate the DER Aggregator as the entity responsible for providing any required metering information to ISO-NE; (ii) require that each DER Aggregator maintain and submit aggregate settlement data for DERAs; and (iii) establish protocols for sharing metering data. However, the FERC disagreed with ISO-NE's assertion that meter data submission responsibilities and deadlines at issue are technical and timing details to implement the Tariff's settlement requirements, and, therefore, properly included in ISO-NE's manuals rather than its Tariff. Rather, the FERC found that "the meter data submission deadline is a key component of metering practices for DER Aggregators that should be included in the basic description of metering practices in the Tariff".⁶³ Accordingly, the FERC directed ISO-NE "to submit ... Tariff revisions that include the meter data submission deadline in its Tariff."⁶⁴ That further compliance filing is due on or before **June 10, 2024**. If you have any questions concerning these matters, 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

No Activities to Report

V. Financial Assurance/Billing Policy Amendments

No Activities to Report

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

- **Schedule 20A-NEP/Schedule 21-NEP: NEP Creditworthiness Policy Updates (ER24-1805, ER24-1808)**

On April 22, 2024, ISO-NE and New England Power d/b/a National Grid ("NEP," and together with ISO-NE, the "Parties") concurrently filed revisions to Schedule 20A (governing the resale by NEP of transmission service over the Phase I and II high-voltage direct current interconnection between New England and Quebec)(ER24-1805) and Schedule 21 (governing Local Network Service and other services) (ER24-108) to reflect NEP's current creditworthiness practices. The Parties requested a May 1, 2024 effective date. Comments on this filing are due on or before **May 13, 2024**. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

⁶¹ *ISO New England Inc.*, 186 FERC ¶ 62,002 (Jan. 4, 2023) ("Order 2222 60-Day Compliance Filing Order Allegheny Notice").

⁶² *ISO New England Inc.*, 187 FERC ¶ 61,017 (Apr. 11, 2024) ("Further Order 2222 Compliance Filing Order").

⁶³ *Id.* at P 13.

⁶⁴ *Id.*

- **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.⁶⁵ 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 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-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”).⁶⁶ 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 requirement⁶⁷ 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 filing.⁶⁸ 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.

Time Value Refunds Report. On February 21, 2024, National Grid filed a refund report (“Report”) detailing the Time Value Refunds National Grid paid to GMP on January 22, 2024. Comments on the Report were due on or before March 13, 2024; none were filed. The Report is pending before the FERC.

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

⁶⁵ *ISO New England Inc.*, Docket No. ER24-24-000 (Nov. 30, 2023) (unpublished letter order).

⁶⁶ The LSA was designated as Service Agreement No. TSA-NEP-114 under the ISO-NE OATT.

⁶⁷ 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.

⁶⁸ *ISO New England Inc.*, Docket No. ER23-2804-000 (Nov. 7, 2023) (unpublished letter order).

- **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”).⁶⁹ 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.⁷⁰ 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-VEC and 20-VEC Annual Informational Filing (ER10-1181)**

On April 30, 2024, VEC submitted its 21st annual update to the formula rates contained in Schedules 21-VEC and 20-VEC covering the July 1, 2024 – June 30, 2025 period. 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

- **135th Agreement; PA13 (Unused Provisional Member Voting Share Allocation Changes)**

On August 19, 2024, the 135th Agreement Amending New England Power Pool Agreement; and Amendment No. 13 to the PA (together, the “Unused Provisional Member Voting Share Allocation Changes” or “Changes”) were approved unanimously by the Participants Committee pursuant to balloting under Section 6.10 of the NEPOOL Agreement and Section 17.2.3 of the Participants Agreement in which the Minimum Response Requirement was satisfied. As described at the April 4 Participants Committee meeting, the Changes modify the allocation of any unused Provisional Member Group Seat voting share to all six Sectors. The Changes will be filed with the FERC this month. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

⁶⁹ *ISO New England Inc.*, Docket No. ER23-2035-000 (July 28, 2023) (“*Versant Black Bear LSAs Order*”).

⁷⁰ 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 Reports⁷¹

- **Capital Projects Report - 2023 Q4 (ER24-1229)**

On April 9, 2024, the FERC accepted ISO-NE's Capital Projects Report and Unamortized Cost Schedule covering the fourth quarter ("Q4") of calendar year 2023 (the "Report").⁷² As previously reported, Report highlights included the following new projects: (i) nGEM Real-Time Market Clearing Engine Implementation Phase I (\$14.8 million); (ii) Managing Transmission Line Ratings (\$7.7 million); (iii) CIP Electronic Security Perimeter Redesign Phase II (\$5.2 million); and (iv) FCM Delivery Financial Assurance (\$270,000). Two projects were reported to have significant changes (reductions in funds): IMM Data Analysis Phase IV (reduced by \$288,800) and Settlement of Technology Improvements (reduced by \$119,400). The Q4 2023 Report was accepted effective as of *January 1, 2024*, as requested. Unless the April 9 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

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

On April 15, 2024, ISO-NE filed its 62nd quarterly status report regarding LFTR implementation. 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.

- **Reserve Market Compliance (36th) Semi-Annual Report (ER06-613)**

As directed by the original ASM II Order,⁷³ as modified,⁷⁴ ISO-NE submitted its 36th semi-annual reserve market compliance report on April 18, 2024. In the 36th report, ISO-NE described the October 31, 2023 Day-Ahead Ancillary Services ("DASI") filing. ISO-NE further stated that "DASI satisfies the underlying objectives of this reporting obligation. DASI procures sufficient DA TMSR from fast-ramping, "online" resources (i.e., those that also receive Day-Ahead Energy awards) to cover the expected TMSR requirements for each hour of the Operating Day. DASI provides the resources that clear for DA TMSR with market-based compensation that provides incentives to take cost-effective actions that increase their ability to deliver energy in Real-Time, when needed. Furthermore, as the Commission notes in the DASI Order, the ISO has also committed "to reviewing DASI's performance after implementation and proposing further adjustments to the design as necessary." Accordingly, ISO-NE asked that the FERC terminate the reporting obligation established in this proceeding, and that the 36th report "serve as the final update on the status of the region's efforts to implement a forward market for TMSR." In light of ISO-NE's request, the 36th status report was noticed for public comment, with comments due on or before **May 9, 2024**.

- **Independent Auditors' Report (ZZ24-1)**

On April 23, 2024, ISO-NE files its Independent Auditors' Report regarding its 2022 and 2023 FERC Form 1s prepared by KPMG. These filings are not noticed for public comment.

⁷¹ 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.

⁷² *ISO New England, Inc.*, Docket No. ER24-1229-000 (Apr. 9, 2024) (unpublished letter order).

⁷³ See *NEPOOL and ISO New England Inc.*, 115 FERC ¶ 61,175 (2006) ("*ASM II Order*") (directing the ISO to provide updates on the implementation of a forward TMSR market), *reh'g denied* 117 FERC ¶ 61,106 (2006).

⁷⁴ See *NEPOOL and ISO New England Inc.*, 123 FERC ¶ 61,298 (2008) (continuing the semi-annual reporting requirement with respect to the consideration and implementation of a forward market for Ten-Minute Spinning Reserve ("TMSR")).

- **ISO-NE 2023 FERC Form 582 (not docketed)**

On April 16, 2024, ISO-NE submitted a report of its total MWh of transmission service during 2023. ISO-NE reported that 113,457,972 MWh of transmission service in interstate commerce was provided during 2023 (roughly 11,549,500 MWh less than 2022 (125,007,501 MWh)). These filings are not noticed for comment.

- **ISO-NE 2023 Q4 FERC Form 3Q (not docketed)**

On April 16, 2024, ISO-NE submitted its 2023/Q4 FERC Form 3Q (quarterly financial report of electric utilities, licensees, and natural gas companies). FERC Form 3-Q is a quarterly regulatory requirement which supplements the annual FERC Form 1 financial reporting requirement. These filings are not noticed for public comment.

