

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of June 24, 2024

The following activity, as more fully described in the attached Litigation Report, has occurred since the report dated May 1, 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	Jun 12-13	Senate confirms as FERC Commissioners: David Rosner , for a term expiring Jun 30, 2027; Lindsay S. See , for a term expiring Jun 30, 2028; and Judy W. Chang , for a term expiring Jun 30, 2029
	Jun 17	Commissioner Rosner sworn in

I. Complaints/Section 206 Proceedings

*	1	206 Proceeding: <i>TO Initial Funding Show Cause Order</i> (EL24-83)	Jun 13	FERC institutes Section 206 proceeding; ISO-NE response due on or before Sep 11, 2024 ; interventions due on or before Jul 5, 2024
			Jun 14-24	Calpine, National Grid, NRDC, MADPU, ACPA, EPSA, SEIA, WIRES, PJM IMM intervene

II. Rate, ICR, FCA, Cost Recovery Filings

*	5	CSC CIP-IROL (Schedule 17) Section 205 Cost Recovery Filing (ER24-2159)	May 31	Cross-Sound Cable requests recovery of \$478,182 in incremental medium impact CIP-IROL Costs incurred between Jan 1, 2023 and Dec 31, 2023
	5	FCA18 Results Filing (ER24-1290)	May 7 May 16 Jun 18	ISO-NE files answer to individual comments NCNG answers ISO-NE May 7 answer FERC accepts FCA18 Results, eff. <i>Jun 20, 2024</i>
	6	Versant MPD OATT 2023 Annual Update Settlement Agreement (ER20-1977-006)	Jun 7	FERC approves uncontested Versant MPDOATT 2022 Annual Update Settlement Agreement
	6	Versant MPD OATT 2022 Annual Update Settlement Agreement (ER20-1977-005)	Jun 7	FERC approves uncontested Versant MPDOATT 2022 Annual Update Settlement Agreement
	7	Mystic 8/9 COSA (ER18-1639)		
	9	(-027) Second CapEx Info Filing Settlement Proceedings	May 17 Jun 10 Jun 14 Jun 18	4 th settlement conference held Judge French submits 3 rd status report recommending continuation of settlement proceedings 5 th settlement conference held 6 th settlement conference held
	9	(-028) Second CapEx Info Filing - Request for Rehearing	May 23	FERC issues <i>Second CapEx Info Filing Order Allegheny Order</i> (i) modifying the discussion in the <i>Second CapEx Info Filing Order</i> ; (ii) granting in part and denying in part, the clarifications requested by Mystic (iii) setting aside the <i>Order</i> in part; and (iv) dismissing Mystic’s alternative request for reh’g
*	11	ISO Securities: Authorization for Future Drawdowns (ES24-41)	Jun 17	ISO-NE requests authorization for the issuance of up to \$75 million in senior unsecured notes; comment deadline Jul 8, 2024

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



* 12	eTariff §1.2 Corrections (ER24-2270)	Jun 13	ISO-NE files conforming changes to eTariff §1.2.2 to ensure that the currently effective eTariff Viewer does not include changes to the defined terms that were included earlier with the DASI and SATOA filings, but that are not yet effective and will become effective at a later date
11	FCA19 2-Year Delay (ER24-1710)	May 20	FERC approves FCA19 delay until Feb 2028
12	Waiver Request: Withdrawal from IEP and Return of IEP Net Revenues Received (Canal Marketing/ Canal 3) (ER24-1407)	May 24 Jun 7	Canal requests FERC action on waiver request Canal answers IMM's Mar 25 comments
13	New England's Order 2222 Compliance Filings (ER22-983)	May 23 Jun 10	FERC modifies and sets aside, in part, the Nov 2, 2023 <i>Order 2222 60-Day Compliance Filing Order</i> ; further compliance filing deadline Jul 22, 2024 ISO-NE files Metering Data Submission Revisions (-008) in response to requirements of the Apr 11, 2024 <i>Further Order 2222 Compliance Filing Order</i> ; comment deadline Jul 1, 2024

IV. OATT Amendments / TOAs / Coordination Agreements



* 15	Order 2023 Compliance Changes (ER24-2009)	May 14 May 23-Jun 4 May 31 Jun 4 Jun 20	ISO-NE, NEPOOL and PTO AC file Tariff changes in compliance with Orders 2023 and 2023-A MA DPU, Calpine, RIE, Constellation, NESCOE, Shell Energy/Savion, National Grid, Clearway Energy, and Cordelio Services intervene ISO-NE and NEPOOL file errata to transmittal letter BlueWave , Glenvale , New Leaf , RENEW , Clean Energy Associations , Longroad Energy Holdings file comments ISO-NE answers Jun 4 comments
* 15	Order 2023 Related Changes (ER24-2007)	May 14 May 23-Jun 5 Jun 4 Jun 20	ISO-NE, NEPOOL and PTO AC file Tariff changes related to the <i>Order 2023 Compliance Changes</i> MA DPU, Calpine, Clearway, BlueWave, National Grid, NESCOE, RIE, Shell Energy/Savion, and Cordelio Services intervene Glenvale, Longroad Energy Holdings, New Leaf Energy, RENEW and the Clean Energy Associations file comments ISO-NE answers Jun 4 comments
* 16	LTPP Phase 2 Tariff Changes (ER24-1978)	May 9 May 10-30 May 30 Jun 14 Jun 20	ISO-NE, NEPOOL and PTO ACs submit proposed revisions to OATT Attachment K to establish mechanisms that enable the New England states to develop policy-based transmission facilities in connection with Longer-Term Transmission Studies, and associated cost allocation mechanism Brookfield, Calpine, EDF, MA AG, National Grid, NRG, MA DPU, ME PUC, ACPA, and Public Citizen intervene AEU, NESCOE, Public Interest Organizations, Public Systems, RENEW and NHT/LSPower file comments ISO-NE answers NHT/LSPower, AEU and RENEW comments ISO-NE supplements May 9 filing, identifying changes to definitions in Section 1.2.2 that were included in error in the May 9 filing and proposing a process to backout those incorrectly included changes

V. Financial Assurance/Billing Policy Amendments



No Activities to Report

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

16	Schedule 20A-NEP (ER24-1805); Schedule 21-NEP (ER24-1808)	May 22 Jun 18	NEP files amends Schedule 21-NEP to address minor omission FERC accepts revisions to both Schedules, eff. <i>May 1, 2024</i>
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VII. NEPOOL Agreement/Participants Agreement Amendments

No Activities to Report

VIII. Regional Reports

* 19	Capital Projects Report – 2024/Q1 (ER24-1991)	May 10 May 14 May 20 Jun 24	ISO-NE files Q1 2024 Capital Projects Report NEPOOL files comments supporting ISO-NE 2024 Q1 Report National Grid intervenes FERC accepts 2024/Q1 Report, eff. <i>Apr 1, 2024</i>
* 19	Interconnection Study Metrics Processing Time Exceedance Report 2024/Q1 (ER19-1951)	May 15	ISO-NE files required quarterly report
20	Reserve Market Compliance (36th) Semi-Annual Report (ER06-613)	May 9	National Grid intervenes
* 20	IMM 2023 Annual Markets Report (ZZ24-4)	May 24	IMM files annual report covering calendar year 2023; to be discussed at the July 9-10 Markets Committee Summer Meeting
* 21	IMM Quarterly Markets Reports (ZZ24-4)	May 31	IMM files Winter 2023/24 Report
* 21	ISO-NE FERC Form 3Q (2024/Q1) (not docketed)	May 22	ISO-NE submits its 2024 Q1 FERC Form 3Q
* 22	ISO-NE FERC Form 714 (2023) (not docketed)	May 31	ISO-NE submits its 2023 FERC Form 714

IX. Membership Filings

* 22	June 2024 Membership Filing (ER24-2169)	May 31	New Members: ATNV Energy; Delorean Power d/b/a Lightshift Energy; Fanfare Energy; ProGrid Ventures; and ZGE Massachusetts; Termination of Participant status: Agile Energy Trading; Energy Harbor; Hydroland; and the CT Materials Innovations and Recycling Authority; and Name Change: Reworld REC, LLC
22	May 2024 Membership Filing (ER24-1895)	Jun 5	FERC accepts: (i) membership of Comity Inc., Earthjustice, Gunvor USA, MFT Energy US POWER, and Viridon New England; and (ii) the termination of the Participant status of Paper Birch Energy
22	April 2024 Membership Filing (ER24-1650)	May 16	FERC accepts: (i) membership of Eagle Creek Madison Hydro and Vineyard Offshore; and (ii) the termination of the Participant status of Power Supply Services and Green Choice Energy

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

23	Revised Reliability Standard: CIP-012-2 (RD24-3)	May 23	FERC approves new Reliability Standard CIP-012-2, eff. <i>Jul 1, 2026</i>
24	NERC Cold Weather Data Collection Plan (RD23-1-002)	May 23	FERC approves NERC's proposed cold weather data collection plan
24	CIP Standards Development: Info Filings on Virtualization and Cloud Computing Svcs. Projects (RD20-2)	Jun 13	NERC files final quarterly report; revised Reliability Standards to be filed by end of June, 2024

* 24 Report of Comparisons of Budgeted to Actual Costs for 2023 for NERC and the Regional Entities (RR24-3) May 30 FERC files Report

XI. Misc. - of Regional Interest



* 25	203 Application: Trailstone/ Engelhart (EC24-87)	Jun 11	Trailstone Marketing, Trailstone Renewables and Engelhart US request authorization for Engelhart’s acquisition of 100% of the interests in the Trailstone companies from Riverstone V Trailstone Holdings; comment deadline Jul 2, 2024
		Jun 24	Public Citizen intervenes
25	203 Application: Eversource/ GIP IV (EC24-59)	Jun 7	FERC authorizes GIP IV Whale Fund Holdings or one of its affiliates’ acquisition of Eversource’s interest North East Offshore, Revolution Wind, and South Fork Wind
25	203 Application: GIP/BlackRock (EC24-58)	May 10 May 13 May 20	Applicants supplement Mar 12 application Public Citizen and Private Equity Stakeholder Project file joint protest Public Citizen and Private Equity Stakeholder Project file second protest; Sierra Club files protest
		Jun 5	Applicants answer protests; FERC issues deficiency letter
		Jun 18	Applicants file response to deficiency letter
26	PURPA Enforcement Petition – Allco Finance Ltd (EL24-95)	May 23	FERC issues notice of its intent not to initiate an enforcement action against CT DEEP
* 26	D&E Agreement: CL&P/BPUS (ER24-2233)	Jun 11	CL&P files Agreement in connection with the interconnection of BPUS’ 50 MW solar facility; comment deadline Jul 2, 2024
* 26	TSA Amendment: NSTAR/Park City Wind (ER24-2104)	May 28	NSTAR files Transmission Support Agreement governing the construction of transmission facilities required to interconnect Park City Wind LLC’s 800 MW facility
* 26	CSA: NextEra Seabrook/NECEC (ER24-2097)	May 24	Seabrook files Agreement with NECEC related to the Seabrook Station 24.5 kV generator circuit breaker and ancillary equipment, including pre-Fall 2024 Planned Outage work
		May 29 -Jun 5	Avangrid/NECEC, National Grid, Eversource intervene
* 27	SGIA: PSNH White Pine Hydro (ER24-2092)	May 23	PSNH files a non-conforming SGIA to provide for continued interconnection of Brookfield Hydro’s 3.2 MW facility
* 27	RFA Termination: PSNH/NECEC (ER24-2087)	May 23	PSNH files to terminate the RFA between Eversource Energy, on behalf of PSNH, and NECEC
* 27	Order 2023 Compliance Filing: Versant MPD OATT (ER24-2035)	May 16	Versant Power submits Order 2023 compliance filing
* 27	IA 2nd Amendment: CMP/White Pine Hydro (ER24-1966)	May 8	CMP files 2nd amended IA
28	SGIA – NEP/Ampersand Gillman (ER24-1851)	Jun 24	FERC accepts SGIA, eff. Jun
28	LGIA: ISO-NE/NEP/SouthCoast Wind (ER24-1840)	Jun 4	FERC accepts LGIA, eff. <i>Mar 26, 2024</i>
28	EPC Cancellation: CMP/FPL Wyman (ER24-1510)	May 14	FERC accepts termination of the EPC, eff. <i>Mar 15, 2024</i>
28	LGIA: ISO-NE/CMP/Andro Hydro (ER24-1477)	May 8	ISO-NE/CMP amend Mar 17 filing

