

**EXECUTIVE SUMMARY**  
**Status Report of Current Regulatory and Legal Proceedings**  
**as of October 8, 2024**

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

**I. Complaints/Section 206 Proceedings**

1	206 Proceeding: <i>TO Initial Funding Show Cause Order</i> (EL24-83)	Sep 11	ISO-NE submits NE Response; comments due on or before <b>Oct 10, 2024</b>
		Sep 26	FERC issues “Allegheny Order”, dismissing Indicated Utilities’ Reh’g Request
		Sep 30	Clean Energy Associations request 14-day extension of time, to and including Oct 24, 2024, to comment on ISO/RTO Responses
		Oct 8	FERC grants an extension of time for interested parties to file comments; comment deadline now <b>Oct 25, 2024</b>

**II. Rate, ICR, FCA, Cost Recovery Filings**

4	MOPA Formal Challenge to TO’s Annual (2023-24) Transmission Rate Update/Info Filing (ER20-2054-000)	Sep 5	MOPA challenges National Grid statement and renews request that the FERC direct Identified TOs to answer MOPA’s questions
		Sep 6	VTransco submits responses
5	<b>Mystic 8/9 COSA (ER18-1639)</b>		
5	(-027) Second CapEx Info Filing Settlement Proceedings	Oct 2	Judge French issues 5 <sup>th</sup> status report recommending that settlement proceedings continue
6	Mystic COSA Protocols Waiver Request (ER24-3054)	Sep 13	Mystic requests second waiver of the deadlines in Sections II.6.A and II.4.F of the Protocols
		Sep 19	ISO-NE intervenes

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

8	Waiver Request: Late Stage SIS Process (GDQ ESS) (ER24-2926)	Sep 6 Sep 9, 18	ISO-NE protests GDQ ESS’ waiver request Calpine, NEPOOL intervene
8	DASI Conforming Changes (ER24-2883)	Sep 9-18	National Grid, NEPGA, MA DPU intervene
9	Waiver Request: Withdrawal from IEP and Return of IEP Net Revenues Received (Canal Marketing/Canal 3) (ER24-1407)	Sep 20 Sep 23 Oct 8	Judge Hurt issues 1 <sup>st</sup> settlement report recommending that settlement procedures continue 1 <sup>st</sup> settlement conference held Canal IEP Settlement Agreement filed (ER25-56)
11	New England’s <i>Order 2222</i> Compliance Filings: Metering Data Submission Revisions (ER22-983-008)	Sep 5	FERC accepts Metering Data Submission Revisions, eff. <i>Nov 1, 2026</i>

**IV. OATT Amendments / TOAs / Coordination Agreements**

* 12	VELCO Att. F App. D Depreciation Rate Changes (ER24-3019)	Sep 11	VTransco files changes to incorporate revised depreciation rates used to calculate VTransco’s annual transmission revenue requirements
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12	Fitchburg Att. F App. D Depreciation Rate Changes (ER24-2766)	Sep 26	FERC accepts changes to App. D to Tariff Att. F to reflect updated FG&E depreciation rates as approved by the MPUC, eff. <i>Jul 1, 2024</i>
12	Order 2023 Compliance Changes (ER24-2009)	Sep 30	Allco intervenes out-of-time and protests filing
13	Order 2023 Related Changes (ER24-2007)	Sep 30	Allco intervenes out-of-time and protests filing
14	LTPP Phase 2 Tariff Changes Compliance Filing (ER24-1978)	Sep 30	FERC accepts corrections to Section I.1.2 that were not yet intended to be in effect but had been included with the LTPP Phase 2 Changes in error

**V. Financial Assurance/Billing Policy Amendments**



* 14	FAP Revisions to Mitigate Risk of PFP Penalty Payment Defaults (ER24-3071)	Sep 19-Oct 8	Calpine, Dominion, ENE, HQ US, NEPGA, MA DPU, Public Citizen intervene
* 15	Updates to Non-Commercial Capacity FA Amount Multiplier (ER24-3040)	Sep 13 Sep 16-26	ISO-NE and NEPOOL jointly file updates to the Non-Commercial Capacity FA Amount Multiplier Calpine, National Grid, Public Citizen intervene

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



* 15	LGIA – ISO-NE/CMP/Andro Hydro (ER24-2970)	Sep 4	ISO-NE and CMP file executed, non-conforming LGIA with Andro Hydro (the Interconnection Customer) under Schedule 22
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**VII. NEPOOL Agreement/Participants Agreement Amendments**



17	135th Agreement; PA13 (Unused Provisional Member Voting Share Allocation Changes) (ER24-2636)	Sep 24	FERC accepts Changes, eff. <i>Aug 1, 2024</i>
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**VIII. Regional Reports**



17	Capital Projects Report – 2024/Q2 (ER24-2769)	Sep 6	FERC accepts Q2 2024 Capital Projects Report, eff. <i>Jul 1, 2024</i>
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**IX. Membership Filings**