- **ISO-NE FERC Form 715 (not docketed)**

On March 27, 2024, ISO-NE submitted its 2023 Annual Transmission Planning and Evaluation Report. These filings are not noticed for public comment.

IX. Membership Filings

- **May 2024 Membership Filing (ER24-1895)**

On April 30, 2024, NEPOOL requested that the FERC accept: (i) the following Applicants' membership in NEPOOL as of May 1, 2024: Comity Inc. (Supplier Sector); Earthjustice (Governance Only End User); Gunvor USA LLC (Supplier Sector); MFT Energy US POWER LLC [Related Person to MFT Energy US 1 LLC (Supplier Sector)]; and Viridon New England LLC [Related Person to Champlain VT, LLC d/b/a TDI New England (Provisional Member Group Seat)]; and (ii) the termination as of April 1, 2024 of the Participant status of: Paper Birch Energy, LLC [Related Person to Berlin Station, LLC and CS Berlin Ops, Inc. (Generation Sector Group Seat)]. Comments on this filing, if any, are due on or before **May 21, 2024**.

- **April 2024 Membership Filing (ER24-1650)**

On March 29, 2024, NEPOOL requested that the FERC accept: (i) the following Applicants' membership in NEPOOL as of April 1, 2024: Eagle Creek Madison Hydro LLC [Related Person to Ontario Power Generation Inc.; Ontario Power Generation Energy Trading, Inc.; Brown Bear II Hydro, Inc., and Eagle Creek Renewable Energy Holdings LLC (Supplier Sector)] and Vineyard Offshore LLC (Generation Sector) and (ii) the termination as of March 1, 2024 of the Participant status of: Power Supply Services, LLC (AR Sector) and RPA Energy Inc. d/b/a Green Choice Energy (Supplier Sector). Comments on this filing, if any, are due on or before **April 19, 2024**.

- **March 2024 Membership Filing (ER24-1369)**

On April 29, 2024, the FERC accepted: (i) the following Applicants' membership in NEPOOL: DRW Energy Trading LLC [Related Person to Ebsen and Umber (Supplier Sector)]; Innovo Markets Inc. (GIS-Only Participant); OW North America LLC [Related Person to ENGIE (AR Sector) and Marble River (the EDP companies) (Supplier Sector)]; and Trailstone Renewables, LLC [Related Person to Talen Energy Marketing et al. (Supplier Sector)]; (ii) the termination of the Participant status of Transource New England, LLC (Provisional Group Member); and (iii) the name change of the following Participants: Canal Marketing LLC (f/k/a Stonepeak Kestrel Energy Marketing LLC); Excelsior Billerica, LLC (f/k/a Syncarpha Billerica, LLC); Excelsior Bondsville, LLC (f/k/a Syncarpha Bondsville, LLC); Excelsior Lexington, LLC (f/k/a Syncarpha Lexington, LLC).⁷⁵ Unless the April 29 order is challenged, this proceeding will be concluded.

⁷⁵ *New England Power Pool Participants Comm.*, Docket No. ER24-1369-000 (Apr. 29, 2024)

- **Suspension Notice (not docketed)**

Since the last Report, ISO-NE filed, pursuant to Section 2.3 of the Information Policy, a notice with the FERC noting that the following Market Participant was suspended from the New England Markets on the date indicated (at 8:30 a.m.) due to a Payment Default:

<i>Date of Suspension/ FERC Notice</i>	<i>Participant Name</i>	<i>Default Type</i>	<i>Date Reinstated</i>
Apr 22/24	Hydroland Inc.	Payment	--

Suspension notices are for the FERC’s information only and are not docketed or noticed for public comment.

X. Misc. - ERO Rules, Filings; Reliability Standards⁷⁶

Questions concerning any of the ERO Reliability Standards or related rule-making proceedings or filings can be directed to Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **NERC Glossary of Terms Revisions (RD24-6)**

On April 29, 2024, the FERC accepted NERC’s proposed revisions to definitions in its Glossary of Terms⁷⁷ used in the NERC Reliability Standards, effective *July 1, 2025*.⁷⁸ The revisions (2 new, 30 modified, and 4 retired terms)⁷⁹ define, or are related to, the components of Reporting Area Control Error (“ACE”). Unless the April 29 order is challenged, this proceeding will be concluded.

- **Revised Reliability Standard: EOP-012-2 (RD24-5)**

On February 16, 2024, NERC filed proposed Reliability Standard EOP-012-2 (Extreme Cold Weather Preparedness and Operations) to provide a comprehensive framework of requirements addressing cold weather planning and operations (“Freeze Protection Standards”). NERC stated that EOP-012-2 would improve upon the approved, but not yet effective, EOP-012-1 by clarifying the applicability of standard’s requirements for generator cold weather preparedness, further defining the circumstances under which a Generator Owner may declare that constraints preclude them from implementing one or more corrective actions to address freezing issues, and shorting the implementation timeline so cold weather reliability risks would be addressed more quickly. EOP-012-2 also reflects additional improvements that would address the recommendations of the FERC, NERC, and

⁷⁶ Reporting on the following ERO Reliability Standards or related rule-making proceedings has been suspended since the last Report and will be continued if and when there is new activity to report: NERC Report on Evaluation of Physical Reliability Standard (CIP-014) (RD23-2); *Order 901*: IBR Reliability Standards (RM22-12); and 2024 Reliability Standards Development Plan (RM05-17 *et al.*).

⁷⁷ The “Glossary” is a comprehensive list that reflects all of the defined terms used in Reliability Standards that have been adopted by the NERC Board of Trustees. The Glossary is updated through the Reliability Standards development process, and changes to the Glossary are sometimes proposed independent of proposed changes to Reliability Standards, as is the case in this proceeding. The Glossary is available on NERC’s website.

⁷⁸ *N. Am. Elec. Rel. Corp.*, Docket No. RD24-6-000 (Apr. 29, 2024) (unpublished letter order).

⁷⁹ **New Glossary Terms:** ACE Diversity Interchange and Inadvertent Interchange Management; **Modified Glossary Terms:** Actual Net Interchange; ACE; Automatic Generation Control; Automatic Time Error Correction; Balancing Authority Area; Balancing Contingency Event; Control Performance Standard; Disturbance; Dynamic Interchange Schedule or Dynamic Schedule; Frequency Bias Setting; Frequency Error; Implemented Interchange; Inadvertent Interchange; Interchange Meter Error; Operating Reserve – Spinning; Operating Reserve – Supplemental; Overlap Regulation Service; Pseudo-Tie; Ramp Rate or Ramp; Regulation Service; Reportable Balancing Contingency Event; Reporting Area Control Error; Reserve Sharing Group; Reserve Sharing Group Reporting ACE; Scheduled Frequency; Scheduled Net Interchange; Supplemental Regulation Service; Tie Line Bias; Time Error; and Time Error Correction; **Retired Glossary Terms:** Disturbance Control Standard; Net Interchange Schedule; Net Scheduled Interchange; and Reportable Disturbance.

Regional Entity Staff Joint Inquiry into the causes of the February 2021 cold weather event affecting Texas and the south-central United States.