28	LGIA: ISO-NE/NSTAR/MMWEC (ER24-1238)	Jun 3	FERC accepts LGIA, eff. <i>Apr 13, 2024</i>
29	CMP ESF Service Rate (ER24-1177)	May 8 May 31 Jun 4	Judge Hessler schedules 2 nd settlement conference for Jul 17, 2024 CMP requests protective treatment of proprietary and commercially sensitive information Deputy Chief Administrative Law Judge grants CMP's motion and adopts a Protective Order to govern this proceeding

XII. Misc. - Administrative & Rulemaking Proceedings

33	<i>Order 1977</i> : Transmission Siting Changes (RM22-7)	May 13	FERC issues <i>Order 1977</i> eff. Jul 29, 2024
33	NOPR: Compensation for Reactive Power Within the Standard Power Factor Range (RM22-2)	May 2, 7 May 10 May 24 May 24-28	PJM IMM file comments support of comment deadline extension, COMPP opposes FERC declines to extend comment deadlines Over 30 sets of comments filed, including by: ISO-NE , Calpine , CT OCC , EDP Renewables , Glenvale , National Grid , New England Consumer Advocates , ACPA/SEI , ACORE , EPSA , National Hydropower Assoc. , NEI , and Reactive Service Providers Reply comments due Jun 26, 2024
34	<i>Order 1920</i> : Transmission Planning Reforms (RM21-17)	May 13 Jun 11-12	FERC issues <i>Order 1920</i> eff. <i>Aug 12, 2024</i> Over 50 parties file requests for rehearing, including requests by: AEU , Dominion , Invenergy , NESCOE (with VT PUC supporting), Versant , APPA , EEL , Large Public Power Council , NARUC , NRECA , TAPS , WIRES , Consumer Advocates , Harvard Electricity Institute

XIII. FERC Enforcement Proceedings

Electric-Related Enforcement Actions

* 36	Engie Stipulation and Consent Agreement (IN24-6)	May 20	FERC approves Stipulation and Consent Agreement resolves OE's investigation into Engie's failure to properly evaluate whether necessary all conditions were met prior to the submission of an attestation to the ISO-NE IMM for energy market mitigation under the FCM; Engie must pay a civil penalty of \$48,000 and submit one annual compliance report
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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



40	Mystic Second CapEx Info Filing - Request for Rehearing (24-1077)	May 1 May 3-6 May 6 Jun 6	ISO-NE, NESCOE intervene Mystic files underlying decision, statement re: Appendix deferral, statement of issues FERC requests case be held in abeyance Court orders case be held in abeyance; directs parties to file motions to govern further proceedings in this case by Jul 16, 2024
40	<i>Orders 2023 and 2023-A</i> (23-1282 et al.) (consolidated)	Jun 6	Court orders cases remain in abeyance and parties to submit motions to govern future proceedings by Jun 25, 2024
40	<i>Order 2222 Compliance Orders</i> (23-1167, 23-1168, 23-1169, 23-1170, 23-1335)(consolidated)	Jun 6	FERC files a status report reporting that, on May 23, 2024, the FERC issued its order on reh'g of its Nov 2023 order and that, under the Court's Feb 6 order, motions to govern future proceedings in these consolidated appeals are due Aug 5, 2024

MEMORANDUM

TO: NEPOOL Participants Committee Members and Alternates

FROM: Pat Gerity and Teresa Chen, NEPOOL Counsel

DATE: June 24, 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 June 24, 2024. If you have questions, please contact us.

I. Complaints/Section 206 Proceedings

- **206 Proceeding: TO Initial Funding Show Cause Order (EL24-83)**

On June 13, 2024, the FERC instituted a Section 206 proceeding finding that the ISO-NE Tariff appears to be unjust, unreasonable, and unduly discriminatory or preferential because it includes provisions for transmission owners to unilaterally elect transmission owner (“TO”) Initial Funding (the funding of network upgrade capital costs that the TO incurs to provide interconnection service to an interconnection customer, with the network upgrade capital costs subsequently recovered from the interconnection customer through charges that provide a return on and of those network upgrade capital costs).² TO Initial Funding, the FERC found, may increase the costs of interconnection service without corresponding improvements to that service, may unjustifiably increase costs such that it results in barriers to interconnection, and may result in undue discrimination among interconnection customers.³ The FERC also found that there may be no risks associated with owning, operating, and maintaining network upgrades for which transmission owners are not already otherwise compensated.⁴ Accordingly, ISO-NE was directed, on or before **September 11, 2024**, 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.⁵ The refund effective date for this proceeding will be June 24, 2024.⁶ A more detailed summary of the *TO Initial Funding Show Cause Order* was circulated to, and will be reviewed with, the Transmission Committee. Interventions are due on or before **July 5, 2024**. Thus far, interventions have been filed by: Calpine, National Grid, NRDC, Massachusetts Department of Public Utilities (“MA DPU”), American Clean Power Association (“ACPA”), Electric Power Supply Association (“EPSA”), Solar Energy Industries Association (“SEIA”), WIRES, and the PJM IMM. If you have questions on this proceeding, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com) or Margaret Czepiel (202-218-3906; mczepiel@daypitney.com).

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 *ISO New England Inc. et al.*, 187 FERC ¶ 61,170 (June 13, 2024) (“*TO Initial Funding Show Cause Order*”).

³ *Id.* at P 1.

⁴ *Id.*

⁵ *Id.* at P 2.

⁶ Notice of this 206 proceeding was published in the *Fed. Reg.* on June 24, 2024 (Vol. 89, No. 121) pp. 52,454-52,455.

- **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.⁷ 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,⁸ and became effective as of *December 12, 2023*. On January 29, 2024, ISO-NE requested that this proceeding continue to be held in abeyance,⁹ through **August 30, 2024**, “pending completion of the stakeholder process through which further revisions to [the Tariff] are being proposed and vetted.”¹⁰ 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**. Further changes to address issues raised by the FERC in the *Dynegy Mitigation Order* are to be considered by the Participants Committee at the Summer Meeting (Consent Agenda Item No. 5). If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

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

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

⁷ *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.

⁸ *ISO New England Inc.*, Docket No. ER24-324-000 (Dec. 12, 2023) (unpublished letter order).

⁹ 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.

¹⁰ 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 exceeded a Resource’s Day-Ahead Energy Market awards.

¹¹ RENEW also requested (i) that it be considered an Interested Party or afforded adequate opportunity to participate and access transmission rate information under the PTOs’ Formula Rate Protocols and (ii) the PTOs be directed to provide greater transparency regarding O&M costs in the interconnection process.

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,¹² 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*).¹³ However, the FERC's orders were challenged, and in *Emera Maine*,¹⁴ the U.S. Court of Appeals for the D.C. Circuit ("DC Circuit") vacated the FERC's prior orders, and remanded the case for further proceedings consistent with its order. The FERC's determinations in *Opinion 531* are thus no longer precedential, though the FERC remains free to re-adopt those determinations on remand as long as it provides a reasoned basis for doing so.
- **Base ROE Complaints II & III (EL13-33 and EL14-86) (consolidated).** The second (EL13-33)¹⁵ and third (EL14-86)¹⁶ 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.¹⁷ 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 proceeding¹⁸ also went to hearing before an Administrative Law Judge ("ALJ"), Judge Glazer, who issued his initial decision on March

¹² 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*").

¹³ *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*").

¹⁴ *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).

¹⁵ 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%.

¹⁶ 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.

¹⁷ *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*").

¹⁸ The 4th ROE Complaint asked the FERC to reduce the TOs' current 10.57% return on equity ("Base ROE") to 8.93% and to determine that the upper end of the zone of reasonableness (which sets the incentives cap) is no higher than 11.24%. The FERC established hearing and settlement judge procedures (and set a refund effective date of April 29, 2016) for the 4th ROE Complaint on September 20, 2016. Settlement procedures did not lead to a settlement, were terminated, and hearings were held subsequently held December 11-15,

27, 2017.¹⁹ 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.²⁰ 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.²¹ 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*²² (EL14-12; EL15-45) in Section XI below). The FERC established a paper hearing on how its proposed methodology should apply to the four pending ROE proceedings.²³

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

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

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

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

¹⁹ *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 162 FERC ¶ 63,026 (Mar. 27, 2018) (“*Base ROE Complaint IV Initial Decision*”).

²⁰ *Id.* at P 2.; Finding of Fact (B).

²¹ *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (Oct. 18, 2018) (“*Order Directing Briefs*” or “*Coakley*”).

²² *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 mode l before any high- or low-end outlier test is applied, subject to a natural break analysis. This is a shift from the 150% threshold applied in *Opinion 569*; and (iv) calculating the zone of reasonableness in equal thirds, instead of using the quartile approach that was applied in *Opinion 569*.

²³ *Id.* at P 19.

unreasonable. The FERC suggested that it would adopt a 10.41% Base ROE and cap any preexisting incentive-based total ROE at 13.08%.²⁴ 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 Customers²⁵ for an extension of time to submit briefs, the latest date for filing initial and reply briefs was extended to January 11 and March 8, 2019, respectively. On January 11, initial briefs were filed by EMCOS, Complainant-Aligned Parties, TOs, Edison Electric Institute (“EEI”), Louisiana PSC, Southern California Edison, and AEP. As part of their initial briefs, each of the Louisiana PSC, SEC and AEP also moved to intervene out-of-time. Those interventions were opposed by the TOs on January 24, 2019. The Louisiana PSC answered the TOs’ January 24 motion on February 12. Reply briefs were due March 8, 2019 and were submitted by the TOs, Complainant-Aligned Parties, EMCOS, and FERC Trial Staff.

TOs Request to Re-Open Record and file Supplemental Paper Hearing Brief. On December 26, 2019, the TOs filed a Supplemental Brief that addresses the consequences of the November 21 *MISO ROE Order*²⁶ 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

- **CSC CIP-IROL (Schedule 17) Section 205 Cost Recovery Filing (ER24-2159)**

On May 31, 2024, Cross-Sound Cable (“CSC”) requested FERC acceptance of its revised rate schedule to allow recovery eligible medium-impact Interconnection Reliability Operating Limits (“IROL”) critical infrastructure protection (“CIP”) costs (“IROL-CIP Costs”) under Schedule 17 of the ISO-NE Tariff, effective July 31, 2024. CSC seeks to recover \$478,182 of incremental medium impact CIP-IROL Costs incurred between January 1, 2023 and December 31, 2023. Comments on CSC’s request were due on June 21, 2024; none were filed. 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).

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

On June 18, 2024, the FERC accepted the results of the eighteenth Forward Capacity Auction (“FCA18”) for the June 1, 2027 - May 31, 2028 Capacity Commitment Period (“CCP”).²⁷ In accepting the FCA18 results, the FERC

²⁴ *Id.* at P 59.

²⁵ For purposes of the motion seeking clarification, “Customers” are CT PURA, MA AG and EMCOS.

²⁶ *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).

²⁷ *ISO New England Inc.*, 187 FERC ¶ 61,175 (June 18, 2024) (“*FCA18 Results Order*”).

found that ISO-NE conducted FCA18 in accordance with its Tariff. The FERC found the protests of No Coal No Gas, 198 Methods, other organizations and *pro se* commenters “largely challenge the FCM design and raise various challenges related to climate change, fossil fuels, the minimum offer price rule and the Merrimack Generating Station, which are issues that are beyond the scope of the instant proceeding.”²⁸ The FERC accepted the FCA18 Results effective *June 20, 2024*, as requested. Unless the *FCA18 Results Order* is challenged on or before **July 19, 2024**, this proceeding will be concluded. If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

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

Formal Challenge by MOPA. As previously reported, the Maine Office of the Public Advocate (“MOPA”) filed a formal challenge (“MOPA Formal Challenge”) to the 2023-24 Annual Update on January 31, 2024.²⁹ 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 Advocates³⁰ (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 TOs³¹ (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 remains 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 June 7, 2024, the FERC accepted the uncontested Joint Offer of Settlement (“Versant MPD OATT 2023 Annual Update Settlement Agreement”) between Versant and the Eastern Maine Electric Cooperative, Inc. (“EMEC”) and the Maine Public Utilities Commission (“MPUC”) resolving all issues regarding to Versant’s 2023 annual update to the transmission charges under the MPD OATT.³² Unless the June 7 order is challenged, this proceeding will be concluded. 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)**

Also on June 7, 2024, the FERC accepted the uncontested Joint Offer of Settlement (“Versant MPD OATT 2022 Annual Update Settlement Agreement”) between Versant and the Maine Wholesale Customer Group, the Aroostook Energy Association, MOPA, and the MPUC resolving all issues regarding Versant’s 2022

²⁸ *Id.* at P 15.

²⁹ 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.

³⁰ For purposes of this proceeding, “Consumer Advocates” are the MA AG, CT OCC, NH OCA and RI Division.

³¹ “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”).