* 19	Oct 2024 Membership Filing (ER24-3139)	Sep 30	<b>New Members:</b> Castleton Commodities Energy Services; Castleton Commodities Energy Trading; Alan Sliski; and Stony Creek Energy; and <b>Termination of Participant status:</b> Gas Recovery Systems; comment deadline <b>Oct 21, 2024</b>
19	Aug 2024 Membership Filing (ER24-2623)	Sep 24	FERC accepts the membership of Twig Redwood Inc. and the termination of the Participant status of MFT Energy US 1 LLC
* 19	Suspension Notices (not docketed)	Sep 11	ISO-NE files notice of Sep 9, 2024 suspension from the New England Markets of: Excelsior Billerica, Bondsville and Lexington; Hudson Energy Services; and Wolverine Holdings

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



**XI. Misc. - of Regional Interest**

21	203 Application: Carlyle Group (Nautilus)/Q-Generation (Trafigura) (EC24-114)	Sep 13 Sep 23 Sep 30	Public Citizen, ODEC submit comments Applicants answer ODEC comments PJM (out-of-time) intervenes
21	203 Application: Berkshire Power/Gate City Power (EC24-104)	Sep 13 Oct 1	FERC authorizes Gate City Power's acquisition of Berkshire Power Berkshire Power Co. submits notice of <i>Sep 30, 2024</i> consummation of transaction
22	203 Application: GIP/BlackRock (EC24-58)	Sep 6	FERC authorizes BlackRock's acquisition of 100% of the LLC interests in GIP and thus an indirect controlling interest in the GIM public utility subsidiaries, including, among others, Clearway Power Marketing and GenConn Energy
* 22	D&E Agreement: NSTAR / Vicinity Energy Boston (ER25-49)	Oct 7	NSTAR files D&E Agreement; comment deadline <b>Oct 28, 2024</b>
* 22	Wholesale Distribution Tariff – NSTAR (ER24-3154)	Sep 30  Oct 3	NSTAR files new Wholesale Distribution Tariff to facilitate ESS resources' participation in the wholesale markets via distribution facilities owned by NSTAR; comment deadline <b>Oct 21, 2024</b> MA DPU intervenes
* 22	Wholesale Distribution Tariff – CL&P (ER24-3153)	Sep 30	CL&P files new Wholesale Distribution Tariff to facilitate ESS resources' participation in the wholesale markets via distribution facilities owned by CL&P; comment deadline <b>Oct 21, 2024</b>
* 22	LGIA - Versant / Eagle Point Energy Center (ER24-2982)	Sep 6	Versant Power submits a fully executed, non-conforming LGIA by and among Versant and Eagle Point Energy Center, LLC
23	Wholesale Distribution Tariff – UI (ER24-2939)	Sep 20 Sep 6-17	<a href="#">Alliance for Climate Transition</a> , <a href="#">Elevate Renewable F7</a> file comments Agilitas, Eversource, New Leaf intervene
23	Wholesale Distribution Tariffs – National Grid (ER24-2796 (MECO); ER24-2795 (Nantucket))	Sep 6 Sep 23 Oct 4	<a href="#">MA AG</a> and <a href="#">Northeast Clean Energy Council</a> file protests <a href="#">National Grid</a> answers the Sep 6 protests <a href="#">Alliance for Climate Transition</a> (f/k/a the Northeast Clean Energy Council) responds to National Grid's Sep 23 answer
24	LGIA: ISO-NE/CL&P/Brookfield Husky Solar (ER24-2740)	Sep 26	FERC accepts non-conforming LGIA covering the interconnection of Brookfield's ~50 MW solar facility located in Sterling, CT, eff. <i>Aug 10, 2024</i>
24	D&E Agreement Cancellation: NSTAR/Hingham (ER24-2695)	Sep 9	FERC accepts notice of cancellation of NSTAR/Hingham D&E Agreement, eff. <i>Aug 5, 2024</i>
24	E&P Agreement, 3d Amendment: Seabrook / NECEC Transmission (ER24-2588)	Sep 20	FERC accepts third amendment to the E&P Agreement, eff. <i>Jul 3, 2024</i>
24	CMP ESF Service Rate (ER24-1177)	Sep 19 Sep 20	3 <sup>rd</sup> settlement conference held 4 <sup>th</sup> settlement conference scheduled for <b>Dec 10-11, 2024</b>
25	IA Cancellation Versant / PERC (ER24-965)	Sep 9	Versant asks the FERC to "un-pause" action on its Jan 22, 2024 notice of cancellation of the IA between itself and PERC

**XII. Misc. - Administrative & Rulemaking Proceedings**

25	Large Loads Co-Located at Generating Facilities (AD24-11)	Sep 10	FERC issues 2 <sup>nd</sup> supplemental notice of <b>Nov 1, 2024</b> tech. conf.
26	Innovations & Efficiencies in Generator Interconnection (AD24-9)	Sep 10-11 Sep 12	FERC holds workshop FERC invites post-workshop comments; comments due (following an extension of time) on or before <b>Nov 14, 2024</b>