Comments on EOP-012-2 were due on or before March 21, 2024. The ISO/RTO Council (“IRC”), including ISO-NE, protested the proposed Standard citing various issues and concerns regarding the effectiveness of the Freeze Protection Standards as a winterization standard.⁸⁰ NEPGA submitted comments supporting the goals of the Freeze Protection Standards, and while it did not specifically protest or challenge the proposed Freeze Protection Standards, submitted comments requesting that the FERC encourage ISO-NE to work with affected Generator Owners to ensure that the Tariff allows for cost recovery of compliance costs (which, absent changes, it doubted could be achieved currently). On April 2, 2024, EPSA submitted comments supporting NEPGA’s comments, urging the FERC to “survey the markets within its jurisdiction to determine whether there are sufficient vehicles for cost recovery should NERC’s Freeze Protection Standards be approved. If there is a determination that any market does not have sufficient cost recovery pathways in place, the Commission should take action to remedy these issues ahead of the time generators would need to take action in order to meet the effective date of the proposed standard.” Doc-less interventions were filed by Dominion (timely) and out-of-time by Avangrid Renewables, Calpine, PA PUC, and TAPS. Since the last Report, both NERC and TAPS answered the IRC’s protest. NERC and TAPS answered IRC’s April 4 answer on April 16 and April 22, respectively. This matter is pending before the FERC.

- **Revised Reliability Standard: CIP-012-2 (RD24-3)**

On January 31, 2024, NERC filed proposed Reliability Standard CIP-012-2 (Cyber Security – Communications between Control Centers) to improve upon and expand the protections required by Reliability Standard CIP-012-1 by requiring Responsible Entities to mitigate the risk posed by loss of availability of communication links and Real-time Assessment and Real-time monitoring data transmitted between Control Centers. Proposed Reliability Standard CIP-012-2 modifies CIP-012-1 by adding two new Parts to Requirement R1 to address availability: Part 1.2, which requires protections for the availability of data in transit; and Part 1.3, which requires protections to initiate recovery of lost (i.e., unavailable) communication links. Comments on CIP-012-2 were due on or before February 21, 2024; none were filed. This matter is pending before the FERC.

- **NERC Cold Weather Data Collection Plan (RD23-1-002)**

Also on February 16, 2024, NERC filed, in response to the requirements of the *Cold Weather Standards Order*,⁸¹ its plan to gather and analyze certain data related to generator owner declared constraints and the performance of freeze protection measures during future extreme cold weather events (“NERC Cold Weather Data Collection Plan”) to be included in each October 1 annual information filing, the first of which will be submitted on October 1, 2025. Comments on the Cold Weather Data Collection Plan were due on or before March 12, 2024; none were filed. This matter is pending before the FERC.

- **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

⁸⁰ The IRC urged the FERC to direct NERC to revise the standard to: exclude cost-based constraint criteria from the standard itself, recognizing that the issue needs to be addressed through other avenues in the regulatory process; use effective facility performance as a benchmark instead of relying on vague references to “general industry practice”; eliminate language that is vague, unauditible, and susceptible to multiple interpretations by different Generator Owners; narrow the proposed exemptions for existing generating units; shorten and clarify the periods allotted for implementation of freeze protection measures; eliminate grandfathering provisions so that the same enhanced winterization standard applies to all affected generating units regardless of commercial operation date; require annual reviews of declared Generator Cold Weather Constraints; and add timing specificity for required inspections and maintenance.

⁸¹ *N. Am. Elec. Rel. Corp.*, 182 FERC ¶ 61,094 (Feb. 16, 2023) (“*Cold Weather Standards Order*”), *reh’g denied*, 183 FERC ¶ 62,034 (Apr. 20, 2023), *order addressing arguments raised on reh’g*, 183 FERC ¶ 61,222 (June 29, 2023).

development project (Project 2016-02 – Modifications to CIP Standards (“Project 2016-02”))⁸² on March 13, 2024. Project 2016-02 focuses on modifications to the CIP Reliability Standards to incorporate applicable protections for virtualized environments. In the March 13 report, NERC reported that the schedule for Project 2016-02 has been further revised slightly and now calls for final balloting of revised standards in April (rather than March) 2024; NERC Board of Trustees Adoption is still scheduled for May 2024 and filing of the revised standards with the FERC in **June 2024**.

- **NERC Reserve Policy Revisions (RR24-1)**

On April 5, 2024, the FERC approved NERC’s revisions to its Working Capital and Operating Reserve Policy (“Reserve Policy”).⁸³ The Reserve Policy Revisions: (i) cite to relevant FERC orders, including the Modified Settlement Agreement,⁸⁴ rather than outlining certain filing requirements; (ii) modify internal approval thresholds for budget re-directions or unbudgeted reserve use (using percentages rather than set dollar amounts of FERC-approved budgets) and requiring quarterly reporting to the FERC of any use of such reserves or budget redirections; (iii) update the target range for the Operating Contingency Reserve from 3.5-7% to 8-16% (increasing reserves from one-two weeks to one-two months of NERC’s budget); (iv) include updates to reflect Cybersecurity Risk Information Sharing Program reserve categories and approval processes; (v) permit use of the Assessment Stabilization Reserve for other uses in “extreme and highly unusual circumstances”; and (vi) to reflect non-substantive revisions to improve readability, organization, and consistency of terms.

- **NERC 2024 Standards Report (RR09-6)**

On March 22, 2024, NERC filed its 2024 Standards Report, Status and Timetable for Addressing Regulatory Directives summarizing the progress made and plans for addressing the reliability standard-related directives issued by the FERC. NERC reported that since March 27, 2023, the date of NERC’s last annual report, (i) the FERC issued eight new directives, (ii) it filed petitions with the FERC addressing six directives, and that (iii) currently, there are 13 outstanding directives, 7 of which NERC is addressing through standards development projects. These filings are not noticed for public comment.

- **RTO Recommendations for Gas-Electric Coordination**

On February 21, 2024, ISO-NE, MISO, PJM, and SPP (“Joint RTOs”) released “[Strategies for Enhanced Gas Electric Coordination: A Blueprint for National Progress](#),” a paper recommending potential initiatives that could help enhance the reliability of gas-electric coordination. Joint RTOs put forth a range of immediate- and near-term initiatives aimed at enhancements to the gas market, RTO operations, and coordination between state and federal regulators. The Joint RTOs identify specific recommendations along with suggested specific action steps to be undertaken respectively by the RTOs; gas producers, marketers, and pipelines; and/or federal and state regulators corresponding to each recommendation.

XI. Misc. - of Regional Interest

- **203 Application: Eversource/ GIP IV (EC24-59)**

On March 13, 2024, North East Offshore, LLC, Revolution Wind, LLC, South Fork Wind, LLC (together with North East Offshore and Revolution Wind, the “Companies”), and GIP IV Whale Fund Holdings, L.P. (“GIP Whale”) requested FERC authorization for a proposed transaction pursuant to which GIP Whale and/or one more of its affiliates would acquire Eversource Investment, LLC’s interests in the Companies (the “Proposed Transaction”). After the Proposed Transaction, GIP Whale will acquire: (1) Eversource Investment’s 50 percent interest in North East Offshore and will thereby also indirectly acquire a 50 percent interest in Revolution Wind; and (2) Eversource

⁸² 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.

⁸³ *N. Am. Elec. Rel. Corp.*, 187 FERC ¶ 61,011 (Apr. 5, 2024) (“Reserve Policy Revisions Order”).

⁸⁴ *N. Am. Elec. Rel. Corp.*, 185 FERC 61,055 (“Modified Settlement Agreement”) (order modifying 2013 settlement agreement).

Investment's 50 percent Class B interest in South Fork Class B and will thereby also indirectly acquire an indirect interest in South Fork Wind. Comments on this 203 application were due on or before April 3, 2024; none were filed. Public Citizen filed a doc-less motion to intervene. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **203 Application: GIP/BlackRock (EC24-58)**

On March 12, 2024, Global Infrastructure Management, LLC ("GIM") d/b/a Global Infrastructure Partners, on behalf of investment funds sponsored by GIM that own public utility subsidiaries, and BlackRock, Inc. requested authorization for a transaction pursuant to which BlackRock Funding Inc. will acquire 100% of the LLC interests in GIM and thereby an indirect controlling interest in the GIM public utility subsidiaries, including, among others, Clearway Power Marketing and GennConn Energy. Following an errata notice, comments on this 203 application are due on or before **May 13, 2024**. Thus far, interventions have been filed by PJM, the PJM IMM, the Private Equity Stakeholder Project,⁸⁵ and Public Citizen. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

On July 28, 2023, the FERC authorized⁸⁶ 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).