³² *Versant Power*, 187 FERC ¶ 61,148 (June 7, 2024).

annual update to the transmission charges under the MPD OATT.³³ Unless the June 7 order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

Mystic I Remand. As previously reported, the DC Circuit issued a decision on August 23, 2022³⁴ 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 order³⁵ on the formal challenges to Mystic's September 15, 2022 "Second CapEx Info Filing".³⁶ As previously reported, formal challenges to the Second CapEx Info Filing were submitted by NESCOE and ENECOS³⁷ (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).

³³ *Versant Power*, 187 FERC ¶ 61,147 (June 7, 2024).

³⁴ *Constellation Mystic Power, LLC v. FERC*, 45 F.4th 1028 (D.C. Cir. 2022) ("*Mystic I Remand Order*").

³⁵ *Constellation Mystic Power, LLC*, 185 FERC ¶ 61,170 (Dec. 5, 2023) ("*Second CapEx Info Filing Order*").

³⁶ 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").

³⁷ 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.

(-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*.³⁸ 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*³⁹ 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.⁴⁰ 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.⁴¹ 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".⁴² 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.⁴³ In addition, the *Order* also denied Public Systems⁴⁴ May 19, 2023 request that the FERC direct ISO-NE to release

³⁸ *Constellation Mystic Power, LLC*, 185 FERC ¶ 61,016 (Oct. 6, 2023) ("*Mystic I Order on Remand Modification Order*"). The *Mystic I Order on Remand Modification Order* set aside the FERC determinations in the *Mystic I Order on Remand* that: (i) interested parties may review and challenge revenues and Revenue Credits during the true-up process; (ii) interested parties may review and challenge Tank Congestion Charges during the true-up process; and (iii) the revenues from the sliding scale revenue sharing mechanism for third-party vapor sales should be included within the true-up. As previously reported, the FERC concluded in the *Mystic I Order on Remand* that "the language of the true-up and Protocol provisions of the [COS] Agreement, Schedule 3A, does not include these three items within the scope of the true-up, nor is calculation of these items consistent with purpose for the true-up mechanism in the [COS] Agreement because none of them are projected in advance, but rather they are each settled and audited on a monthly basis. The FERC found that "existing cost review and audit processes, ... facilitated by ISO-NE, its auditors, and the Internal Market Monitor, are sufficient to ensure that Mystic adheres to its filed rate with respect to these items and continues to appropriately balance customers' interest in transparency of the formula rate with Mystic's interests in protecting commercially-sensitive information, reducing security risks, and avoiding burdensome audit obligations".

³⁹ *Constellation Mystic Power, LLC*, 182 FERC ¶ 61,200 (Mar. 28, 2023) ("*Mystic I Order on Remand*"), *reh'g denied by operation of law*, 183 FERC ¶ 62,115 (May 30, 2023) ("*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).

⁴⁰ *Constellation Mystic Power, LLC*, 185 FERC ¶ 62,120 (Dec. 7, 2023) ("*Mystic I Order on Remand Modification Order Allegheny Notice*").

⁴¹ *Constellation Mystic Power, LLC*, 186 FERC ¶ 61,103 (Feb. 15, 2024) ("*Mystic I Order on Remand Modification Order Allegheny Order*").

⁴² *Mystic I Order on Remand Allegheny Notice*.

⁴³ *Constellation Mystic Power, LLC*, 185 FERC ¶ 61,016 (Oct. 6, 2023) ("*Mystic I Order on Remand Modification Order*").

⁴⁴ "Public Systems" for these purposes are: MMWEC, CMEEC, NHEC, VPPSA, the Eastern New England Consumer-Owned Systems ("ENECOS"), and Energy New England, LLC ("ENE").

additional information concerning ISO-NE's audit of performance under Mystic COSA ("Audit Information Request").⁴⁵

(-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 deemed the settlement proceedings continued without further action. Judge French has since convened six settlement conferences.⁴⁶ Judge French submitted her 3rd status report on June 10, 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*.⁴⁷ 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",⁴⁸ 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.⁴⁹ 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).

Second CapEx Info Filing Order Allegheny Order. On May 23, 2024, the FERC issued an order (i) modifying the discussion in the *Second CapEx Info Filing Order*; (ii) granting in part and denying in part, the clarifications requested by Mystic (granting Mystic's requested clarification of Formal Challenge Issue 7; denying Mystic's requested clarification regarding Formal Challenge Issue 1; confirming that Formal Challenge Issues 1, 2 and 6 were appropriately set for hearing and settlement judge procedures); and setting aside that order, in part (setting aside, in part, the determination regarding Challenge Issue 7)); and (iii) dismissing Mystic's alternative request for reh'g.⁵⁰ As noted immediately above, this matter has been appealed to, and is pending before, the DC Circuit.

⁴⁵ 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).

⁴⁶ The first settlement conference was convened on Jan. 4, 2024; the second, Mar. 20, 2024; the third, Apr. 19, 2024; the fourth, May 17, 2024; the fifth, June 14, 2024; and the most recent and sixth settlement conference, June 18, 2024.

⁴⁷ *Constellation Mystic Power, LLC*, 185 FERC ¶ 61,170 (Dec. 5, 2023) ("*Second CapEx Info Filing Order*").

⁴⁸ 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" or an "Allegheny 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.

⁴⁹ *Constellation Mystic Power, LLC*, 186 FERC ¶ 62,048 (Feb. 5, 2024) ("*Second CapEx Info Filing Order Allegheny Notice*").

⁵⁰ *Constellation Mystic Power, LLC*, 187 FERC ¶ 61,099 (May 23, 2024) ("*Second CapEx Info Filing Order Allegheny Order*").

(-014) Revised ROE (Sixth) Compliance Filing. Still pending is Mystic's December 20, 2021 filing in response to the requirements of the *Mystic ROE Allegheny Order*.⁵¹ 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*,⁵² changes to the Mystic COSA to include pipeline-related crediting as an explicit provision in the COSA. Mystic also provided additional information/COSA changes to (i) describe the crediting process; (ii) differentiate, through both an explanation in its compliance filing and creation of two new line items in Schedule 3A, the credits and charges included as part of the Fixed Pipeline Costs; (iii) address how and whether the pipeline-related crediting procedure interacts or should interact with the true-up procedure already included in the COSA and revise the true-up as necessary; and (iv) differentiate in the COSA the Pipeline Transportation Costs as Fixed O&M/Return on Investment Costs from the Pipeline Transportation Agreement Costs. Comments on the 30-day compliance filing were due on or before May 18, 2023. ISO-NE and Monitoring Analytics, LLC filed doc-less motions to intervene.

On July 10, 2023, ENECOS submitted comments (out-of-time) asserting that Mystic's compliance filing did not provide information sufficient to show that Mystic's after-the-fact pipeline-related crediting ensures that Mystic customers do not pay for pipeline costs that do not benefit them ("Crediting Issue"), the Schedule 3A true-up process does not provide the opportunity for an adequate verification process, and ISO-NE's COSA-related filings to date have similarly not addressed the Crediting Issue. ENECOS requested that the FERC direct Mystic to provide a work paper to "verify its assertion that it has always applied a full credit for third-party pipeline transportation costs to Constellation LNG's billings to Mystic". On July 20, 2023, Mystic protested ENECOS' comments. This 30-day compliance filing remains pending before the FERC.

If you have questions on any aspect of these Mystic proceedings, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Margaret Czepiel (202-218-3906; mzczepiel@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 Filing⁵³ 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

⁵¹ 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.

⁵² *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).

⁵³ 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.

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).

- **ISO Securities: Authorization for Issuance of Debt Securities (ES24-41)**

On June 18, 2024, ISO-NE requested the necessary FERC authorization for the issuance of up to \$75 million in senior unsecured notes ("Notes") to (i) refinance its existing financings⁵⁴ and (ii) raise an additional \$25 million of indebtedness to support additional capital expenditures to support ISO-NE's market design objectives of "moving toward clean energy, balancing resources, energy adequacy and robust transmission". ISO-NE proposed to issue the Notes within the two-year period in which this authorization will be effective and stated that the Notes will be long-term debt expected to mature in a minimum of 10 years and a maximum of 12 years from the date of issuance. Comments on this filing are due on or before **July 8, 2024**. If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

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

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

On May 20, 2024, the FERC approved Tariff revisions jointly filed by ISO-NE and NEPOOL to delay New England's nineteenth Forward Capacity Auction ("FCA19") until **Feb 2028** in order to maximize 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").⁵⁵ Specifically, the FCA19 2-Year Delay Revisions (i) delay FCA19 and related market activities by two additional years beyond the revised timeline already accepted by the FERC;⁵⁶ (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 accepted effective as of *May 21, 2024*. The *FCA19 2-Year Delay Order* was not challenged and is final and

⁵⁴ Prior to 2012, ISO-NE's existing capital projects had been financed through the proceeds of \$39 million of private placement debt that was issued by ISO-NE in 2004 (the "2004 Capital Financing") (authorized by the FERC in 109 FERC ¶ 62,195 (2004)). In 2012, ISO-NE obtained FERC approval to raise an additional \$11 million in indebtedness in order to support a higher sustained level of capital expenditures (the "2012 Capital Financing"). In 2013, the FERC authorized ISO-NE to issue notes in order to refinance the \$39 million in aggregate principal amount of senior unsecured notes issued in the 2004 Capital Financing in order to reduce ISO-NE's interest costs (the "2013 Refinancing," and together with the 2004 Capital Financing and the 2012 Capital Financing, the "Existing Financings"). The notes issued in the Existing Financings mature on Nov. 8, 2024.

⁵⁵ *ISO New England Inc.*, 187 FERC ¶ 61,083 (May 20, 2024) ("FCA19 2-Year Delay Order").

⁵⁶ *ISO New England Inc. and NEPOOL Participants Comm.*, 186 FERC ¶ 61,001 (Jan. 2, 2024, 2024) (accepting Initial FCA19 Delay Filing).

unappealable. Reporting on this proceeding is now concluded. Should you have any questions concerning this proceeding, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **eTariff § 1.2 Corrections (ER24-2270)**

On June 13, 2024, ISO-NE filed corrections to its eTariff to remove from Section 1.2.2 changes (from the DASI (ER24-275) and SATOA (ER23-739) filings) that were inadvertently included in the FRM Offer Cap eTariff changes that became effective on April 15, 2024. Other than to pull out the yet-to-effective changes from the effective eTariff text, no other changes were made to the definitions. Comments on this filing are due on or before **July 5, 2024**. Thus far, Calpine has intervened doc-lessly. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

As previously reported, 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”)⁵⁷ 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.⁵⁸ 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 CM 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.

Since the Last Report, CM submitted 2 filings. The first, filed on May 24, 2024, requested that the FERC act on its waiver request and informed the FERC that ISO-NE supported CM’s request to return to ISO-NE the net revenues, with applicable interest, that Canal Marketing has received on behalf of Canal 3 for Canal 3’s participation in the IEP. In CM’s second filing, submitted on June 7, 2024, CM answered the IMM’s comments, highlighting that ISO-NE was apprised by mid-December 2023 of CM’s intent to return all payments received on behalf of Canal 3 and to withdraw from the IEP, well before ISO-NE incurred any charges. This matter is pending before the FERC, with an order expected immanently. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@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

⁵⁷ 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.

⁵⁸ 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.

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 Order⁵⁹ issued March 1, 2023, the FERC approved in part, and rejected in part, the *Order 2222* compliance filing⁶⁰ (“*Order 2222 Compliance Order*”) filed jointly by ISO-NE, NEPOOL and the PTO AC (“Filing Parties”).⁶¹ 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.⁶² In the order conditionally accepting the 60-day compliance filing,⁶³ 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.⁶⁴ The FERC also granted in part ISO-NE’s request for an extension of time to address directives

⁵⁹ 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.”

⁶⁰ As previously reported, the Filing Parties submitted on Feb. 2, 2022 Tariff revisions (“*Order 2222 Changes*”) in response to the requirements of *Order 2222*. The Filing Parties stated that the *Order 2222 Changes* create a pathway for Distributed Energy Resource Aggregations (“DERAs”) to participate in the New England Markets by: creating new, and modifying existing, market participation models for DERA use; establishing eligibility requirements for DERA participation (including size, location, information and data requirements); setting bidding parameters for DERAs; requiring metering and telemetry arrangements for DERAs and individual Distributed Energy Resources (“DERs”); and providing for coordination with distribution utilities and relevant electric retail regulatory authorities (“RERRAs”) for DERA/DER registration, operations, and dispute resolution purposes.

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

⁶² *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).

⁶³ *ISO New England Inc.*, 185 FERC ¶ 61,095 (Nov. 2, 2023) (“*Order 2222 60-Day Compliance Filing Order*”).