26	Joint Federal-State Current Issues Collaborative (AD24-7)	Sep 17	FERC issues notice of the first public meeting of the Collaborative to be held <b>Nov 12, 2024</b> in Anaheim, California
26	ANOPR: Implementation of Dynamic Line Ratings (RM24-6)	Sep 16, 23	Topolonet Corporation, Laki Power submit comments

**XIII. FERC Enforcement Proceedings**

**Electric-Related Enforcement Actions**

* 30	Big Rivers Electric Corporation Stipulation and Consent Agreement (IN24-9)	Sep 5	FERC approves Agreement that resolves OE’s investigation into whether BREC violated the MISO Tariff and FERC regulations through false and misleading communications with MISO and the MISO IMM and by submitting bids to MISO at full availability when BREC knew or was reckless in not knowing that its plant could not run at full availability; BREC agrees to <b>disgorge \$308,341</b> , pay a <b>\$336,870 civil penalty</b> , and provide compliance training & monitoring
30	Ketchup Caddy / Phillip Mango (MISO DR Program Violations) (IN23-14)	Sep 4	FERC Secretary issues notice that Respondents were served with a copy of the <i>Ketchup Caddy Show Cause Order</i> on Jul 26, 2024 (to which they did not respond)

**Gas-Related Enforcement Actions**

32	Total Gas & Power North America, Inc. et al. (IN12-17)	Sep 19	In light of the Supreme Court’s decision in <i>Jarkesy</i> , the FERC terminated the hearing procedures established in the <i>Hearing Order</i> . The FERC stated that “will not impose penalties against [TGPNA] for the conduct alleged in the <i>Show Cause Order</i> on the basis of an administrative enforcement proceeding before a FERC ALJ.” This proceeding will be held in abeyance until a further FERC order is issued.
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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**

34	<i>TO Initial Funding Show Cause Order</i> (8 <sup>th</sup> Circuit - 24-2714)	Oct 3	Court issues order holding briefing schedule in abeyance for 90 days (until <b>Jan 1, 2025</b> )
35	<i>Order 2222 Compliance Orders</i> (23-1167, 23-1168, 23-1169, 23-1170, 23-1335)(consolidated)	Sep 30	FERC files status report stating that the FERC has not yet issued a final order in ER22-983, and these consolidated appeals should remain in abeyance
36	<i>Seabrook Dispute Order</i> (23-1094, 23-1215) (consolidated)	Oct 4	Court issues 2-1 opinion denying Seabrook’s Petition for Review

## M E M O R A N D U M

**TO:** NEPOOL Participants Committee Members and Alternates

**FROM:** Pat Gerity, Teresa Chen NEPOOL Counsel

**DATE:** October 8, 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”),<sup>1</sup> state regulatory commissions, and the Federal Courts and legislatures through October 8, 2024. If you have questions, please contact us.

### I. Complaints/Section 206 Proceedings<sup>2</sup>

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

As previously reported, 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).<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> The refund effective date for this proceeding is June 24, 2024.<sup>7</sup> A more detailed summary of the *TO Initial Funding Show Cause Order* was circulated to, and was reviewed with, the Transmission Committee.

<sup>1</sup> 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”).

<sup>2</sup> Reporting on Base ROE Complaints I-IV: (EL11-66, EL13-33; EL14-86; EL16-64) has been suspended and will be continued if and when there is new activity to report.

<sup>3</sup> *ISO New England Inc. et al.*, 187 FERC ¶ 61,170 (June 13, 2024) (“*TO Initial Funding Show Cause Order*”).

<sup>4</sup> *Id.* at P 1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at P 2.

<sup>7</sup> Notice of this 206 proceeding was published in the *Fed. Reg.* on June 24, 2024 (Vol. 89, No. 121) pp. 52,454-52,455.

Interventions were due on or before July 5, 2024 and were filed by the following New England-related parties:<sup>8</sup> NEPOOL, AEU, Avangrid, Calpine, CMEEC (out-of-time), EDP Renewables, Eversource, Invenergy, MA AG, National Grid, NESCOE, NextEra, NRDC, PPL, Maine Public Utilities Commission (“MPUC”), Massachusetts Department of Public Utilities (“MA DPU”), American Clean Power Association (“ACPA”), American Council on Renewable Energy (“ACRE”), Edison Electric Institute (“EEI”), Electric Power Supply Association (“EPSA”), RENEW Northeast (“RENEW”), Solar Energy Industries Association (“SEIA”), WIRES, Cordelio Services, and Public Citizen.