- **PURPA Enforcement Petition – Allco Finance Ltd/CT DEEP (EL24-95)**

On March 27, 2024, Allco Finance Limited ("Allco") petitioned the FERC to initiate an enforcement action against the Connecticut Department of Energy and Environmental Protection ("CT DEEP") to remedy what it asserts is CT DEEP's improper implementation of section 210 of PURPA. Allco asked the FERC to (i) invalidate and permanently enjoin the Shared Clean Energy Facility program's 50 MW volumetric cap, (ii) invalidate and permanently enjoin the CT DEEP from implementing Conn. Gen. Stat. §§ 16a-3f, 16a-3g, 16a-3j, and 16a-3m, which compel CL&P and UI to procure energy from zero carbon resources that have a 5 MW or greater nameplate capacity rating and participate in the New England Markets, (iii) invalidate and permanently enjoin the CT DEEP from implementing solicitations for off-shore wind facilities and/or nuclear facilities, and (iv) to permanently enjoin the CT DEEP from regulating wholesale sales except as permitted by PURPA. Comments on the filing were due on or before April 17, 2024; CT DEEP protested the Petition. Eversource intervened doc-lessly. 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).

⁸⁵ The Private Equity Stakeholder Project states that it supports stakeholders impacted by private equity firms and similar private asset managers. See <https://pestakeholder.org/>.

⁸⁶ *Three Corners Solar, LLC and Three Corners Prime Tenant, LLC*, 184 FERC ¶ 62,060 (Jul. 28, 2023).

- **SGIA – NEP/Ampersand Gillman (ER24-1851)**

On April 26, 2024, NEP filed a non-conforming SGIA to govern the interconnection of Ampersand Gillman’s four hydroelectric facilities (total capacity of 5.05MW) in Vermont and to replace the existing interconnection agreement between NEP and Ampersand Gilman’s predecessor in interest, American Paper Mills of Vermont, Inc. The SGIA is non-conforming in that ISO-NE is not a party to the agreement. An April 5, 2024 effective date was requested. Comments on the SGIA filing are due on or before **May 17, 2024**. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **LGIA – ISO-NE/NEP/SouthCoast Wind (ER24-1840)**

On April 25, 2024, ISO-NE and NEP filed a non-conforming LGIA to govern the interconnection of SouthCoast Wind Energy LLC’s (“SouthCoast Wind”) 14.7 MW offshore wind facility off the coast of Massachusetts, which interconnects to the Brayton Substation. The LGIA is non-conforming in that it contains limited deviations from the Schedule 22 *pro forma* LGIA that are necessary to reflect unique characteristics of SouthCoast Wind’s proposed interconnection, including the interconnection of its facility to the Administered Transmission System through Somerset Wind Link LLC’s proposed Internal Elective Transmission Upgrade. A March 26, 2024 effective date was requested. Comments on the LGIA filing are due on or before **May 16, 2024**. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **EPC Cancellation – CMP/FPL Wyman (ER24-1510)**

On March 15, 2024, CMP filed a Notice of Termination of its Engineering and Procurement Agreement with FPL Energy Wyman, LLC (“FPL Wyman”). CMP reported that the notice was being filed because it had completed the services set forth in the Agreement. CMP requested a March 15, 2024 effective date for the termination notice. Comments on this filing were due on or before April 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).

- **LGIA – ISO-NE/CMP/Andro Hydro (ER24-1477)**

On March 13, 2024, ISO-NE and CMP filed a non-conforming LGIA to govern the interconnection of Andro Hydro, LLC’s 27.57 MW hydro facility, which interconnects to the Jay Substation. The LGIA is non-conforming in that it contains limited deviations from the Schedule 22 *pro forma* LGIA that are necessary to reflect unique characteristics of Andro Hydro’s proposed interconnection, including the interconnection of its facility through shared facilities co-owned, and used by, JGT2 Redevelopment LLC to serve its own load. A February 12, 2024 effective date was requested. Comments on the LGIA filing were due on or before April 3, 2024; none were filed. Andro Hydro intervened doc-lessly. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **LGIA – ISO-NE/NSTAR/MMWEC (ER24-1238)**

On February 12, 2024, ISO-NE and NSTAR (“Filing Parties”) filed a non-conforming LGIA to govern the interconnection of MMWEC’s existing Large Generating Facility and the Surplus Interconnection of MMWEC’s new 6.9 MW solar generating facility, both of which are located in Ludlow, MA. The LGIA is non-conforming in that it includes a fourth party, the Surplus Interconnection Customer, and also contains non-conforming changes that are necessary in light of MMWEC’s representations regarding its ability to meet the indemnification requirement. A January 10, 2024 effective date was requested. Comments on the LGIA filing were due on or before March 4, 2024; none were filed. Since the last Report, on April 5, 2024, the Filing Parties supplemented the February 12 filing in two ways: first, Filing Parties corrected the requested date identified in the transmittal letter’s conclusion to January 10, 2024 (rather than July 10, 2020, as incorrectly noted there). Second, Filing Parties requested waiver of the FERC’s prior notice requirements since the executed agreement was filed 33, rather than 30 or less days, after it was executed. Comments on the supplement were due on or before April 26, 2024; none were filed. This matter is again pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **RFA – PSNH/NECEC (ER24-1210)**

On April 5, 2024, the FERC accepted a Related Facilities Agreement (“RFA”) filed by PSNH that sets forth the terms and conditions under which it will construct Related Facilities in its New Hampshire service territory to allow the reliable interconnection of NECEC Transmission’s Project.⁸⁷ The RFA was accepted effective as of *February 9, 2024*, as requested. Unless the April 5 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **CMP ESF Rate (ER24-1177)**

On April 1, 2024, the FERC accepted, subject to refund and settlement judge procedures, CMP’s rate schedule for distribution services for electric storage facilities (“ESFs”) seeking to participate in the ISO-NE Market (“ESF Rate”).⁸⁸ As previously reported, CMP filed the ESF Rate following re-consideration by the MPUC of the jurisdictional applicability of the ESF rate (which, while it recovers costs associated with the use of local the distribution network, the MPUC found upon re-consideration to include charges related to a FERC-jurisdictional wholesale transaction per *Order 841*). CMP sought in this proceeding to obtain FERC approval of a modified version of the MPUC Rate, with the primary difference between the MPUC Rate and the ESF Rate being the removal of state benefit charges. In the *CMP ESF Rate Order*, the FERC found that CMP’s filing had not been shown to be just and reasonable, and raised issues of material fact that could not be resolved based on the record and would be more appropriately addressed in hearing and settlement judge procedures.⁸⁹ Accordingly, the FERC accepted the filing, subject to refund, and established hearing and settlement judge procedures. The FERC denied CMP’s request for waiver of the FERC’s 60-day prior notice requirement, and accepted the ESF Rate effective April 2, 2024, though, as noted, subject to refund and hearing and settlement judge procedures.⁹⁰ The FERC encouraged efforts to reach settlement before hearing procedures commence and will hold the hearing in abeyance pending the outcome of settlement judge procedures. As directed, the Chief ALJ appointed a settlement judge, Judge Jeremy Hessler, to assist participants in settling the issues in this proceeding, and deemed the settlement proceedings continued without further action.⁹¹ Judge Hessler was directed to submit his first report on or before **June 10, 2024**, and to submit a report every 60 days thereafter as to the parties’ progress toward settlement. On April 9, 2024, Versant Power moved to intervene out-of-time. 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; none were filed. On February 12, PERC intervened doc-lessly. On February 29, 2024, Versant Power asked that the FERC take no action on the filed notice of cancellation prior to **May 1, 2024**, in order to allow Versant and the new owner of the PERC facility, which may wish to reenergize the facility and assume the IA, to agree to a course of action. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

⁸⁷ *Public Service Co. of New Hampshire*, Docket No. ER24-1210-000 (Apr. 5, 2024) (unpublished letter order).