⁶⁴ 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.

in the *First Order 2222 Compliance Order*.⁶⁵ On December 4, 2023, AEU requested rehearing of the *Order 2222 60-Day Compliance Filing Order*, which was deemed to have been denied by operation of law.⁶⁶

Order 2222 60-Day Compliance Filing Order Allegheny Order (-006). On May 23, 2024, in response to AEU's December 4, 2023 request for rehearing of the *Order 2222 60-Day Compliance Filing Order*, the FERC issued an *Allegheny order*,⁶⁷ sustaining three of the four findings challenged by AEU. However, the FERC set aside, in part, its prior finding that ISO-NE partially complies with the requirement to revise its Tariff to establish market rules that address metering requirements necessary for distributed energy resource aggregations ("DERAs").⁶⁸ The FERC found that, under its rule of reason,⁶⁹ ISO-NE's basic description of its metering practices for DERAs was incomplete because the Tariff did not include submetering requirements for DERAs participating as submetered Alternative Technology Regulation Resources ("ATRRs").⁷⁰ Accordingly, the FERC directed ISO-NE to file, on or before **July 22, 2024**, a further compliance filing to revise ISO-NE's Tariff to specify its submetering requirements for DER Aggregations' participation as submetered Alternative Technology Regulation Resources.

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.⁷¹ 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".⁷²

⁶⁵ The FERC ordered ISO-NE in its 60-day compliance filing to revise the Tariff to: (1) have RERRA make the determination of whether to allow customers of small utilities to participate in ISO-NE's markets through aggregation; (2) require that each DER Aggregator maintain and submit aggregate settlement data for the DERA; (3) designate the DER Aggregator as the entity responsible for providing any required metering information to ISO-NE, and if necessary, establish protocols for sharing meter data that minimize costs and other burdens and address concerns raised with respect to privacy and cybersecurity; (4) designate the DER Aggregator as the entity responsible for providing any required metering information to ISO-NE; and (5) add specificity regarding existing resource non-performance penalties that would apply to a DERA when a Host Utility overrides ISO-NE dispatch instructions. ISO-NE was also directed to: (1) identify the existing rules requiring a Market Participant that provides energy withdrawal service to be a load serving entity that is billed for energy withdrawal ("LSE Requirement") and explain whether the LSE Requirement is required of all resources seeking to provide wholesale energy withdrawal service in the energy market; (2) explain why its proposed metering and telemetry requirements were just and reasonable and did not pose an unnecessary and undue barrier to individual DERs joining a DERA; (3) establish protocols for sharing metering data that minimize costs and other burdens and address privacy and cybersecurity concerns; and (4) address how ISO-NE will resolve disputes that are within its authority and subject to its Tariff, regardless of whether there is an available dispute resolution process established by the RERRA.

⁶⁶ *ISO New England Inc.*, 186 FERC ¶ 62,002 (Jan. 4, 2023) ("*Order 2222 60-Day Compliance Filing Order Allegheny Notice*").

⁶⁷ *ISO New England Inc.*, 187 FERC ¶ 61,100 (May 23, 2024) ("*Order 2222 60-Day Compliance Filing Order Allegheny Order*").

⁶⁸ See *id.* P 78 ("we find that ISO-NE partially complies with the requirement to revise its Tariff to establish market rules that address metering requirements necessary for DERAs").

⁶⁹ "[d]ecisions as to whether an item should be placed in a tariff or in a business practice manual are guided by the [FERC]'s rule of reason policy, under which provisions that 'significantly affect rates, terms, and conditions' of service, are readily susceptible of specification, and are not generally understood in a contractual agreement must be included in the tariff, while items better classified as implementation details may be included only in the business practice manual." *Order 2222 60-Day Compliance Filing Order Allegheny Order* at P 36 citing *Order 2222*, 172 FERC ¶ 61,247 at P 271.

⁷⁰ *Order 2222 60-Day Compliance Filing Order Allegheny Order* at P 6.

⁷¹ *ISO New England Inc.*, 187 FERC ¶ 61,017 (Apr. 11, 2024) ("*Further Order 2222 Compliance Filing Order*").

⁷² *Id.* at P 13.

Accordingly, the FERC directed ISO-NE, on or before June 10, 2024, “to submit ... Tariff revisions that include the meter data submission deadline in its Tariff.”⁷³

Metering Data Submission Revisions (-008). The Metering Data Submission Revisions required by the April 11, 2024 *Further Order 2222 Compliance Filing Order* were recommended for Participants Committee support by the Markets Committee at its May 7-8, 2024 meeting and, because of the compliance deadline, filed by ISO-NE on June 10, 2024. The changes will be considered by the Participants Committee at the June 25-27 Summer Meeting by way of the Consent Agenda (Item No. 6). Comments on ISO-NE’s June 10 compliance filing are due on or before **July 1, 2024**. NEPOOL will file comments by that deadline summarizing its actions, particularly those taken at the Summer Meeting.

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

If you have any questions concerning 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

- **Order 2023 Compliance Changes (ER24-2009)**

On May 14, 2024 (as corrected May 31, 2024), ISO-NE, NEPOOL and the PTO AC filed proposed Tariff revisions in response to the requirements of *Orders 2023* and *2023-A* (“*Order 2023 Revisions*”). The *Order 2023 Revisions* adopt most of the required *pro forma* OATT changes, with some regional variations to recognize certain existing features of the ISO-NE interconnection process, including an existing cluster process to address cases where cluster enabling transmission is required, integration of the interconnection process with FCM participation, and a unified treatment of all ISO interconnection requests, including those for small generators and Elective Transmission Upgrades (“ETU”) (such revisions were filed in a separate concurrent filing (ER24-2007)). Concurrently, the Filing Parties proposed changes to aspects of the Tariff impacted by the *Order 2023 Revisions*, but that may be considered to be beyond the scope of the compliance obligations (see ER24-2007 immediately below). The filing parties requested an effective date of August 12, 2024 for the *Order 2023 Revisions*. Comments on this filing were due on or before June 4, 2024, and were filed by [BlueWave](#), [Glenvale](#), [New Leaf](#), [RENEW](#), [Clean Energy Associations](#),⁷⁴ and [Longroad Energy Holdings](#). Calpine, Clearway, Constellation, National Grid, NESCOE, RIE, Shell Energy/Savion, MA DPU, and Cordelio Services intervened doc-lessly. On June 20, 2024, ISO-NE answered the June 4 comments. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617- 345-4735; ekrunge@daypitney.com).

- **Order 2023 Related Changes (ER24-2007)**

Also on May 14, 2024, ISO-NE, NEPOOL and the PTO AC filed proposed Tariff revisions to harmonize the SGIP, ETU Interconnection Procedures (“ETUIP”), and Regional Transmission Service rules with the contemporaneously-filed *Order 2023 Revisions* (“*Order 2023 Related Changes*”). The *Order 2023 Related Changes*, which propose changes to aspects of the Tariff impacted by the *Order 2023 Revisions*, but that may be considered to be beyond the scope of the *Order 2023* compliance requirements, include: (i) revisions to the *pro forma* SGIP beyond those explicitly required in *Order 2023/2023-A* to align the Small Generator Interconnection Procedures (“SGIP”) with the Large Generator Interconnection Procedures (“LGIP”) and

⁷³ *Id.*

⁷⁴ “Clean Energy Associations” are, collectively, Advanced Energy United (“AEU”), the American Clean Power Association (“ACPA”), Natural Resources Defense Council (“NRDC”), and the Solar Energy Industries Association (“SEIA”).

include Small Generating Facilities in the new Cluster Study Process; (ii) revisions to the ETUIP to ensure it remains aligned with the LGIP and include ETUs in the Cluster Study Process; and (iii) revisions to Study Procedures for Regional Network Service Requests and Through or Out Service Requests to require that System Impact Studies related to Regional Transmission Service requests take place in the Cluster Study incorporated as part of the Cluster Study Process. An effective date of August 12, 2024 was requested. Comments on the *Order 2023* Related Changes were due on or before June 4, 2024, and were filed by Glenvale, Longroad, New Leaf Energy, RENEW and Clean Energy Associations. BlueWave, Calpine, Clearway (out-of-time), National Grid, NESCOE, RIE, Shell Energy/Savion, Cordelio Services, and the MA DPU intervened doc-lessly. On June 20, 2024, ISO-NE answered the June 4 comments. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617- 345-4735; ekrunge@daypitney.com).

- **LTTP Phase 2 Tariff Changes (ER24-1978)**

On May 9, 2024, ISO-NE, NEPOOL and PTO filed proposed revisions to Section 16 of Attachment K of the OATT to establish, as part of the optional, longer-term transmission planning process, the mechanisms that enable the New England states to develop policy-based transmission facilities in connection with Longer-Term Transmission Studies (“LTTS”), and the associated cost allocation methods for these upgrades (the “LTTP Phase 2 Changes”). The LTTP Phase 2 Changes incorporate the following processes: (i) comprehensive core process and (ii) add-on supplemental process. The core process allows the New England states to advance the development of transmission when at least one Longer-Term Proposal submitted in response to a request for proposal meets the identified needs and has financial benefits that exceed the project’s costs as calculated over the first 20 years of the project’s life has a benefit-to-cost ratio (“BCR”) that is greater than one. The supplemental process is an add-on to the core process that enables the New England states to agree to move forward with a transmission project where none of the proposals that meet the identified needs satisfy the greater-than-one BCR requirement. An effective date of July 9, 2024 was requested. Comments on this filing were due on or before May 30, 2024. Comments in support of the LTTP Phase 2 Changes were filed by: [AEU](#), [NESCOE](#), [Public Interest Organizations](#)⁷⁵, [Public Systems](#), [RENEW](#); adverse comments were filed jointly by [NH Transmission \(“NHT”\)](#) and [LS Power](#). Brookfield, Calpine, EDF, National Grid, NRG, ME PUC, MA AG, ACPA, and Public Citizen filed doc-less motions to intervene. ISO-NE answered the comments by NHT/LS Power, AEU and RENEW on June 14, 2024. On June 20, ISO-NE supplemented the May 9 filing with a summary of revisions related to defined terms that are not to be in effect as of, but in effect later than, July 9, 2024 (the requested effective date for the LTTP Phase 2 Changes) but nevertheless included in error in the eTariff changes submitted as part of the May 9 Filing, and a proposal to correct those errors. The LTTP Phase 2 Changes are pending before the FERC. If you have any questions concerning this proceeding, please contact Eric Runge (617- 345-4735; ekrunge@daypitney.com).

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 June 18, 2024, the FERC accepted revisions to both 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)⁷⁶ and Schedule 21 (governing Local Network Service and other services) (ER24-

⁷⁵ Acadia Center, Conservation Law Foundation (“CLF”), Earthjustice, NRDC, Sustainable FERC Project, Sierra Club, and Union of Concerned Scientists (“UCS”).

⁷⁶ *ISO New England Inc.*, Docket No. ER24-1805-000 (Jun. 18, 2024) (unpublished letter order).

1808)⁷⁷ to reflect the current creditworthiness practices of New England Power d/b/a National Grid's ("NEP"). The revisions were accepted for filing effective as of May 1, 2024, as requested. Unless the June 18 orders are challenged, these proceedings will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **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.⁷⁸ The FERC found that the Filing Parties did not make the required showing of extraordinary circumstances to warrant waiver of the prior filing requirement. Accordingly, the FERC directed the Filing Parties (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").⁷⁹ 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 requirement⁸⁰ 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.⁸¹ 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.

⁷⁷ *ISO New England Inc.*, Docket No. ER24-1808-000 (Jun. 18, 2024) (unpublished letter order).

⁷⁸ *ISO New England Inc.*, Docket No. ER24-24-000 (Nov. 30, 2023) (unpublished letter order).

⁷⁹ The LSA was designated as Service Agreement No. TSA-NEP-114 under the ISO-NE OATT.

⁸⁰ 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.

⁸¹ *ISO New England Inc.*, Docket No. ER23-2804-000 (Nov. 7, 2023) (unpublished letter order).

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).

- **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”).⁸² 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.⁸³ On August 29, 2023, Versant Power submitted a Refund Report detailing the Time Value Refunds it paid to Black Bear Hydro Partners, LLC and Black Bear SO, LLC on August 18, 2023. Comments on the Refund Report were due on or before September 19, 2023; none were filed. The Refund Report remains pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

On August 29, 2023, Versant submitted a Joint Offer of Settlement (“Versant 2022 Annual Update Settlement Agreement”) between itself and the MPUC. Versant stated that, if approved, the 2022 Annual Update Settlement Agreement would resolve all issues raised by the MPUC with respect to the 2022 Annual Update. Comments on the Versant 2022 Annual Update Settlement Agreement were due on or before September 19, 2023; none were filed. MPUC intervened doc-lessly on September 15, 2023. This matter remains pending before the FERC. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

VII. NEPOOL Agreement/Participants Agreement Amendments

- **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).