**NE Response to Show Cause Order (Attaching Substantive Response by NETOs).** On September 11, 2024, ISO-NE submitted a response (“NE Response”) explaining that, because the rules identified in the *TO Initial Funding Show Cause Order*<sup>9</sup> fall within the exclusive purview of, and are implemented by, the Participating Transmission Owners (“PTOs”) under the Transmission Operating Agreement (“TOA”) between ISO-NE and the PTOs, it had requested that the PTOs respond to the *TO Initial Funding Show Cause Order* and attached the response of Indicated New England Transmission Owners (“NETOS”)<sup>10</sup> to the NE Response. NETOs’ response identified several reasons why the FERC’s proposal is in their view beyond the FERC’s authority and power.

Responses to the September NE Response are currently due on or before **October 25, 2024**.<sup>11</sup> Responses may address: (i) whether the OATT remains just and reasonable and not unduly discriminatory or preferential; (ii) if not, what changes to the OATT should be implemented as a replacement rate; and (iii) and respond to any of the questions in Appendix A to the *TO Initial Funding Show Cause Order*.<sup>12</sup>

**Order Dismissing Indicated Utilities<sup>13</sup> Request for Rehearing (-001).** As previously reported, Indicated Utilities requested rehearing, asking the FERC rescind its *TO Initial Funding Show Cause Order*. On August 15, 2024, the FERC issued an “Allegheny Notice”,<sup>14</sup> noting that Indicated Utilities request for rehearing may be deemed to have been denied by operation of law, but noting that Indicated Utilities’ request would be addressed

<sup>8</sup> The notice instituting this 206 proceeding was issued in the following four unconsolidated dockets (which resulted in some parties intervening in all four proceedings): EL24-80 (MISO); EL24-81 (PJM); EL24-82 (SPP); and EL24-83 (ISO-NE).

<sup>9</sup> The rules identified in the *Order to Show Cause* were those that establish the methodology to recover costs associated with interconnection-related upgrades, and the related financial obligations of the PTO or the interconnecting party – in New England, set forth in Article 11.3 of the LGIA, Article 5.2 of the SGIA, and Article 11.3 of the ETU IA, as well as Schedule 11 of the OATT.

<sup>10</sup> The NETOs, for purposes of this proceeding, are: Eversource; Central Maine Power Company (“CMP”); The United Illuminating Company (“UI”); New England Power Company (“National Grid”); The Narragansett Electric Company (“RI Energy”); Fitchburg Gas and Electric Light Co. (“Unitil”); and Versant Power (“Versant”).

<sup>11</sup> On Oct. 8, 2024, the FERC, in response to a September 30, 2024 request by Clean Energy Associations (AEU, ACPA, SEIA) for an additional 14 days to submit responses to the ISO/RTO filings, granted an extension of time, to and including October 25, 2024, for interested parties to file comments.

<sup>12</sup> *TO Initial Funding Show Cause Order* at Ordering Paragraph (E).

<sup>13</sup> “Indicated Utilities” are: Ameren Srvc. Co. (“Ameren”), on behalf of Ameren Illinois Co. (“Ameren Illinois”), Union Elec. Co. d/b/a Ameren Missouri, and Ameren Trans. Co. of Illinois (“ATXI”); American Trans. Co. LLC (“ATC”); Duke Energy Corp., on behalf of Duke Energy Business Services, LLC and its franchised public utility affiliates, Duke Energy Ohio, Inc. (“Duke Ohio”), Duke Energy Kentucky, Inc. (“Duke Kentucky”), Duke Energy Indiana, LLC (“Duke Indiana”) (collectively “Duke Energy”); Exelon Corp. on behalf of its affiliates Atlantic City Elec. Co., Baltimore Gas and Elec. Co., Commonwealth Edison Co., Delmarva Power & Light Co., PECO Energy Company, and Potomac Elec. Power Co.; Northern Indiana Pub. Srvc. Co. LLC (“NIPSCO”); and Xcel Energy Services, Inc. (“XES”), on behalf of Northern States Power Co., a Minnesota Corp. (“NSPM”), Northern States Power Co., a Wisconsin Corp. (“NSPW”), and Southwestern Public Service Co. (“SPS”).

<sup>14</sup> The FERC issues an “Allegheny Notice” when it does not act within 30 days after receiving a challenge (a request for clarification and/or rehearing) to a FERC order. An Allegheny Notice confirms that the request is deemed denied by operation of law (see *Allegheny Def. Project v. FERC*, 964 F.3d 1, 2020 WL 3525547 (D.C. Cir. June 30, 2020)) and the FERC order is final and ripe for appeal. The FERC has the right, up to the point when the record in a proceeding is filed with the court of appeals, to modify or set aside, in whole or in part, any finding or order made or issued by it. The FERC’s intention to avail itself of its right and to issue a further order addressing the issues raised in the request (a “merits order”) is signaled by the phrase “and providing for Further Consideration”; the absence of that phrase signals that the FERC does not intend to issue a merits order in response to the rehearing request.