⁸⁸ *Central Maine Power Co.*, 187 FERC ¶ 61,002 (Apr. 1, 2024) (“*CMP ESF Rate Order*”).

⁸⁹ *Id.* at P 29.

⁹⁰ *Id.*

⁹¹ *Central Maine Power Co.*, Docket No. ER24-1177-000 (Apr. 5, 2024) (unpublished letter order).

XII. Misc. - Administrative & Rulemaking Proceedings⁹²

- **Joint Federal-State Current Issues Collaborative (AD24-7)**

On March 21, 2024, the FERC issued an order establishing a Federal and State Current Issues Collaborative (“Collaborative”).⁹³ The Collaborative will be the successor to the Joint Federal-State Task Force on Electric Transmission (“Transmission Task Force” or “JFSTF”),⁹⁴ which by design will expire on November 10, 2024 (3 years from its first public meeting). The FERC stated that the Collaborative will provide a venue for federal and state regulators to share perspectives, increase understanding, and, where appropriate, identify potential May 1, 2024 Report regarding challenges and coordination on matters that impact specific state and federal regulatory jurisdiction, including (but not limited to) the following: electric reliability and resource adequacy; natural gas-electric coordination; wholesale and retail markets; new technologies and innovations; and infrastructure. The Collaborative will similarly be comprised of all FERC Commissioners as well as representatives from 10 state commissions, who will be nominated for and serve one-year terms from the date of appointment by the FERC. The FERC will issue notices announcing the time, place and agenda for each meeting of the Collaborative, after consulting with members of the Collaborative and considering suggestions from state commissions. Collaborative meetings will be on the record, and open to the public for listening and observing. The FERC expects that the first public meeting of the Collaborative will be held in the Fall of 2024. The Collaborative will expire 3 years after its first public meeting, but may be extended for an additional period of time prior to its expiration by agreement of both FERC and NARUC.

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

On October 19, 2023, the FERC issued a NOPR⁹⁵ 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. Comments on the NOPR were filed by [ISO-NE](#), [CAISO](#), [MISO](#), [NYISO](#), [PJM](#), [BPA](#), [EEI](#), [Energy Compliance Consulting](#), [EPISA](#), [Interstate Gas Supply](#), [Macquarie](#), [PG&E](#), [Systrends](#), [Tri-State](#), [XBRL US](#). This matter is pending before the FERC.

⁹² Reporting on the following Administrative proceedings have been suspended since the last Report and will be continued if and when there is new activity to report: ACPA Petition for Capacity Accreditation Technical Conference (AD23-10); and Reliability Technical Conference (AD23-9).

⁹³ *Joint Federal-State Task Force on Elec. Transmission and Federal and State Current Issues Collaborative*, 186 FERC ¶ 61,189 (Mar. 21, 2024) (“*Order Establishing Collaborative*”).

⁹⁴ *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).

⁹⁵ *Revisions to the Filing Process and Data Collection for the Electric Quarterly Report*, 185 FERC ¶ 61,043 (Oct. 19, 2023) (“*EQR NOPR*”).

- **Orders 2023 and 2023-A: Interconnection Reforms (RM22-14)**

Order 2023. On July 28, 2023, the FERC issued *Order 2023*,⁹⁶ its final rule on proposed reforms to the *pro forma* Large Generator Interconnection Procedures (“LGIP”), *pro forma* Small Generator Interconnection Procedures (“SGIP”), *pro forma* Large Generator Interconnection Agreement (“LGIA”), and *pro forma* SGIA to address interconnection queue backlogs, improve certainty, and prevent undue discrimination for new technologies. *Order 2023* adopts reforms to: (i) implement a first-ready, first-served cluster study process;⁹⁷ (ii) increase the speed of interconnection queue processing;⁹⁸ and (iii) incorporate technological advancements into the interconnection process.⁹⁹ Many of the reforms adopted in *Order 2023* closely track the reforms set out in the FERC’s Notice of Proposed Rulemaking.¹⁰⁰ However, the FERC did revise aspects of the reforms.¹⁰¹ *Order 2023* became effective November 6, 2023¹⁰² (60 days from its publication in the *Federal Register* (“Publication Date”)).

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

⁹⁷ A first-ready, first-served cluster study process improves efficiency in the interconnection study process by including the following elements: increased access to information prior to entering the queue; a mechanism to study interconnection requests in groups where all interconnection requests in the group are equally queued and of equal study priority; and increased financial commitments and readiness requirements to enter and proceed through the queue. In contrast, the existing first-come, first-served serial study process in the *pro forma* LGIA and LGIP provides limited information to interconnection customers prior to entering the queue, assigns interconnection requests an individual queue position based solely on the date of entry into the queue, and contains limited financial and readiness requirements.

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

⁹⁸ In order to increase the speed of interconnection queue processing, *Order 2023*: (1) eliminates the reasonable efforts standard for conducting interconnection studies and imposes a financial penalty on transmission providers that fail to meet interconnection study deadlines; and (2) establishes an affected system study process and associated *pro forma* affected system agreements.

⁹⁹ In order to incorporate technological advancements into the interconnection process, *Order 2023* requires transmission providers to: (1) allow more than one generating facility to co-locate on a shared site behind a single point of interconnection and share a single interconnection request; (2) evaluate the proposed addition of a generating facility at the same point of interconnection prior to deeming such an addition a material modification if the addition does not change the originally requested interconnection service level; (3) allow interconnection customers to access the surplus interconnection service process once the original interconnection customer has an executed LGIA or requests the filing of an unexecuted LGIA; (4) use operating assumptions in interconnection studies that reflect the proposed charging behavior of an electric storage resource; and (5) evaluate the list of alternative transmission technologies enumerated in this final rule during the generator interconnection study process.

¹⁰⁰ *Order 2023* also requires: (i) interconnection customers requesting to interconnect a non-synchronous generating facility to: (a) provide the transmission provider with the models needed for accurate interconnection studies; and (b) have the ability to maintain power production at pre-disturbance levels and provide dynamic reactive power to maintain system voltage during transmission system disturbances and within physical limits; (ii) all newly interconnecting large generating facilities provide ride through capability consistent with any standards and guidelines that are applied to other generating facilities in the balancing authority area on a comparable basis; and (iii) with respect to the *pro forma* SGIP and *pro forma* SGIA, the incorporation of enumerated alternative transmission technologies into the interconnection process, and the provision of modeling and ride through requirements for non-synchronous generating facilities.

¹⁰¹ Reforms revised in *Order 2023* pertain to the cluster study process, allocation of cluster study and network upgrade costs, increased financial commitments and readiness requirements, financial penalties for delayed interconnection studies, the affected system study process, *pro forma* affected system agreements, the material modification process, operating assumptions for interconnection studies, incorporating the enumerated alternative transmission technologies, and ride through requirements. In addition, the FERC declined to adopt the NOPR proposals pertaining to informational interconnection studies, shared network upgrades, the optional resource solicitation study, and the alternative transmission technologies annual report.

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

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".¹⁰³ 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." The FERC issued that order, *Order 2023-A*, on March 21, 2024 (see immediately below). Several parties submitted petitions in Federal Court challenging *Order 2023*. Developments in those federal court proceedings will be summarized in Section XVI below.