⁸² *ISO New England Inc.*, Docket No. ER23-2035-000 (July 28, 2023) (“*Versant Black Bear LSAs Order*”).

⁸³ 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 Reports⁸⁴

- **Capital Projects Report – 2024/Q1 (ER24-1991)**

On June 24, 2024, the FERC accepted ISO-NE’s May 10, 2024 Capital Projects Report and Unamortized Cost Schedule covering the first quarter (“Q1”) of calendar year 2024 (the “Report”). As previously reported, Report highlights included the following new projects: (i) Network Modeling Tool Enhancements (\$1.3 million); (ii) Day-Ahead Ancillary Services Benchmark Levels (\$915,500); (iii) 2024 Issue Resolution (\$486,000); (iv) IMS nGEM Compatibility Enhancement (\$315,600); (v) Tie-Line Telemetry and PCEC Upgrade Phase I (\$304,200); and (vi) On-Call Notification Systems (\$141,100). One project was reported to have significant changes: IMM Data Analysis Phase IV (reduced by \$285,700) and two projects were reported complete: FCM Order 2222 and Market Information Server Reporting by Sub Accounts. The Report was accepted effective *April 1, 2024*, as requested. Unless the June 24 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).

- **Interconnection Study Metrics Processing Time Exceedance Report 2024/Q1 (ER19-1951)**

On May 15, 2024, ISO-NE filed, as required,⁸⁵ public and confidential⁸⁶ versions of its Interconnection Study Metrics Processing Time Exceedance Report (the “Exceedance Report”) for the First Quarter of 2024 (“2024 Q1”). ISO-NE reported that with respect to:

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

- Both of the 2024 Q1 IFS Reports delivered to Interconnection Customers were delivered later than the best efforts completion timeline of 90 days.
- 32 IFSs that are not yet completed also exceeded the 90-day completion expectation.
- The average time from ISO-NE’s receipt of the executed IFS Agreement to delivery of the completed IFS Report to the Interconnection Customer was 173.5 days (which is approximately 20 days sooner than the previous quarter).

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

- 6 SIS Reports were delivered to Interconnection Customers in 2024 Q1. Those Reports were delivered later than the best efforts completion timeline of 270 days.
- 31 SISs that are not yet completed have also exceeded the 270-day completion expectation.
- The average time from ISO-NE’s receipt of the executed SIS Agreement to delivery of the completed SIS report to the Interconnection Customer was 534.33 days (an increase of approximately 10 days from 2023 Q4).

- ◆ **Facility Study Reports**

- 1 Facility Study Report was delivered to Interconnection Customers and was delivered later than the best efforts timeline of 90 days for 20% cost estimates or 180 days for 10% cost estimates.

⁸⁴ 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.

⁸⁵ Under section 3.5.4 of ISO-NE’s LGIP, ISO-NE must submit an informational report to the FERC describing each study that exceeds its Interconnection Study deadline, the basis for the delay, and any steps taken to remedy the issue and prevent such delays in the future. The Exceedance Report must be filed within 45 days of the end of the calendar quarter, and ISO-NE must continue to report the information until it reports four consecutive quarters where the delayed amounts do not exceed 25 percent of all the studies conducted for any study type in two consecutive quarters.

⁸⁶ ISO-NE requested that the information contained in Section 3 of the un-redacted version of the Exceedance Report, which contains detailed information regarding ongoing Interconnection Studies and if released could harm or prejudice the competitive position of the Interconnection Customer, be treated as confidential under FERC regulations.

- No Facility Study in process has exceeded the 90-day completion expectations for a 20% level of cost estimate.
- The average time from executed Facilities Study Agreement receipt to delivery of completed Facilities Study report to the Interconnection Customer was 116 days (which is an improvement from previous quarter).

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

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

As directed by the original ASM II Order,⁸⁷ as modified,⁸⁸ 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 FERC noted in the DASI Order, ISO-NE 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. Comments were due on or before May 9, 2024; none were filed. National Grid intervened doc-lessly. ISO-NE’s request that its reporting obligation be terminated is pending before the FERC. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **IMM 2023 Annual Markets Report (ZZ24-4)**

On May 24, 2024, the IMM filed its 2023 Annual Markets Report, which covers the 2023 calendar year period.⁸⁹ The report addresses the development, operation, and performance of the New England Markets and presents an assessment of each market based on market data, performance criteria, and independent studies, providing the information required under Section 17.2.4 of Appendix A to Market Rule 1. On the basis of its review of market outcomes and related information, the IMM concluded, as it has for many years in a row, that the New England Markets (with the exception of the Forward Reserve Market (“FRM”)) operated competitively in 2023. The IMM reported that Day-Ahead and Real-Time Energy prices reflected changes in underlying primary fuel prices, electricity demand and the region’s supply mix, and returned to typical levels after record highs in 2022 -- the annual average Day-Ahead price of \$37/MWh was down by almost 60% from 2022. Energy prices continued to follow the market price of natural gas, which at about \$3/MMBtu was nearly 70% lower than the average 2022 price. Lower natural gas prices reflected high national inventory levels, a lack of sustained cold weather in New England, and the settling of international energy markets following the Russian invasion of Ukraine.

⁸⁷ 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).

⁸⁸ 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”)).

⁸⁹ Please note that Annual Markets Reports filings are not noticed for public comment by the FERC.

In 2023, New England's average wholesale load was at its lowest level in at least 24 years. In addition, renewable energy sources like wind and solar, which have low marginal costs, alongside existing non-price-setting supply, can lead to instances of low or negative energy prices. Residential solar is reducing load levels and shifting peak load to later in the day.

Other highlights included:

- ▶ 2023 total wholesale costs (\$9.5 billion) were 43% lower than 2022, driven by lower energy costs in turn driven by natural gas prices, which fell by 67% between 2022 (\$9.28/MMBtu) and 2023 (\$3.04/MMBtu). Also, with the exception of ancillary services costs (up by \$0.01 billion), every other component of the wholesale cost of electricity decreased in 2023.
- ▶ 2023 Energy costs totaled \$4.8 billion, a 59% decrease from 2022 (Day-Ahead LMPs averaged \$36.82/MWh; Real-Time LMPs, \$35.70/MW).
- ▶ Capacity costs (\$1.32 billion) continued to decrease, down 30% from 2022. The costs were a function of lower combined clearing prices in FCAs 13 and 14).
- ▶ In 2023, net interchange (or net imports) averaged 1,724 MWs per hour, an 10% (or 190 MW) decrease compared to 2022, and the lowest level of net interchange since 2012. This reduction was influenced by lower reservoir levels in Québec, which resulted in decreased excess hydroelectric generation and lower availability of imports over the Phase II interface into New England.
- ▶ The trend of decreasing load driven by EE and BTM continued. Average and peak load levels were the lowest in years, down by 4% and 3%, respectively, from 2022 levels, consistent with mild summer and winter weather. Net Energy for Load ("NEL") averaged 13,096 MW per hour in 2023 and peak load 24,016 MW. On a weather-adjusted basis, load declined by 3%, which reflects the adoption of behind-the-meter (BTM) solar generation. BTM solar generation reduced weather-normalized hourly load by 489 MW (by 3%) which was a 7% increase (34 MW) compared to 2022; it is expected to continue this upward trend in future years. In 2023, energy efficiency (EE) reduced average hourly load by an estimated 2,269 MW (by 14%), which was an 11% decrease (268 MW) compared to 2022. This is in line with the ISO's expectation that EE will decline over time due to rising costs of eligible EE measures and the associated baselines used to calculate claimable savings.

In light of its review, the IMM, on pp. 21-27 of the Report, made a number of recommendations for Market Rule changes and identified areas for additional analysis in 2023. These recommendations will be discussed in more detail at the Markets Committee July 9-10 Summer Meeting.

- **IMM Quarterly Markets Reports: Winter 2024 (ZZ24-4)**

On May 31, 2024, the IMM filed with the FERC its Winter 2024 report of "market data regularly collected by [the IMM] in the course of carrying out its functions under ... Appendix A and analysis of such market data," as required pursuant to Section 12.2.2 of Appendix A to Market Rule 1. These filings are not noticed for public comment by the FERC. The Winter 2024 Report will be discussed with the Markets Committee at the Markets Committee's July 9-10 summer meeting.

- **ISO-NE FERC Form 3Q (2024/Q1) (not docketed)**

On May 22, 2024, ISO-NE submitted its 2024/Q1 FERC Form 3Q (quarterly financial report of electric utilities, licensees, and natural gas companies). FERC Form 3-Q is a quarterly regulatory requirement which supplements the annual FERC Form 1 financial reporting requirement. These filings are not noticed for public comment.

- **ISO-NE FERC Form 714 (2023) (not docketed)**

On May 31, 2024, ISO-NE submitted its Annual Electric Balancing Authority Area and Planning Area Report for calendar year 2023. Through its Form 714 filing, ISO-NE reports, among other things, generation in the New England Control Area, actual and scheduled inter-balancing authority area power transfers, and net energy for load, summer-winter generation peaks and system lambda. The FERC uses the data to obtain a broad picture of interconnected balancing authority area operations including comprehensive information of balancing authority area generation, actual and scheduled inter-balancing authority area power transfers, and load; and to prepare status reports on the electric utility industry including review of inter-balancing authority area bulk power trade information. Planning area data will be used to monitor forecasted demands by electric utility entities with fundamental demand responsibility, and to develop hourly demand characteristics. These filings are not noticed for public comment.

IX. Membership Filings

- **June 2024 Membership Filing (ER24-2169)**

On May 31, 2024, NEPOOL requested that the FERC accept: (i) the following Applicants' membership in NEPOOL as of June 1, 2024: ATNV Energy LP (Supplier Sector); Delorean Power LLC d/b/a Lightshift Energy [Related Person to Howard Wind LLC, Hecate Energy Albany 2 LLC, RoxWind LLC, and Weaver Wind, LLC (Supplier Sector)]; Fanfare Energy, LLC [Related Person to Think Energy, LLC and to Brookfield Renewable Trading and Marketing LP (Supplier Sector)]; ProGrid Ventures, LLC (Supplier Sector); and ZGE Massachusetts LLC (Supplier Sector); (ii) the termination as of May 1, 2024 of the Participant status of: Agile Energy Trading LLC (Supplier Sector) and Energy Harbor LLC [Related Person to Dynegy Marketing and Trade, LLC (Supplier Sector)] and the termination as of June 1, 2024 of the Participant status of: Hydroland, Inc. (AR Sector) and Connecticut Materials Innovations and Recycling Authority (Publicly Owned Entity Sector); and (iii) the name change of the following Participant: Reworld REC, LLC (f/k/a Covanta Energy Marketing, LLC). Comments on this filing were due on or before June 21, 2024; none were filed. This matter is pending before the FERC.

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

On June 5, 2024, the FERC accepted: (i) the following Applicants' membership in NEPOOL: 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 of the Participant status of: Paper Birch Energy, LLC [Related Person to Berlin Station, LLC and CS Berlin Ops, Inc. (Generation Sector Group Seat)].⁹⁰ Unless the June 5 order is challenged, this proceeding will be concluded.

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

On May 16, 2024, FERC accepted: (i) the following Applicants' membership in NEPOOL: 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 of the Participant status of: Power Supply Services, LLC (AR Sector) and RPA Energy Inc. d/b/a Green Choice Energy (Supplier Sector).⁹¹ The May 16 order was not challenged and is final and unappealable.

⁹⁰ *New England Power Pool Participants Comm.*, Docket No. ER24-1895-000 (June 5, 2024) (unpublished letter order).

⁹¹ *New England Power Pool Participants Comm.*, Docket No. ER24-1650-000 (May 16, 2024) (unpublished letter order).

X. Misc. - ERO Rules, Filings; Reliability Standards⁹²

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

- **Revised Reliability Standard: 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 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.⁹³ 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. 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 remains pending before the FERC.

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

On May 23, 2024, the FERC approved Reliability Standard CIP-012-2 (Cyber Security – Communications between Control Centers), which improves upon and expands 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.⁹⁴ Reliability Standard CIP-012-2 modified CIP-012-1 by adding two new Parts to Requirement R1 to address availability: Part 1.2, which

⁹² 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.*).

⁹³ 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.

⁹⁴ *N. Am. Elec. Rel. Corp.*, 187 FERC ¶ 61,086 (May 23, 2024).

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. Pursuant to the approved implementation plan, CIP-012-2 will become effective on *July 1, 2026*.