in a future order.<sup>15</sup> On September 26, 2024, the FERC issued that order, dismissing Indicated Utilities' Request for Rehearing.<sup>16</sup> In dismissing the Request for Rehearing, the FERC explained that, because its action was not final, is to succeed by further Commission action and is therefore not yet a final FERC action, "it is premature to address Indicated Utilities' arguments" and "a request for rehearing may be dismissed."<sup>17</sup>

**Federal Court Appeals.** On August 30, 2024, certain parties<sup>18</sup> filed a petition for review of the FERC's orders in this proceeding in the 8<sup>th</sup> Circuit. Developments on the federal court appeals will be reported in Section XVI below. In the meantime, if you have questions on this proceeding, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)) or Margaret Czepiel (202-218-3906; [mczepiel@daypitney.com](mailto:mczepiel@daypitney.com)).

- **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.<sup>19</sup> 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,<sup>20</sup> and became effective as of *December 12, 2023*. On January 29, 2024, ISO-NE requested that this proceeding continue to be held in abeyance,<sup>21</sup> through August 30, 2024, "pending completion of the stakeholder process through which further revisions to [the Tariff] are being proposed and vetted."<sup>22</sup> 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* were filed on July 24, 2024 (see Section III, MW-Dependent Fuel Price Adjustments (ER24-2584), below). Those changes are pending before the FERC. If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; [rgarza@daypitney.com](mailto:rgarza@daypitney.com)) or Sebastian Lombardi (860-275-0663; [slombardi@daypitney.com](mailto:slombardi@daypitney.com)).

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<sup>15</sup> *Midcontinent Indep. Sys. Op. et al.*, 188 FERC ¶ 62,084 (Aug. 15, 2024) ("TO Initial Funding Show Cause Allegheny Notice").

<sup>16</sup> *Midcontinent Indep. Sys. Op. et al.*, 188 FERC ¶ 61,211 (Sep. 26, 2024) ("TO Initial Funding Show Cause Allegheny Order").

<sup>17</sup> Citing, e.g., *Westlands Transmission, LLC*, 177 FERC ¶ 61,175, at P 4 (2021); *Red Horse Wind 2, LLC*, 172 FERC ¶ 61,147, at P 3 (2020); *BridgeTex Pipeline Co., LLC*, 164 FERC ¶ 61,111, at PP 10-12 (2018); *Pac. Gas & Elec. Co.*, 162 FERC ¶ 61,246, at PP 6-7 (2018); *Talen Energy Mktg., LLC*, 158 FERC ¶ 61,077, at PP 3-4 (2017).

<sup>18</sup> The parties to the 8<sup>th</sup> Circuit Appeal are: Ameren Services Co., Ameren Illinois Co., Union Elec. Co. d/b/a Ameren Missouri, Ameren Trans. Co. of IL, American Trans. Co. LLC, Duke Energy Corp., Duke Energy Business Services, LLC, Duke Energy Ohio, Inc., Duke Energy KY, Inc., Duke Energy IN, LLC, Exelon Corp., Atlantic City Elec. Co., Baltimore Gas and Elec. Co., Commonwealth Edison Co., Delmarva Power & Light Co., PECO Energy Co., Potomac Elec. Power Co., Northern Indiana Pub. Svc. Co. LLC, Xcel Energy Services Inc., Northern States Power Co., a MN Corp., Northern States Power Co., a WI Corp., and Southwestern Pub. Svc. Co. ("8<sup>th</sup> Circuit Parties").

<sup>19</sup> *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.

<sup>20</sup> *ISO New England Inc.*, Docket No. ER24-324-000 (Dec. 12, 2023) (unpublished letter order).

<sup>21</sup> 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.

<sup>22</sup> ISO-NE identified as additional topics not fully addressed by the Upward Mitigation Revisions the following: (1) whether the duration of general threshold energy mitigation is appropriate; and (2) whether a Resource should be permitted to submit multiple fuel price adjustments that reflect the cost of fuel for segments of its Supply Offer that exceed a Resource's Day-Ahead Energy Market awards.



- **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,<sup>23</sup> 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, ACPA, 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.

On July 16, 2024, RENEW submitted supplemental affidavits as further evidence in support of its [Complaint](#) and requested that the FERC issue an order on an expedited basis. On July 31, 2024, the PTO AC protested RENEW’s July 16 supplemental submission. On August 9, 2024, RENEW replied to the PTO AC’s July 31 protest. This matter remains pending before the FERC. If you have questions on this proceeding, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)) or Margaret Czepiel (202-218-3906; [mzczepiel@daypitney.com](mailto:mzczepiel@daypitney.com)).