Order 2023-A. On March 21, 2024, the FERC issued *Order 2023-A*¹⁰⁴ addressing arguments raised on rehearing of *Order 2023*. *Order 2023-A* set aside, in part, and clarified *Order 2023*. Among other things, in *Order 2023-A* the FERC:

- upheld its prior determination that eliminating the Reasonable Efforts Standard with firm steady deadlines was "warranted as part of a package of comprehensive reforms to address interconnection queue delays and backlogs;"¹⁰⁵
- denied several requests for rehearing or clarification regarding the transition process, including requests to revise the deposit amounts and withdrawal penalty amounts for the transitional process;¹⁰⁶

¹⁰³ *Improvements to Generator Interconnection Procedures and Agreements*, 184 FERC ¶ 62,163 (Sep 28, 2023) ("*Order 2023 Allegheny Notice*").

¹⁰⁴ *Improvements to Generator Interconnection Procedures and Agreements*, 186 FERC ¶ 61,199 (Mar. 21, 2024) ("*Order 2023-A*").

¹⁰⁵ *Id.* at P 280.

¹⁰⁶ *Id.* at P 257.

- declined to revise the eligibility date for participation in a transitional cluster study or set a size threshold for the transitional cluster study;¹⁰⁷
- declined to clarify whether transmission providers may use Energy Resource Interconnection Service (“ERIS”) or Network Resource Interconnection Service (“NRIS”) assumptions for public heatmaps, rather than just NRIS, but provided that a transmission provider may propose on compliance an option for heatmap users to view results using ERIS assumptions in addition to NRIS assumptions;¹⁰⁸
- declined requests to revisit the requirement that transmission providers evaluate the list of alternative transmission technologies and noted that as long as a transmission provider has evaluated the list, it has complied with Order 2023 and affirmed its prior decision not to include dynamic line ratings or storage-as-a-transmission-asset on the list of alternative transmission technologies.¹⁰⁹

Due to breadth of the issues addressed in *Order 2023-A*, the FERC extended the *Order 2023* compliance filing deadline until 30 days after the date *Order 2023-A* is published in the *Federal Register* which, as of the date of this Report, has not yet occurred. A more [fulsome summary](#) from NEPOOL Counsel of the Order was distributed to, and was reviewed with, the Transmission Committee at the March 27, 2024 TC Meeting. ISO-NE’s Order 2023 Revisions were unanimously supported at the March 7 Participants Committee meeting, but are not to be filed until closer to the as-yet-to-be-determined updated compliance filing deadline. On April 22, 2024, PacificCorp filed a petition for review of *Order 2023-A* before the DC Circuit (Case No. 24-1093). This proceeding was consolidated with other proceedings related to *Order 2023* (see Section XVI below).

If you have any questions concerning this matter, please contact Margaret Czepiel (202-218-3906; mzczepiel@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

On December 15, 2022, the FERC issued a NOPR¹¹⁰ 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](#), [EEL/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.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at P 95.

¹⁰⁹ *Id.* at P 615.

¹¹⁰ *Applications for Permits to Site Interstate Elec. Transmission Facilities*, 181 FERC ¶ 61,205 (Dec. 15, 2022) (“*Transmission Siting NOPR*”).

- **NOPR: Compensation for Reactive Power Within the Standard Power Factor Range (RM22-2)**

On March 21, 2024, the FERC issued a NOPR¹¹¹ proposing revisions to Schedule 2 of the *pro forma* OATT, § 9.6.3 of the *pro form* LGIA, and § 1.8.2 of the *pro forma* SGIA to prohibit separate compensation to generators for the provision of reactive power within the standard power factor range or “deadband.”¹¹² The proposed change may affect revenues received by reactive power resources in New England.¹¹³ The NOPR seeks comments on, among other issues, the following:

- (i) The reliability impact of prohibiting transmission providers from including in their transmission rates any charges associated with the supply of reactive power within the standard power factor range from a generating facility in regions where generating facilities currently receive such compensation;
- (ii) Whether, and if so how, the elimination of separate reactive power payments will affect generating facilities’ ability to recover their costs in the markets that currently provide reactive power compensation within the standard power factor range;
- (iii) Whether, and if so how, eliminating separate reactive power compensation within the standard power factor range may affect investment decisions to build, or finish building, generation facilities, and whether, and if so how, the elimination could otherwise affect generators’ business decisions in those markets; and
- (iv) If the FERC allows existing generation resources that have previously received compensation for reactive power supply to continue to receive compensation for a limited period while prohibiting new generation resources from receiving reactive power compensation, how should it determine eligibility for continued compensation in a manner that is just and reasonable and not unduly discriminatory or preferential.¹¹⁴

Initial comments on the *Reactive Power NOPR* are due **May 27, 2024**; reply comments, **June 26, 2024**.¹¹⁵ NEPOOL Counsel prepared a [summary](#) of the NOPR which was distributed to, and was reviewed with, the Transmission Committee at the March 27, 2024 TC Meeting.

Comment Date Extension Request. On April 25, 2024, EPSA, the PJM Power Providers Group, NEPGA and Independent Power Producers of New York (collectively, the “Indicated Energy Trade Associations”) filed a motion requesting that the FERC extend the NOPR comment deadline until 45 days after the D.C. Circuit issues its decision on challenges to the elimination of all charges for the provision of reactive power within the standard power factor range under the MISO Tariff. On April 30, ACPA/SEIA, Vistra/Dynegy, and Renewable Generation Companies¹¹⁶ supported the extension request; Joint Customers¹¹⁷ opposed the request. The comments filed with respect to the extension request are pending before the FERC.

¹¹¹ *Compensation for Reactive Power Within the Standard Power Factor Range*, 186 FERC ¶ 61,203 (Mar. 21, 2024) (“*Reactive Power NOPR*”).

¹¹² *Reactive Power NOPR* PP 51-53.

¹¹³ Generating facilities in New England are compensated for reactive power under a flat, inflation-adjusted rate design.

¹¹⁴ *Id.* at PP 47, 49, 56.

¹¹⁵ The *Reactive Power NOPR* was published in the Fed. Reg. on Mar. 28, 2024 (Vol. 89, No. 61) pp. 21,454-21,468.

¹¹⁶ “Renewable Generation Companies” are: Capital Power Corporation; D. E. Shaw Renewable Investments, L.L.C.; Invenergy Renewables LLC, Lightsource Renewable Energy Operations, LLC; National Grid Renewables Development, LLC, NextEra Energy Resources, LLC, and RWE Renewables Americas, LLC.

¹¹⁷ “Joint Customers” are: Northern Virginia Elec. Coop., Inc. (“NOVEC”), Old Dominion Elec. Coop. (“ODEC”); and Dominion Energy Services, Inc. on behalf of Virginia Electric and Power Company d/b/a Dominion Energy Virginia (“Dominion”).

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

Following its ANOPR process,¹¹⁸ the FERC issued on April 21, 2022 a NOPR¹¹⁹ that would require public utility transmission providers to:

- (v) 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;
- (vi) more fully consider dynamic line ratings and advanced power flow control devices in regional transmission planning processes;
- (vii) 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;
- (viii) 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
- (ix) 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, May 1, 2024 Report 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.

¹¹⁸ 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](#).

¹¹⁹ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 179 FERC ¶ 61,028 (Apr. 21, 2022) (“*Transmission NOPR*”).