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

On May 23, 2024, the FERC accepted NERC's compliance filing for cold weather data collection as directed by the *Cold Weather Standards Order*⁹⁵ ("Cold Weather Data Collection Plan").⁹⁶ The Cold Weather Data Collection Plan proposes 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 noted that it plans to issue a Section 1600 data request for its first October 1 informational filing, thereafter, it may use other data collection methods.

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

As previously reported, NERC is required to file on an informational basis quarterly status updates regarding the development of new or modified Reliability Standards pertaining to virtualization and cloud computing services. NERC submitted its most recent informational filing regarding one active CIP standard development project (Project 2016-02 – Modifications to CIP Standards ("Project 2016-02"))⁹⁷ on June 13, 2024. Project 2016-02 focuses on modifications to the CIP Reliability Standards to incorporate applicable protections for virtualized environments. In the June 13 report, NERC reported that Project 2016-02 was successfully balloted in April, the Reliability Standards adopted by the NERC Board on May 9, 2024, and the Standards will be filed before the end of June. Because the Reliability Standards are to be filed before the end of June, NERC indicated that the June 13 report would be the last schedule update filed in this docket and asked that the FERC consider NERC to have satisfied the directive to file schedule updates.

- **Report of Comparisons of 2023 Budgeted to Actual Costs for NERC and the Regional Entities (RR24-3)**

On May 30, 2024, NERC filed its annual comparisons of actual to budgeted costs for 2023 for NERC and the six Regional Entities operating in 2023,⁹⁸ including NPCC. The Report includes comparisons of actual funding received and costs incurred, with explanations of significant actual cost-to-budget variances, audited financial statements, and tables showing metrics concerning NERC and Regional Entity administrative costs in their 2023 budgets and actual results. Comments on this filing were due on or before June 20, 2024; none were filed. This matter is pending before the FERC.

- **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.

⁹⁵ *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).

⁹⁶ *N. Am. Elec. Rel. Corp.*, 187 FERC ¶ 61,087 (May 23, 2024).

⁹⁷ 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.

⁹⁸ Midwest Rel. Org. ("MRO"), Northeast Power Coordinating Council, Inc. ("NPCC"), ReliabilityFirst Corp. ("ReliabilityFirst"), SERC Rel. Corp. ("SERC"), Texas Rel. Entity, Inc. ("Texas RE"), and Western Elec. Coordinating Council ("WECC").

XI. Misc. - of Regional Interest

- **203 Application: Trailstone/Engelhart US (EC24-87)**

On June 11, 2024, Trailstone Energy Marketing, LLC (“Trailstone Marketing”), Trailstone Renewables, LLC (“Trailstone Renewables”, and together with Trailstone Marketing, the “Trailstone Companies”) and Engelhart CTP (US) LLC (“Engelhart US”) requested authorization for a transaction pursuant to which Engelhart US would acquire 100% of the interests in the Trailstone Companies from Riverstone V Trailstone Holdings (making the Trailstone Companies and Engelhart US Related Persons). Comments on this application are due on or before **July 2, 2024**. Thus far, Public Citizen has filed a doc-less intervention. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

On June 7, 2024, the FERC issued an order authorizing the proposed transaction pursuant to which GIP IV Whale Fund Holdings, L.P. (“GIP Whale”) and/or one more of its affiliates will acquire Eversource Investment, LLC’s interests in North East Offshore, LLC, Revolution Wind, LLC, South Fork Wind, LLC (together with North East Offshore, Revolution Wind and GIP Whale, the “Applicants”).⁹⁹ Upon consummation, GIP Whale will hold: (i) Eversource Investment’s 50 percent interest in North East Offshore and will thereby also indirectly hold a 50 percent interest in Revolution Wind; and (ii) Eversource Investment’s 50 percent Class B interest in South Fork Class B and will thereby also indirectly hold an interest in South Fork Wind. The Applicants must file a notice within 10 days of consummation of the transaction, which as of the date of this Report has not happened. 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 were due on or before May 13, 2024. Public Citizen and Private Equity Stakeholder Project¹⁰⁰ filed two joint protests (the first related to upstream ownership/affiliate issues; the second, addressing Applicants’ proposed purchase of Allele); Sierra Club also filed a protest. On June 5, 2024, Applicants answered the Protests.

Deficiency Letter. Also on June 5, the FERC issued a deficiency letter, requesting additional information before it acts on the Application. The deficiency letter response must address issues related to the data and methods used for the submitted Delivered Price Test (“DPT”) and how Proposed Transaction is consistent with, or would have any impact on the terms of, the blanket authorization granted to BlackRock and certain of its investment management subsidiaries. GIM responded to the deficiency letter on June 18, 2024.

This matter is pending before the FERC. intervened. 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 authorized¹⁰¹ 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

⁹⁹ *North East Offshore, LLC, et al.*, 187 FERC ¶ 62,151 (June 7, 2024).

¹⁰⁰ The Private Equity Stakeholder Project states that it supports stakeholders impacted by private equity firms and similar private asset managers. See <https://pestakeholder.org/>.

¹⁰¹ *Three Corners Solar, LLC and Three Corners Prime Tenant, LLC*, 184 FERC ¶ 62,060 (Jul. 28, 2023).

which Lessee will lease, operate, and control an approximately 112 MWac solar photovoltaic (“PV”) electric generation facility owned by Lessor in Kennebec County, Maine (the “Transaction”). Pursuant to the July 28 order, Lessor and Lessee must file a notice within 10 days of consummation of the transaction, which as of the date of this Report has not yet occurred. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

On May 23, 2024, the FERC issued a Notice of Intent Not to Act on the petition by Allco Finance Limited (“Allco”).¹⁰² As previously reported, Allco asked the FERC to initiate an enforcement action against the Connecticut Department of Energy and Environmental Protection (“CT DEEP”) to remedy what it asserted was 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. In light of the *Allco CT DEEP Notice*, Allco may now initiate an action against CT DEEP in an appropriate court. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **D&E Agreement: CL&P/BPUS (ER24-2233)**

On June 11, 2024, CL&P filed a Design & Engineering (“D&E”) Agreement that sets forth the terms and conditions under which CL&P will perform necessary engineering, procurement and design services in connection with the interconnection of BPUS Generation Development LLC’s 50 MW solar facility in Windham, Connecticut. Comments on this filing are due on or before **July 2, 2024**. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **TSA Amendment: NSTAR/Park City Wind (ER24-2104)**

On May 28, 2024, NSTAR filed an Amended and Restated Settlement Transmission Support Agreement (“TSA”) memorializing NSTAR’s commitment to construct certain transmission facilities required to interconnect Park City Wind LLC’s (“PCW”) proposed 800 MW offshore wind farm to the NSTAR transmission system and sets forth the parties’ respective responsibilities to finance and pay for those facilities. The initial Settlement TSA was approved on June 17, 2022. The amended TSA amends and restates the Settlement TSA with primary revisions to certain milestone dates associated with (i) PCW’s provision of notices to NSTAR to proceed with work related to constructing transmission facilities required to interconnect PCW’s offshore wind farm and (ii) NSTAR’s completion of such facilities and costs of certain of the transmission facility upgrades that NSTAR will construct under the TSA. A July 28, 2024 effective date was requested. Comments on the filing were due on or before June 18, 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).

- **CSA: NextEra Seabrook/NECEC (ER24-2097)**

On May 24, 2024, NextEra Energy Seabrook, LLC (“Seabrook”) filed a Construction Services and Cost Reimbursement Agreement for Affected System Project (“Agreement”) with NECEC Transmission LLC (“NECEC”) to set forth the terms of Seabrook’s performance related to the construction, implementation, and testing of the Seabrook Station 24.5 kV generator circuit breaker and ancillary equipment, including pre-Fall 2024 Planned Outage work that will commence following the effective date of the Agreement. A May 25, 2024 effective date was requested. Comments on the filing were due on or before June 14, 2024; none were filed. Avangrid/NECEC

¹⁰² *Allco Finance Ltd. et al.*, 187 FERC ¶ 61,092 (May 23, 2024) (“*Allco CT DEEP Notice*”).

National Grid and Eversource intervened. 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).

- **SGIA: PSNH/Brookfield White Pine Hydro (ER24-2092)**

On May 23, 2024, Public Service Company of New Hampshire (“PSNH”) filed a non-conforming SGIA governing the continued interconnection to the PSNH system of Brookfield White Pine Hydro LLC’s (“White Pine Hydro”) 3.2 MW hydroelectric generation facility (located in Errol, New Hampshire). The facility receives interconnection service pursuant to a state-jurisdictional interconnection agreement dated April 7, 1986, which is set to expire on June 30, 2024. The SGIA restates and updates the terms under which White Pine Hydro will continue to receive interconnection service. The SGIA is non-conforming in that ISO-NE is not a party to the agreement. A May 24, 2024 effective date was requested. Comments on the filing were due on or before June 13, 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).

- **RFA Termination: PSNH/NECEC (ER24-2087)**

On May 23, 2024, PSNH filed to terminate the Related Facilities Agreement (“RFA”) between Eversource Energy, on behalf of PSNH, and NECEC Transmission LLC (“NECEC”). PSNH stated that it has completed all work pursuant to the RFA. An effective date of May 23, 2023 was requested. Comments on this filing were due on or before June 13, 2024; none were filed. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Order 2023 Compliance Filing: Versant MPD OATT (ER24-2035)**

On May 16, 2024, Versant Power proposed revisions to its *pro forma* LGIP, Large Generator Interconnection Agreement (“LGIA”), SGIP and Small Generator Interconnection Agreement (“SGIA”) in the MPD OATT in compliance with *Orders 2023* and *2023-A*. The revised LGIP contains two deviations from *Order 2023-A*, Versant proposes (i) to eliminate the reference to when the transition process will commence and, instead, only reference when it plans to hold its first Cluster Study process on January 1, 2025 language that was previously approved by the FERC in Versant Power’s Order No. 845 compliance filing and (ii) to limit the use of surety bonds to those where the surety bond is “issued by an insurer reasonably acceptable to the Transmission Provider” and that “specify a reasonable expiration date.” An effective date of January 1, 2025 was requested. Comments were due on or before June 6, 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).

- **IA 2nd Amendment – CMP/Brookfield White Pine Hydro (ER24-1966)**

On May 8, 2024, CMP filed a second amendment to the Interconnection Agreement governing the interconnection of generation facilities owned by Brookfield Hydro to remove references to the “Bonny Eagle” and “West Buxton Hydro” generating facilities (now subject to a new *pro forma* LGIA between CMP, Brookfield and ISO-NE). The amended IA does not implement any new rates or charges. A July 8, 2024 effective date was requested. Comments on the filing were due on or before May 29, 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).

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

On June 24, 2024, the FERC accepted a non-conforming SGIA that governs the interconnection of Ampersand Gillman’s four hydroelectric facilities (total capacity of 5.05MW) in Vermont and replaces the existing interconnection agreement between NEP and Ampersand Gillman’s predecessor in interest, American Paper Mills of Vermont, Inc.¹⁰³ The SGIA is non-conforming in that ISO-NE is not a party to the agreement. The non-conforming SGIA was accepted effective as of *April 5, 2024*, as requested. Unless the June 24 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

On June 4, 2024, the FERC accepted, effective March 26, 2024 as requested, the non-conforming LGIA governing the interconnection of SouthCoast Wind Energy LLC’s (“SouthCoast Wind”) 14.7 MW offshore wind facility off the coast of Massachusetts.¹⁰⁴ Unless the June 4 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).

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

On May 14, 2024, the FERC accepted CMP’s Notice of Termination of its Engineering and Procurement Agreement with FPL Energy Wyman, LLC (“FPL Wyman”) after the completion of the services set forth in the Agreement.¹⁰⁵ The Notice was accepted effective *March 15, 2024* as requested. Unless the May 14 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **LGIA – 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. On May 7, 2024, the Filing Parties filed a replacement LGIA to allow the FERC additional time to consider the filing, as well as a related filing made by Andro Hydro (ER24-1629), and further consultation among the Filing Parties. Comments on the May 7 filing were due on May 28, 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/NSTAR/MMWEC (ER24-1238)**

On June 3, 2024, the FERC accepted, effective April 13, 2024, a non-conforming LGIA governing 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.¹⁰⁶ Unless the June 3 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).

¹⁰³ *New England Power Co.*, Docket No. ER24-1851-000 (June 24, 2024) (unpublished letter order).

¹⁰⁴ *ISO New England Inc. and New England Power Co.*, Docket No. ER24-1840-000 (June 4, 2024) (unpublished letter order).

¹⁰⁵ *Central Maine Power Co.*, Docket No. ER24-1510-000 (May 14, 2024) (unpublished letter order).

¹⁰⁶ *ISO New England Inc.*, Docket No. ER24-1238-000, 001 (June 3, 2024) (unpublished letter order).

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

As previously reported, 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").¹⁰⁷ 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.¹⁰⁸ 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.¹⁰⁹ 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.