## II. Rate, ICR, FCA, Cost Recovery Filings

- **Transmission Rate Annual (2023-24) Update/Informational Filing (ER20-2054-000)**

**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.<sup>24</sup> MOPA asserted that, (i) with respect to the cost of asset condition projects placed into service in 2022, Identified TOs<sup>25</sup> have refused to answer questions regarding investment policies and practices related to prudence of these investments and (ii) that the Identified TOs’ decision not to respond to these questions violates their obligation under the OATT’s Protocols. Comments on the MOPA Formal Challenge were due on

<sup>23</sup> 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.

<sup>24</sup> 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.

<sup>25</sup> “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”).



or before February 21, 2024 and were filed by Consumer Advocates<sup>26</sup> (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 TOs (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).

On July 26, 2024, the FERC directed Identified TOs to provide to the FERC its responses (both public and confidential) to MOPA's questions related to general processes and procedures for asset condition project planning. The FERC stated that it needs the full information to evaluate whether the Identified TOs made "a good faith effort to respond to [the] information request[] pertaining to the Annual Update." Identified TOs' responses were filed by CMP, Eversource (CL&P, NSTAR East, NSTAR West, and PSNH), MEPCO, National Grid (Narragansett and New England Power), and VTransco (on September 6). On September 5, 2024, MOPA challenged National Grid's claim that, because it had provided copies of what it sent to MOPA originally, MOPA's Formal Challenge could be rejected without further procedures. MOPA continues to assert that the materials provided by National Grid do not constitute a "good faith response" and renewed its request for the FERC to direct the Identified TOs to answer its questions concerning the investment policies and practices used to evaluate the need for a particular asset condition project, a necessary predicate to a prudence review.

The MOPA Formal Challenge is pending before the FERC. If there are questions on this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

**(-018) Second CapEx Info Filing.** On December 5, 2023, the FERC issued an order<sup>27</sup> on the formal challenges to Mystic's September 15, 2022 "Second CapEx Info Filing".<sup>28</sup> As previously reported, formal challenges to the Second CapEx Info Filing were submitted by NESCOE and ENECOS<sup>29</sup> (with ENECOS challenges supported separately by MMWEC/NHEC). Several rounds of answers, described in previous reports, followed. 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).<sup>30</sup>

**(-027) Second CapEx Info Filing Settlement Proceedings.** As previously reported, while the FERC set several aspects of ENECOS Formal Challenges to Mystic's September 15, 2022 "Second CapEx Info Filing" for a

<sup>26</sup> For purposes of this proceeding, "Consumer Advocates" are the MA AG, CT OCC, NH OCA, and RI Division.

<sup>27</sup> *Constellation Mystic Power, LLC*, 185 FERC ¶ 61,170 (Dec. 5, 2023) ("*Second CapEx Info Filing Order*").

<sup>28</sup> 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").

<sup>29</sup> ENECOS Formal Challenges included asserted 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.

<sup>30</sup> As noted in previous reports and as summarized in Section XVI below, this matter has been appealed to, and is pending (though being held in abeyance) before, the DC Circuit.

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, has been holding the hearing in abeyance pending the completion of settlement judge procedures. Judge Patricia M. French is the appointed settlement judge in this proceeding. Judge French has convened seven settlement conferences.<sup>31</sup> Judge French submitted her 5th status report on October 2, 2024, reporting that a settlement in principle has been reached, and noting Mystic’s most recent request for a waiver of certain deadlines required by Schedule 3A of the Mystic COSA (see ER24-3054 below), which states the anticipated agreement will “resolve[ ] all outstanding issues related to the Mystic Agreement, including matters set for hearing in Docket No. ER18-1639-027, and all issues that would have been in scope of Mystic’s 2024 and 2025 Informational Filing processes.” Judge French recommended that settlement procedures continue. The settlement process continues.

**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*,<sup>32</sup> 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.

**Mystic COSA ROE Settlement Agreement (ER24-2804).** On August 14, 2024, Mystic filed an unopposed Settlement Agreement to establish a settled ROE of 9.0%<sup>33</sup> for the Mystic COSA (“*Mystic ROE Settlement Agreement*”) that would, if approved, moot all of the ROE appeals currently pending before the DC Circuit related to that ROE<sup>34</sup> and a pending Revised ROE (Sixth) Compliance Filing pending in ER18-1639-014.<sup>35</sup> Mystic requested

<sup>31</sup> 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; the sixth, June 18, 2024; and the most recent and seventh settlement conference, Aug. 29, 2024.

<sup>32</sup> *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).

<sup>33</sup> The ROE to be used in the Methodology for both Everett and Mystic would be 9.0% for the entirety of the Term (or June 1, 2022 – May 31, 2024) (“*Settled Mystic ROE*”), a reduction from the currently-on-file ROE of 9.19%. Recall that, on July 15, 2021, the FERC set the base ROE for the Mystic COSA at 9.33%. (*Constellation Mystic Power, LLC*, 176 FERC ¶ 61,019 (July 15, 2021) (“*Mystic ROE Order*”)) Subsequently, in response to challenges, the FERC on rehearing lowered the base ROE to 9.19%. (*Constellation Mystic Power, LLC*, 178 FERC ¶ 61,116 (Feb. 18, 2022) (“*Mystic ROE Second Allegheny Order*”)).