Comments. Following a number of requests for extensions of time, comments on the *Transmission NOPR* were due August 17, 2022.¹²⁰ Nearly 200 sets of comments were filed, including comments by [NEPOOL](#), [ISO-NE](#), [Acadia/CLF](#), [Anbaric](#), [AEU](#), [Avangrid](#), [BP](#), [Dominion](#), [Enel](#), [Engie](#), [Eversource](#), [Invenergy](#), [LSP Power](#), [MOPA](#), [MMWEC/CMEEC/NHEC/VPPSA](#), [National Grid](#), [NECOES](#), [NESCOE](#), [NextEra](#), [NRG](#), [Onward Energy](#), [Orsted](#), [PPL](#), [Shell](#), [Transource](#), [VELCO](#), [Vistra](#), [ISO/RTO Council](#), [NERC](#), [US DOJ/FTC](#), [MA AG](#), [State Agencies](#), [VT PUC/DPS](#), [Potomac Economics](#), [ACPA](#), [ACRE](#), [APPA](#), [EEL](#), [EPSA](#), [Industrial Customer Organizations](#), [LPPC](#), [NASUCA](#), [NRECA](#), [Public Interest Organizations](#), [SEIA](#), [TAPS](#), [WIRES](#), [Harvard Electricity Law Initiative](#), [New England for Offshore Wind](#), and the [R Street Institute](#).

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

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](#),¹²¹ [Institute for Policy Integrity at NYU](#), [Rocky Mountain Institute](#), [EEL](#), [ELCON](#), [Niskanen Center](#), [WIRES](#), and a number of individuals and organizations urging the FERC to finalize the *Transmission NOPR*. The [Harvard Electricity Law Initiative](#) responded to WIRES’ comments.

On March 20, 2024, NESCOE filed a motion requesting that the FERC reject late-filed comments. In the alternative, if the FERC accepts those comments, NESCOE asked that the FERC accept its supplemental comments that were also included with their March 20 motion.

This matter remains pending before the FERC. The FERC is expected to act on the *Transmission NOPR* at a **special May 13, 2024 meeting**. Any action taken on May 13 will be summarized by NEPOOL Counsel and reviewed with the Transmission Committee at the TC’s May 16 meeting. 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).

¹²⁰ 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.

¹²¹ 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, North West 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.

XIII. FERC Enforcement Proceedings

Electric-Related Enforcement Actions

- **Ketchup Caddy / Phillip Mango (MISO DR Program Violations) (IN23-14)**

As previously reported, on February 21, 2024, the FERC directed Ketchup Caddy, LLC (“Ketchup Caddy”) and Phillip Mango, Ketchup Caddy’s CEO and co-owner (together, “Respondents”), to show cause why they should not be found to have violated FPA section 222, along with section 1c.2 of the FERC’s regulations, Sections 69A.3.5 and 69A.7.1 of the MISO Tariff by offering uncontracted resources into the annual Planning Resource Auctions (“PRAs”) that MISO uses to procure capacity necessary to maintain the reliability of the MISO grid.¹²² The FERC directed Ketchup Caddy and Mango to show cause why they should not be assessed **civil penalties of \$25 million** and **\$1.5 million**, respectively, and why **Mango** should not **disgorge \$506,502, plus interest**, in unjust profits. Enforcement alleges that “Ketchup Caddy operated as a fraudulent enterprise with no legitimate market activity, registering and clearing demand response resources without their knowledge or consent and collecting capacity payments in turn, without making payments to the registered resources. Mango ... made no attempt to contract with—or even to contact—legitimate customers, and the purported customers Ketchup Caddy registered with MISO would not have responded if dispatched. Collectively, Mango and his co-owner received \$1,013,004 in capacity payments paid to Ketchup Caddy by MISO during the Relevant Period. Staff’s recommended penalties are predicated on its finding that Respondents caused \$17,639,142.07 in losses to other suppliers because Ketchup Caddy’s fraudulent offers lowered capacity prices in the 2019/20, 2020/21, and 2021/22 MISO PRAs.”¹²³ Respondents had 30 days to file an answer or to make an election to have the procedures set forth in Section 31(d)(3) of the FPA apply to this proceeding;¹²⁴ they did neither. On April 10, 2024, OE Litigation Staff moved for summary disposition of these matters. That motion is pending before the FERC. 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,¹²⁵ 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,¹²⁶ 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

¹²² *Ketchup Caddy, LLC and Philip Mango*, 186 FERC ¶ 61,132 (Feb. 21, 2024).

¹²³ *Id.* at P 3.

¹²⁴ Under that provision, if the FERC finds a violation, the FERC will issue a penalty assessment and, if not paid within 60 days of the order assessing penalties, the FERC will institute an action in the appropriate United States district court.

¹²⁵ 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.

¹²⁶ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 183 FERC ¶ 61,190 (June 14, 2023) (“*June 14 Order*”).

remains suspended until the Northern District's stay is lifted or dissolved such that hearing procedures may resume.

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

On December 16, 2021, the FERC issued a show cause order¹²⁷ 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,¹²⁸ 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;¹²⁹ (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.¹³⁰ 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 order¹³¹ 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 2012.¹³²

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

¹²⁷ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 177 FERC ¶ 61,182 (Dec. 16, 2021) ("*Rover/ETP Tuscarawas River HDD Show Cause Order*").

¹²⁸ *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*").

¹²⁹ 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.

¹³⁰ *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.

¹³¹ *Total Gas & Power North America, Inc.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) ("*TGPNA Show Cause Order*").

¹³² The allegations giving rise to the Total Show Cause Order were laid out in a September 21, 2015 FERC Staff Notice of Alleged Violations which summarized OE's case against the Respondents. Staff determined that the Respondents violated NGA section 4A and the Commission's Anti-Manipulation Rule by devising and executing a scheme to manipulate the price of natural gas in the southwest United States between June 2009 and June 2012. Specifically, Staff alleged that the scheme involved making largely uneconomic trades for physical natural gas during bid-week designed to move indexed market prices in a way that benefited the company's related positions. Staff alleged that the West Desk implemented the bid-week scheme on at least 38 occasions during the period of interest, and that Tran and Hall each implemented the scheme and supervised and directed other traders in implementing the scheme.

on Total's and TGPL's significant control and authority over TGPNA's daily operations. Respondents filed their answer on July 12, 2016. OE Staff replied to Respondents' answer on September 23, 2016. Respondents answered OE's September 23 answer on January 17, 2017, and OE Staff responded to that answer on January 27, 2017.

Hearing Procedures. On July 15, 2021, the FERC issued an order establishing hearing procedures to determine whether Respondents violated the FERC's Anti-Manipulation Rule, and to ascertain certain facts relevant for any application of the FERC's Penalty Guidelines.¹³³ 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.¹³⁴

On June 14, 2023, the Commission issued an Order on Presiding Officer Reassignment,¹³⁵ 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.¹³⁶ 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

¹³³ *Total Gas & Power North America, Inc. et al.*, 176 FERC ¶ 61,026 (July 15, 2021).

¹³⁴ *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).

¹³⁵ *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*").

¹³⁶ *Iroquois Gas Transmission Sys., L.P.*, 178 FERC ¶ 61,200 (2022) ("*Iroquois Certificate Order*").

equivalent to those in its precedent agreements, prior to commencing construction. The March 25, 2022 order also approved, as modified, Iroquois’ proposed incremental recourse rate and incremental fuel retention percentages as the initial rates for transportation on the Enhancement by Compression Project.

- ▶ On April 18, 2022, Iroquois accepted the certificate issued in the *Iroquois Certificate Order*.
- ▶ On June 17, 2022, in accordance with the *Iroquois Certificate Order*, Iroquois submitted its Implementation Plan, documenting how it will comply with the FERC’s Certificate conditions.
 - ▶ In its March 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 (“NYDEC”) and the CT DEEP. Iroquois noted that the public comment period on the NY DPS reliability and needs determination, noticed by NYDEC was open until March 29, 2024. Iroquois has still not yet requested or received authorization to commence construction; accordingly, no construction activities were undertaken in February 2024 and no construction was planned for March 2024.

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).