Settlement Judge Proceedings. 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.¹¹⁰ The initial settlement conference was held on May 3, 2024 and a second settlement conference is scheduled for **July 17, 2024**. Judge Hessler submitted his first report on June 7, 2024 (and must submit a report every 60 days thereafter) addressing the parties' progress toward settlement. On May 31, 2024, CMP requested protective treatment of commercially sensitive or privileged information provided to FERC Trial Staff and other potential participants. On June 4, 2024, the Deputy Chief Administrative Law Judge granted CMP's motion and adopted a Protective Order to govern this proceeding. The Settlement Judge proceedings are on-going. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

At Versant's request, action on this matter has not yet been taken. As previously reported, 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).

¹⁰⁷ *Central Maine Power Co.*, 187 FERC ¶ 61,002 (Apr. 1, 2024) ("*CMP ESF Rate Order*").

¹⁰⁸ *Id.* at P 29.

¹⁰⁹ *Id.*

¹¹⁰ *Central Maine Power Co.*, Docket No. ER24-1177-000 (Apr. 5, 2024) (unpublished letter order).

XII. Misc. - Administrative & Rulemaking Proceedings¹¹¹

- **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”).¹¹² The Collaborative will be the successor to the Joint Federal-State Task Force on Electric Transmission (“Transmission Task Force” or “JFSTF”),¹¹³ 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 Jun 24, 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 NOPR¹¹⁴ 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 remains pending before the FERC.

¹¹¹ 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).

¹¹² *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*”).

¹¹³ *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).

¹¹⁴ *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*,¹¹⁵ its final rule on proposed reforms to the *pro forma* LGIP, *pro forma* SGIP, *pro forma* 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;¹¹⁶ (ii) increase the speed of interconnection queue processing;¹¹⁷ and (iii) incorporate technological advancements into the interconnection process.¹¹⁸ Many of the reforms adopted in *Order 2023* closely track the reforms set out in the FERC's Notice of Proposed Rulemaking.¹¹⁹ However, the FERC did revise aspects of the reforms.¹²⁰ *Order 2023* became effective November 6, 2023¹²¹ (60 days from its publication in the *Federal Register* ("Publication Date")).

¹¹⁵ *Improvements to Generator Interconnection Procedures and Agreements*, Order No. 2023, 184 FERC ¶ 61,054 (July 28, 2023) ("*Order 2023*").

¹¹⁶ 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.

¹¹⁷ 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.

¹¹⁸ 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.

¹¹⁹ *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.

¹²⁰ 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.

¹²¹ *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.

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".¹²² 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*¹²³ 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;"¹²⁴
- ◆ 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;¹²⁵
- ◆ declined to revise the eligibility date for participation in a transitional cluster study or set a size threshold for the transitional cluster study;¹²⁶
- ◆ 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

¹²² *Improvements to Generator Interconnection Procedures and Agreements*, 184 FERC ¶ 62,163 (Sep 28, 2023) ("*Order 2023 Allegheny Notice*").

¹²³ *Improvements to Generator Interconnection Procedures and Agreements*, 186 FERC ¶ 61,199 (Mar. 21, 2024) ("*Order 2023-A*").

¹²⁴ *Id.* at P 280.

¹²⁵ *Id.* at P 257.

¹²⁶ *Id.*

compliance an option for heatmap users to view results using ERIS assumptions in addition to NRIS assumptions;¹²⁷

- ◆ 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.¹²⁸

Due to breadth of the issues addressed in *Order 2023-A*, the FERC extended the *Order 2023* compliance filing deadline to May 16, 2024.¹²⁹ 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 meeting. ISO-NE's *Order 2023* and *Order 2023-A* Revisions were unanimously supported at the March 7 and May 2 Participants Committee meetings, respectively, and were filed on May 14, 2024 (see ER24-2007 and ER24-2009 above). Several parties submitted petitions in Federal Court challenging *Order-A 2023*. Developments in those federal court proceedings will be summarized in Section XVI below.

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

- **Order 1977: Transmission Siting (RM22-7)**

On May 16, 2024, the FERC issued *Order 1977*¹³⁰ updating the regulations governing applications for permits to site electric transmission facilities under section 216 of the FPA, as amended by the Infrastructure and Jobs Act, and particularly to reflect FERC's jurisdiction over projects located in National Interest Electric Transmission Corridors that have been denied state siting authority. There is no compliance filing requirement associated with *Order 1977*, but applicants seeking to develop transmission under federal authority in a National Interest Corridor must comply with the revised and new regulations effective **July 29, 2024**.¹³¹

NEPOOL Counsel prepared a [summary](#) of *Order 1977* which was distributed to the Transmission Committee. If you have any questions concerning *Order 1977*, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com) or Margaret Czepiel (202-218-3906; mczepiel@daypitney.com).

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

On March 21, 2024, the FERC issued a NOPR¹³² 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."¹³³ The proposed change may affect revenues received by reactive power resources in New England.¹³⁴ The NOPR seeks comments on, among other issues, the following:

¹²⁷ *Id.* at P 95.

¹²⁸ *Id.* at P 615.

¹²⁹ *Order 2023-A* was published in the *Fed. Reg.* on Apr. 16, 2024 (Vol. 89, No. 74) pp. 27,006-27,243.

¹³⁰ *Applications for Permits to Site Interstate Elec. Transmission Facilities*, 187 FERC ¶ 61,069 (May. 13, 2024) ("*Order 1977*").

¹³¹ *Order 1977* was published in the *Fed. Reg.* on May 29, 2024 (Vol. 89, No. 104) pp. 46,682-46,740.

¹³² *Compensation for Reactive Power Within the Standard Power Factor Range*, 186 FERC ¶ 61,203 (Mar. 21, 2024) ("*Reactive Power NOPR*").

¹³³ *Reactive Power NOPR* PP 51-53.

¹³⁴ Generating facilities in New England are compensated for reactive power under a flat, inflation-adjusted rate design.

- (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.¹³⁵

Initial comments on the *Reactive Power NOPR* were due May 28, 2024; reply comments are due **June 26, 2024**.¹³⁶ 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. ACPA/SEIA, Vistra/Dynegy, Renewable Generation Companies¹³⁷ and Coalition of Midwest Power Producers ("COMPP")¹³⁸ supported the extension request; Joint Customers¹³⁹ and PJM IMM opposed the request. On May 10, 2024, the FERC denied the request.¹⁴⁰

Comments. Following the denial of the Indicated Energy Trade Associations' request for extension of time to file comments, initial comments were filed on May 28, 2024 by over 30 parties, including by: [ISO-NE](#), [Calpine](#), [CT OCC](#), [EDP Renewables](#), [Glenvale](#), [National Grid](#), [New England Consumer Advocates](#), [ACPA/SEI](#), [ACORE](#), [EPSA](#), [National Hydropower Assoc.](#), [NEI](#), and [Reactive Service Providers](#). Reply comments are due by **June 26, 2024**.

- **Order 1920: Transmission Planning Reforms (RM21-17)**

On May 13, 2023, the FERC issued *Order 1920*,¹⁴¹ its final rule on proposed reforms to existing the transmission planning and cost allocation requirements. In *Order 1920*, the FERC explained that under existing

¹³⁵ *Id.* at PP 47, 49, 56.

¹³⁶ The *Reactive Power NOPR* was published in the Fed. Reg. on Mar. 28, 2024 (Vol. 89, No. 61) pp. 21,454-21,468.

¹³⁷ "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.

¹³⁸ COMPP is a non-profit trade association; member companies include Calpine, Vistra Energy, Rockland Capital and other entities that own and operate generation assets within MISO.

¹³⁹ "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").

¹⁴⁰ *Reactive Power NOPR*, Docket No. RM22-2-000 (May 10, 2024).

¹⁴¹ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 187 FERC ¶ 61,068 (May 13, 2024) ("*Order 1920*").

processes, transmission providers are not required to: (i) perform a sufficiently long-term assessment of transmission needs identifying Long-Term Transmission Needs; (ii) adequately account for known determinants of Long-Term Transmission Needs prospectively; and (iii) consider the broader benefits of regional transmission facilities planned to meet Long-Term Transmission Needs. The existing processes result in less efficient and cost-effective investment in transmission infrastructure and higher costs to customers and, therefore, unjust and unreasonable rates and need for reforms. *Order 1920* requires all transmission providers, *inter alia*, to

- (i) conduct Long-Term Regional Transmission Planning to identify, evaluate and select Long-Term Regional Transmission Facilities to address Long-Term Transmission Needs;
- (ii) to evaluate for selection regional transmission facilities that will address identified interconnection-related transmission needs through the existing Order No. 1000 processes;
- (iii) to include in their compliance filings one or more default ex ante Long Term-Regional Transmission Cost Allocation Methods to allocate costs for Long-Term Regional Transmission Facilities (or a portfolio of such Facilities) that are selected for regional cost allocation; and
- (iv) revise their existing interregional transmission coordination procedures to reflect the long-term regional transmission planning reforms adopted in *Order 1920*.

Order 1920 adopts a number of reforms from the *Transmission NOPR*,¹⁴² but also declines to adopt several reforms, including the NOPR proposal to restrict the availability of the construction-work-in-progress (“CWIP”) incentive for Long-Term Regional Transmission Facilities and to establish a federal rights of first refusal (“ROFR”) for incumbent transmission providers, conditioned on the incumbent transmission provider establishing joint ownership of the transmission facilities. Although the FERC did not adopt a federal ROFR, it did adopt a limited ROFR applicable only to certain “right-sized” replacement transmission facilities. In addition, the FERC noted a willingness to consider the CWIP and ROFR issues in future proceedings.

Order 1920 takes effect on *August 12, 2024*.¹⁴³ Transmission providers must submit compliance filings by **June 12, 2025** with respect to most of the Order’s requirements, while filings to comply with the interregional transmission coordination requirements are due by **August 12, 2025**.

A detailed [high-level summary](#) of *Order 1920* was distributed to, and was reviewed with, the Transmission Committee. NEPOOL counsel will coordinate with ISO-NE counsel on stakeholder engagement to develop a compliance filing in response to *Order 1920*.

Requests for Clarification and/or Rehearing. Over 50 parties file requests for clarification and/or rehearing, including requests by: [AEU](#), [Dominion](#), [Invenergy](#), [NESCOE](#) (with [VT PUC](#) supporting), [Versant](#), [APPA](#), [EEI](#), [Large Public Power Council](#), [NARUC](#), [NRECA](#), [TAPS](#), [WIRES](#), [Consumer Advocates](#), and [Harvard Electricity Institute](#). Those requests for rehearing are pending before the FERC.

If you have any questions concerning *Order 1920*, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com) or Margaret Czepiel (202-218-3906; mzczepiel@daypitney.com).

¹⁴² *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 179 FERC ¶ 61,028 (Apr. 21, 2022) (“*Transmission NOPR*”).

¹⁴³ *Order 1920* was published in the Fed. Reg. on Jun. 11, 2024 (Vol. 89, No. 113) pp. 49,280-49,586.

XIII. FERC Enforcement Proceedings

Electric-Related Enforcement Actions

- **Engie Stipulation and Consent Agreement (IN24-6)**

On May 20, 2024, the FERC approved a Stipulation and Consent Agreement with ENGIE Energy Marketing NA, Inc. (“Engie”) to resolve OE’s investigation of Engie’s involvement as Lead Market Participant and energy manager for unaffiliated generator assets (the “FRM Assets”) that participated in the ISO-NE Forward Reserve Market (“FRM”) between July 2021 and September 2022 (the “Relevant Period”).¹⁴⁴ Enforcement determined that during the Relevant Period, Engie routinely submitted attestations to the ISO-NE IMM that one or more FRM Assets satisfy all six conditions necessary to seek exemption from energy market mitigation under the ISO-NE Tariff when certain conditions were not met. Enforcement determined that there were no instances during the Relevant Period in which the FRM Assets would have been subject to energy market mitigation but for an exemption request submitted by Engie. Enforcement found no intent to defraud; instead, Engie failed to properly evaluate whether necessary conditions were met prior to the submission of an attestation to the IMM; and, relatedly, failed to evaluate how changes Engie made to the internal model it used to generate offers might impact the accuracy of its attestations. Under the Stipulation and Consent Agreement, Engie agreed to pay a **civil penalty of \$48,000** to the United States Treasury and file one annual compliance report with the requirement of a second annual filing at Enforcement’s discretion. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **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.¹⁴⁵ 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.”¹⁴⁶ 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;¹⁴⁷ 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).

¹⁴⁴ *ENGIE Energy Marketing NA, Inc.*, 187 FERC ¶ 61,084 (May 20, 2024).