<sup>34</sup> The *Mystic ROE Order* and the *Mystic ROE Second Allegheny Order* were appealed to the DC Circuit and are being held in abeyance. See Section XVI of this Report, Mystic II (ROE & True-Up) (21-1198 *et al.*)

<sup>35</sup> As long reported, Mystic filed a revised ROE (Sixth) compliance filing (docketed as ER18-1639-014) in response to the requirements of the *Mystic ROE Allegheny Order*. 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.

a November 1, 2024 effective date for the Settlement Agreement. Comments on the *Settlement Agreement* were due on or before September 4, 2024; none were filed. ISO-NE, National Grid, MMWEC, NHEC, and CT PURA intervened. The *Mystic ROE Settlement Agreement* is pending before the FERC.

***Mystic COSA Protocols Waiver Request (ER24-3054)***. On September 13, 2024, Mystic requested another waiver<sup>36</sup> of the deadlines in Sections II.6.A and II.4.F of the COSA Protocols so that the deadline to make the 2024 Informational Filing (and subsequent related deadlines, including billings and re-billings) can be further delayed to provide time for the drafting and filing of, and action on, a settlement agreement that will resolve all remaining matters pertaining to the Mystic COSA. Mystic reported that Mystic and Active Intervenors in ER18-1639-027,<sup>37</sup> have reached (or are not opposed to) a settlement in principle in that proceeding that will resolve all outstanding issues related to the COSA. Comments on Mystic's waiver request were due on or before September 20, 2024; none were filed. This waiver request is 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](mailto:jfagan@daypitney.com)) or Margaret Czepiel (202-218-3906; [mczepiel@daypitney.com](mailto:mczepiel@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 Filing<sup>38</sup> remains pending before the FERC. In the Challenge, RENEW asserted that (i) the TOs failed to provide adequate rate input information in the Annual Informational Filing and in the Information Exchange Period under the Interim Formula Rate Protocols regarding inclusion or exclusion of "O&M costs" on Network Upgrades that the TOs directly assign to Interconnection Customers (and thereby failing to demonstrate that such O&M costs are not being double counted in transmission rates); and (ii) the TO's Interpretation of "Interested Party" to exclude RENEW violated the Interim Formula Rate Protocols. RENEW thus asked that the FERC (a) require the TOs to show the calculation of the annual O&M charges with sources of data inputs and show how such O&M charges are not being double recovered in transmission rates, and (b) determine that an entity such as RENEW is an Interested Party under the Interim Formula Rate Protocols and that its Information Requests seeking rate inputs and support for the O&M charges on Network Upgrades are within the scope of the Interim Formula Rate Protocols process. Comments on RENEW's Challenge were due on or before March 16, 2023. Comments and protests were filed by: [Avangrid](#), [Eversource](#), [National Grid](#), [Public Systems](#), [RI Energy](#), [Unitil](#), [Versant Power](#), [VTransco/GMP](#). On March 31, 2023, RENEW answered the comments and protests to its Challenge. Subsequently, on April 14, 2023, Eversource answered RENEW's March 31 answer. There has been no activity in this proceeding since Eversource's answer. This matter remains pending before the FERC. If there are questions on this matter, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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<sup>36</sup> As previously reported, the FERC granted a waiver to extend the original deadline of Mystic's Fourth Informational Filing from Sep. 15, 2024 to Oct. 15, 2024 to provide parties additional time to negotiate a global settlement agreement. *Constellation Mystic Power, LLC*, 188 FERC ¶ 61,121 (Aug. 12, 2024).

<sup>37</sup> "Active Intervenors" are: ISO-NE; NEPOOL; NESCOE; CT PURA; CT DEEP; CT OCC; MA AG; MMWEC; National Grid; and Belmont, Block Island Utility District, Braintree, Concord, Georgetown, Groveland, Hingham, Littleton (NH), Merrimac, Middleborough, Middleton, North Attleborough, Norwood, Pascoag, Reading, Taunton, Wallingford, Wellesley, and Westfield.

<sup>38</sup> 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.