- **Mystic Second CapEx Info Filing - Request for Rehearing (24-1077)**
Underlying FERC Proceeding: ER18-1639-028¹³⁷
Petitioner: Mystic
Status: Initial Submissions Due May 6, 2024

On April 3, 2024, Constellation Mystic Power, LLC petitioned the DC Circuit Court of Appeals for review of the FERC’s orders. The Court ordered Mystic to file, by May 6, 2024, a Certificate as to Parties, Rulings, and Related Cases, a Docketing Statement, a Statement of Intent to Utilize Deferred Joint Appendix, a Statement of Issues, and the Underlying Decision from which the appeal arose. Appearances and other procedural motions, if any, are also due on or before May 6. A Certified Index to the Record and Dispositive Motions, if any, are due on or before May 20, 2024.

Thus far, a collective of Massachusetts municipal utilities have intervened.¹³⁸

¹³⁷ *Constellation Mystic Power, LLC*, 185 FERC ¶ 61,170 (Dec. 5, 2023) (“*Second CapEx Info Filing Order*”); *Constellation Mystic Power, LLC*, 186 FERC ¶ 62,048 (Feb. 5, 2024) (“*Second CapEx Info Filing Order Allegheny Notice*”).

¹³⁸ Braintree Electric Light Department, Concord Municipal Light Plant, Georgetown Municipal Light Department, Hingham Municipal Lighting Plant, Littleton Electric Light & Water Department, Middleborough Gas & Electric Department, Middleton Electric Light Department, Norwood Light & Broadband Department, Pascoag Utility District, Reading Municipal Light Department, Taunton Municipal Lighting Plant, Wellesley Municipal Light Plant, and Westfield Gas & Electric Department (collectively, the “Eastern New England Consumer-Owned Systems”).

- **Order 2023 (23-1282 (AEU); 23-1284 (MISO); 23-1289 (PacifiCorp); 23-1293 (FPL) (dismissed); 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 (NY TOs); 23-1346 (PacifiCorp); 24-1093 (PacifiCorp)) (consolidated)**

Underlying FERC Proceeding: RM22-14¹³⁹

Petitioners: AEU et al.

Status: Being Held In Abeyance

Several Petitioners have challenged *Order 2023*. Those challenges have now been consolidated, with the AEU docket (23-1282) as the lead docket. Since the issuance of *Order 2023-A* on March 21, 2024, the following parties moved to amend their respective Petitions to account for *Order 2023-A*: FirstEnergy, Dominion, Exelon, MISO TOs and NY TOs. In addition, FPL moved to dismiss its Petition, which the Court granted on April 10, 2024 (23-1293 is dismissed). On April 22, 2024 PacifiCorp petitioned for review of *Order 2023-A* (24-1093) and the docket was consolidated with the rest of the challenges. Since the last Report, in accordance with the Court's directive for parties to file motions to govern future proceedings, on April 16, the FERC asked that the consolidated cases continue to be held in abeyance pending further order of the Court. The motion is pending.

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

Underlying FERC Proceeding: ER22-983¹⁴⁰

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 Compliance Orders*.¹⁴¹ 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, the Court granted the FERC's latest motion to continue to hold cases in abeyance, directing (i) the FERC to file status reports at 60-day intervals beginning on **April 8, 2024**; and (ii) the parties to file motions to govern future proceedings within 14 days of the expiration of the period for filing a petition for review of the FERC's forthcoming order on reh'g of its November 2023 order in ER22-983.

¹³⁹ *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).

¹⁴⁰ *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*").

¹⁴¹ In response to the region's *Order 2222 Changes*, the FERC directed a number of revisions and additional compliance and informational filings to be filed within 30, 60 or 180 days of the *Order 2222 Compliance Order*, as described in previous Reports. When filed, the Filing Parties stated that the *Order 2222 Changes* create a pathway for Distributed Energy Resource Aggregations ("DERAs") to participate in the New England Markets by: creating new, and modifying existing, market participation models for DERA use; establishing eligibility requirements for DERA participation (including size, location, information and data requirements); setting bidding parameters for DERAs; requiring metering and telemetry arrangements for DERAs and individual Distributed Energy Resources ("DERs"); and providing for coordination with distribution utilities and relevant electric retail regulatory authorities ("RERRAs") for DERA/DER registration, operations, and dispute resolution purposes.

- **Seabrook Dispute Order (23-1094, 23-1215) (consolidated)**
Underlying FERC Proceeding: EL21-6, EL 23-3¹⁴²
Petitioner: NextEra Energy Resources, LLC and NextEra Energy Seabrook, LLC
Status: Oral Argument Held Feb 6, 2024; Case Pending Before the Court

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.¹⁴³ 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 was heard on February 6, 2024 by Judges Millett, Katsas and Rao. This matter is pending before the Court.

- **Mystic II (ROE & True-Up)**
(21-1198; 21-1222, 21-1223, 21-1224, 22-1001, 22-1008, 22-1026) (consolidated)
Underlying FERC Proceeding: ER18-1639-010, -011,¹⁴⁴ -013¹⁴⁵ -017¹⁴⁶
Petitioners: Mystic, CT Parties,¹⁴⁷ MA AG, ENECOS
Status: Being Held in Abeyance; Motions to Govern Future Proceedings Due Apr 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

¹⁴² *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*”).

¹⁴³ 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 (“PPF”) 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.

¹⁴⁴ *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).

¹⁴⁵ *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).

¹⁴⁶ *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*).

¹⁴⁷ In this appeal, “CT Parties” are the CT PURA CT PURA, CT DEEP, and the CT OCC.

consolidated cases, and filed a statement of issues. On March 17, 2022, CT Parties moved to intervene, and those interventions were granted on May 4, 2022.

As previously reported, on July 8, 2022, Connecticut Parties and ENECOS jointly moved to hold these proceedings in abeyance until 30 days after the DC Circuit issued an opinion in *MISO Transmission Owners v. FERC*, 16-1325 (“*MISO TOs*”). They requested abeyance on the basis that the consolidated petitions in this proceeding and *MISO TOs* both involve challenges to the FERC’s ROE methodology (the FERC set the ROE used in calculating Constellation’s rates using the methodology challenged in *MISO TOs*). Although Constellation opposed the abeyance request, the Court granted the abeyance request on July 27, 2022, directing the Parties to file motions to govern future proceedings within 30 days of the court’s disposition of *MISO TOs*. The Court has since decided *MISO TOs*. However, the parties continue to agree that this case should remain in abeyance pending further proceedings related to *MISO TOs*, now on remand at the FERC. Most recently, on 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 April 24, 2024, the Court issued an order that these cases remain in abeyance and that the parties file motions to govern future proceedings by **July 23, 2024**.

- **CASPR (20-1333, 21-1031) (consolidated)****

Underlying FERC Proceeding: ER18-619¹⁴⁸

Petitioners: Sierra Club, NRDC, RENEW Northeast, and CLF

Status: Being Held in Abeyance; Motions to Govern Future Proceedings Due Mar 2, 2026

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

Petitioners have moved to hold this matter in abeyance now four times. In the most recent request (filed March 1, 2024) (fourth abeyance request), Petitioners asked the Court to hold this matter in abeyance until March 1, 2026 “in light of the continued delay of the revisions to its capacity market that ISO New England previously asserted were a predicate to eliminating the market impediment that is the subject of the underlying claims before the Court”. The Court granted the request on May 12, 2024, ordering the parties to file motions to govern future proceedings by **March 2, 2026**.

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

Underlying FERC Proceeding: ER15-414¹⁴⁹

Petitioners: TOs (CMP et al.)

Status: Being Held in Abeyance

On August 28, 2020, the TOs¹⁵⁰ 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*¹⁵¹ 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,

¹⁴⁸ *ISO New England Inc.*, 162 FERC ¶ 61,205 (Mar. 9, 2018) (“*CASPR Order*”).

¹⁴⁹ *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) (“*Order Rejecting Filing*”).

¹⁵⁰ 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.

¹⁵¹ *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) (“*Emera Maine*”).

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 FERC remain ongoing and that this appeal should continue to remain in abeyance, was filed on March 26, 2024.

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