¹⁴⁵ *Ketchup Caddy, LLC and Philip Mango*, 186 FERC ¶ 61,132 (Feb. 21, 2024).

¹⁴⁶ *Id.* at P 3.

¹⁴⁷ 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.

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,¹⁴⁸ 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 FERC issued an Order on Presiding Officer Reassignment,¹⁴⁹ which (i) directed the Chief ALJ to reassign this proceeding to another ALJ not previously involved in the proceeding (i.e., designate a new presiding officer) once the *June 14 Order* takes effect; (ii) held that the *June 14 Order* will take effect once the Northern District clarifies or lifts its stay for the limited purpose of allowing the *June 14 Order* to take effect or the stay is lifted or dissolved such that hearing procedures may resume; and (iii) stated that this proceeding otherwise remains suspended until the Northern District’s stay is lifted or dissolved such that hearing procedures may resume.

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

On December 16, 2021, the FERC issued a show cause order¹⁵⁰ 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,¹⁵¹ 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;¹⁵² (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.¹⁵³ This matter is pending before the FERC.

¹⁴⁸ 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.

¹⁴⁹ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 183 FERC ¶ 61,190 (June 14, 2023) (“*June 14 Order*”).

¹⁵⁰ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 177 FERC ¶ 61,182 (Dec. 16, 2021) (“*Rover/ETP Tuscarawas River HDD Show Cause Order*”).

¹⁵¹ *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*”).

¹⁵² 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.

¹⁵³ *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.

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

On April 28, 2016, the FERC issued a show cause order¹⁵⁴ 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 2012.¹⁵⁵

The FERC also directed TGPNA to show cause why it should not be required to disgorge unjust profits of **\$9.18 million**, plus interest; TGPNA, Tran and Hall to show cause why they should not be assessed civil penalties (TGPNA - **\$213.6 million**; Hall - **\$1 million** (jointly and severally with TGPNA); and Tran - **\$2 million** (jointly and severally with TGPNA)). In addition, the FERC directed TGPNA’s parent company, Total, S.A. (“Total”), and TGPNA’s affiliate, Total Gas & Power, Ltd. (“TGPL”), to show cause why they should not be held liable for TGPNA’s, Hall’s, and Tran’s conduct, and be held jointly and severally liable for their disgorgement and civil penalties based on Total’s and TGPL’s significant control and authority over TGPNA’s daily operations. Respondents filed their 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.¹⁵⁶ 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.¹⁵⁷

On June 14, 2023, the FERC issued an Order on Presiding Officer Reassignment,¹⁵⁸ 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).

¹⁵⁴ *Total Gas & Power North America, Inc.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) (“*TGPNA Show Cause Order*”).

¹⁵⁵ 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.

¹⁵⁶ *Total Gas & Power North America, Inc. et al.*, 176 FERC ¶ 61,026 (July 15, 2021).

¹⁵⁷ *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).

¹⁵⁸ *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*”).

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.¹⁵⁹ The certificate was conditioned on: (i) Iroquois' completion of construction of the proposed facilities and making them available for service within **three years** of the date of the; (ii) Iroquois' compliance with all applicable FERC regulations under the NGA; (iii) Iroquois' compliance with the environmental conditions listed in the appendix to the order; and (iv) Iroquois' filing written statements affirming that it has executed firm service agreements for volumes and service terms equivalent to those in its precedent agreements, prior to commencing construction. The March 25, 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

¹⁵⁹ *Iroquois Gas Transmission Sys., L.P.*, 178 FERC ¶ 61,200 (2022) ("*Iroquois Certificate Order*").

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: ER18-1639-028¹⁶⁰

Petitioner: Mystic

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

On April 3, 2024, Constellation Mystic Power, LLC petitioned the DC Circuit Court of Appeals for review of the FERC's orders. Mystic filed, on 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, were also due on or before May 6. Interventions were filed by ISO-NE, NESCOE, and a collective of Massachusetts municipal utilities.¹⁶¹

In response to a motion by the FERC, the Court order that this case be held in abeyance pending further order of the court. The Court directed the parties to file motions to govern further proceedings in this case by **July 16, 2024**.

- **Orders 2023 and 2023-A (23-1282 et al.) (consolidated)**

Underlying FERC Proceeding: RM22-14¹⁶²

Petitioners: AEU et al.

Status: Being Held In Abeyance; Motions to Govern Future Proceedings Due Jun 25, 2024

Several Petitioners have challenged *Orders 2023 and 2023-A*. Those challenges have now been consolidated, with the AEU docket (23-1282) as the lead docket. Since the last Report, the Court ordered that these consolidated cases remain in abeyance pending further order of the court. The Court directed the parties to file motions to govern further proceedings in these consolidated cases by **June 25, 2024**.

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

Underlying FERC Proceeding: ER22-983¹⁶³

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

Status: Being Held In Abeyance; Motions to Govern Future Proceedings Due Aug 5, 2024

On June 30, 2023, ISO-NE (23-1168), CMP/UI (23-1170), Eversource (23-1167), and National Grid (23-1169) petitioned the DC Circuit Court of Appeals for review of the FERC's orders related to the FERC's *Order 2222 Compliance Orders*.¹⁶⁴ On July 3, 2023, the Court consolidated the cases, with Case No. 23-1667 as the lead case.

¹⁶⁰ *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*”).

¹⁶¹ 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”).

¹⁶² *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).

¹⁶³ *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*”).

¹⁶⁴ 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

On July 24, 2023, the FERC moved to have the consolidated cases held in abeyance pending the issuance of the Commission's further order on rehearing. The Court granted that motion on July 27, 2023, with the case to be held in abeyance pending further order of the Court. Since the last Report, on June 6, 2024, the FERC filed a status report reporting that, on May 23, 2024, the Commission issued its order on rehearing of its November 2023 order in the ER22-983 docket and that, under the Court's February 6 order, the parties therefore have until **August 5, 2024**, to file motions to govern future proceedings in these consolidated appeals.

- **Seabrook Dispute Order (23-1094, 23-1215) (consolidated)**
Underlying FERC Proceeding: EL21-6, EL 23-3¹⁶⁵
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.¹⁶⁶ 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.

coordination with distribution utilities and relevant electric retail regulatory authorities ("RERRAs") for DERA/DER registration, operations, and dispute resolution purposes.

¹⁶⁵ *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*").

¹⁶⁶ In the Seabrook Dispute Order, the FERC (i) both denied and granted in part the Seabrook Complaint; (ii) dismissed the Seabrook Declaratory Order Petition; and (iii) directed Seabrook to replace the Seabrook Station breaker pursuant to its obligations under the Seabrook LGIA and Good Utility Practice. Specifically, the FERC denied the Seabrook Complaint in part because it found that Avangrid had "not shown that Seabrook is obligated to replace the breaker due to Seabrook failing to meet certain open access obligations or because Seabrook has failed to comply with Schedule 25 of the ISO-NE Tariff". However, the FERC found that, "under Seabrook's LGIA, Seabrook may not refuse to replace the breaker because it is needed for reliable operation of Seabrook Station and required by Good Utility Practice" and thus, given the specific facts and circumstances in the record, granted the Seabrook Complaint in part. With respect to cost issues, the FERC agreed with Avangrid that, in this case, Seabrook should not recover opportunity costs (e.g. lost profits, lost revenues, and foregone Pay for Performance ("PFP") bonuses) or legal costs. In dismissing the Declaratory Order Petition, the FERC noted that the issues raised in the Petition were addressed in the Seabrook Dispute Order, that additional findings were unnecessary, and thus exercised its discretion to not take action on, and to dismiss, the Petition. The breaker replacement is currently expected to take place during the Fall 2024 refueling outage and the commercial operation date for the NECEC Project is December 2024. Seabrook plans to file an agreement governing installation at the earlier of 30 days prior to delivery of the breaker or 120 days prior to the start of the Fall 2024 outage. The FERC noted its expectation that such an agreement would resolve whatever remaining issues exist between the parties to allow replacement of the breaker to move forward during the 2024 outage, or if not, an unexecuted agreement would be filed.

- **Mystic II (ROE & True-Up)**
(21-1198; 21-1222, 21-1223, 21-1224, 22-1001, 22-1008, 22-1026) (consolidated)
Underlying FERC Proceeding: ER18-1639-010, -011,¹⁶⁷ -013¹⁶⁸ -017¹⁶⁹
Petitioners: Mystic, CT Parties,¹⁷⁰ MA AG, ENECOS

Status: Being Held in Abeyance; Motions to Govern Future Proceedings Due Jul 23, 2024

This case was initiated when, on October 8, 2021, Mystic petitioned the DC Circuit Court of Appeals for review of the FERC's orders setting the base ROE for the Mystic COS Agreement at 9.33%. The *Mystic ROE Order* and subsequent FERC orders addressing the Mystic ROE issues have all also been appealed by various parties and consolidated under 21-1198. Docketing Statements and Statements of Issues to be Raised, and the Underlying Decision from which the various appeals arise have been filed as new dockets have been opened and then consolidated with 21-1198. As previously reported, the Certified Index to the Record was due, and filed by the FERC, on February 22, 2022. On March 10, 2022, MMWEC and NHEC filed a notice of intent to participate in support of FERC in Case Nos. 21-1198, 22-1008, and 22-1026 and in support of Petitioners in the remaining consolidated cases, and filed a statement of issues. On March 17, 2022, CT Parties moved to intervene, and those interventions were granted on May 4, 2022.

As previously reported, on July 8, 2022, Connecticut Parties and ENECOS jointly moved to hold these proceedings in abeyance until 30 days after the DC Circuit issued an opinion in *MISO Transmission Owners v. FERC*, 16-1325 ("*MISO TOs*"). They requested abeyance on the basis that the consolidated petitions in this proceeding and *MISO TOs* both involve challenges to the FERC's ROE methodology (the FERC set the ROE used in calculating Constellation's rates using the methodology challenged in *MISO TOs*). Although Constellation opposed the abeyance request, the Court granted the abeyance request on July 27, 2022, directing the Parties to file motions to govern future proceedings within 30 days of the court's disposition of *MISO TOs*. The Court has since decided *MISO TOs*. However, the parties continue to agree that this case should remain in abeyance pending further proceedings related to *MISO TOs*, now on remand at the FERC. Most recently, on January 24, 2024, Constellation reported that all parties agree and asked the Court that this case should remain in abeyance for an additional 90 days pending FERC action on remand in the *MISO TOs* case. On 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: ER18-619¹⁷¹
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

¹⁶⁷ *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).

¹⁶⁸ *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).

¹⁶⁹ *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*).

¹⁷⁰ In this appeal, "CT Parties" are the CT PURA CT PURA, CT DEEP, and the CT OCC.

¹⁷¹ *ISO New England Inc.*, 162 FERC ¶ 61,205 (Mar. 9, 2018) ("*CASPR Order*").

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

Petitioners have moved to hold this matter in abeyance 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: ER15-414¹⁷²

Petitioners: TOs (CMP et al.)

Status: Being Held in Abeyance

On August 28, 2020, the TOs¹⁷³ 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*¹⁷⁴ decision. On September 22, 2020, the FERC submitted an unopposed motion to hold this proceeding in abeyance for four months to allow for the Commission to “a future order on petitioners’ request for rehearing of the order challenged in this appeal, and the rate proceeding in which the challenged order was issued remains ongoing before the Commission.” On October 2, 2020, the Court granted the FERC’s motion, and directed the parties to file motions to govern future proceedings in this case by February 2, 2021. On January 25, 2021, the FERC requested that the Court continue to hold this petition for review in abeyance for an additional three months, with parties to file motions to govern future proceedings at the end of that period. The FERC requested continued abeyance because of its intention to issue a future order on petitioners’ request for rehearing of the order challenged in this appeal, and the rate proceeding in which the challenged order was issued remains ongoing before the FERC. Petitioners consented to the requested abeyance. On February 11, 2021, the Court issued an order that that this case remain in abeyance pending further order of the court. On April 21, 2021, the FERC filed an unopposed motion for continued abeyance of this case *because* the Commission intends to issue a future order on Petitioners’ request for rehearing of the challenged *Order Rejecting Compliance Filing*, and because the remand proceeding in which the challenged order was issued remains ongoing.

On May 4, 2021, the Court ordered that this case remain in abeyance pending further order of the Court, directing the FERC to file a status report by September 1, 2021 and at 120-day intervals thereafter. The parties were directed to file motions to govern future proceedings in this case within 30 days of the completion of agency proceedings. The FERC’s last status report, indicating that the proceedings before the FERC remain ongoing and that this appeal should continue to remain in abeyance, was filed on March 26, 2024.

¹⁷² *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) (“*Order Rejecting Filing*”).

¹⁷³ 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.

¹⁷⁴ *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) (“*Emera Maine*”).

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