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

- **Waiver Request: Late Stage SIS Process (GDQ ESS) (ER24-2926)**

On August 29, 2024, GDQ ESS LLC (“GDQ ESS”) requested a limited waiver of pending *Order 2023* compliance Tariff revisions<sup>39</sup> to allow it to accept, after August 30, 2024, the SIS results for its facility<sup>40</sup> and thus to enable its LGIA to benefit from the proposed Late-Stage SIS Process and for it to be refunded its deposits associated with participation in the Transitional Cluster Study.<sup>41</sup> On September 6, ISO-NE protested the waiver request asserting that GDQ ESS does not meet the FERC’s standard for granting waivers. NEPOOL and Calpine intervened. The GDQ ESS waiver request is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **DASI Conforming Tariff Changes (ER24-2883)**

On August 27, 2024, ISO-NE and NEPOOL jointly filed Tariff changes necessary to fully implement the Day-Ahead Ancillary Services Initiative (“DASI”) in the spring of 2025 (“DASI Conforming Changes”). Specifically, the DASI Conforming Changes: (i) revise the Day-Ahead Net Commitment Period Compensation (“NCPC”) framework to incorporate the new DASI costs and revenues introduced by the DASI Rules; (ii) revise certain “special case” NCPC rules to include the Forecast Energy Requirement (“FER”) Price, which was also introduced by the DASI Rules and incorporated into Day-Ahead Prices; (iii) update the Day-Ahead excess energy condition rules to account for the new co-optimized Day-Ahead Market created as part of DASI; (iv) incorporate average avoided peak distribution losses into Day-Ahead Ancillary Services obligations for Demand Response Resources; and (v) propose a methodology to capture and allocate administrative costs related to DASI in Section IV.A of the Tariff. In addition to the DASI Conforming Changes, the filing also proposes Tariff clarifications related to Day-Ahead Self-Scheduled External Transactions (“Self-Scheduled External Transactions Changes”). Two effective dates were requested -- October 27, 2024 for the Self-Scheduled External Transactions Changes and March 1, 2025 for the DASI Conforming Changes. The Participants Committee supported the DASI Conforming Changes, as well as the Self-Scheduled External Transactions Changes, by way of the Summer Meeting Consent Agenda (Consent Agenda Items 1-3). Comments on the changes were due on or before September 17, 2024; none were filed. Calpine, National Grid, NEPGA, MA DPU, and Public Citizen intervened. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; [rgarza@daypitney.com](mailto:rgarza@daypitney.com)).

- **MW-Dependent Fuel Price Adjustments (ER24-2584)**

On July 24, 2024, ISO-NE and NEPOOL jointly filed changes to allow Market Participants to submit up to two different MW-dependent fuel prices in their cost-based Reference Levels (“Fuel Price Adjustments”). In addition, ISO-NE provided its explanation for why the current market power mitigation provisions addressing the duration of mitigation are just and reasonable and not unduly discriminatory or preferential. Comments on this filing were due on or before August 14, 2024. The [ISO-NE IMM](#), [NEPGA](#) and [Vistra](#) filed comments generally supporting the Fuel Price Adjustments. Calpine, National Grid, MA DPU, EPSA, and Public Citizen filed doc-less interventions. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; [rgarza@daypitney.com](mailto:rgarza@daypitney.com)).

<sup>39</sup> Revisions to Section 5.1.1.2 of the LGIP, pending in the *Order 2023* Compliance Changes proceeding (ER24-2009), provide that “if the Interconnection Customer accepts the results of its system impact study on or before August 30, 2024, the System Operator shall not include the Interconnection Request in the Transitional Cluster Study and instead tender a Large Generator Interconnection Agreement pursuant to Section 11 of this LGIP, and refund any deposits associated with participation in the Transitional Cluster Study” (the “Late-Stage SIS Process”).

<sup>40</sup> GDQ is the project company for a 203 MW battery energy storage project located in North Kingstown, Rhode Island (Queue Position “QP1163”) (the “ESS Facility”). The ESS Facility will interconnect to the RI Energy transmission system.

<sup>41</sup> GDQ states that it is in potential jeopardy of missing the August 30, 2024 deadline under Section 5.1.1.2 to enter into a LGIA because a previously queued project upon which its queue position is dependent was unlikely to complete its System Impact Study ahead of GDQ’s.

- **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”)<sup>42</sup> 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.<sup>43</sup> 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.

**Settlement Judge Proceedings.** On August 12, 2024, the FERC issued an order establishing settlement judge procedures to address the issue of whether and how CM should return revenues or net revenues, with applicable interest, to ISO-NE.<sup>44</sup> On August 21, 2024, the Chief ALJ designated ALJ Patricia E. Hurt as the settlement judge in this proceeding. Judge Hurt submitted her 1<sup>st</sup> status report on September 20, 2024, recommending that the settlement process continue. A formal settlement conference was held on September 23, 2024, at which time the parties reported that a settlement in principle between Canal and ISO-NE had already been reached.

**Settlement Agreement (ER25-56).** An *unopposed* settlement agreement, which will resolve all of the issues raised in this proceeding (“Canal IEP Settlement Agreement”) was submitted on October 8, 2024 (ER25-56). The Settlement Agreement provides that CM will refund and repay to ISO-NE the net revenues that it received on behalf of Canal 3 for participating in the IEP for the Winter 2023-2024 period, plus interest. The settlement amount (“Settlement Amount”) will consist of a lump sum of \$1,968,156.08 and an amount of interest to be calculated in accordance with FERC regulations. The time period for calculating that interest will be from January 15, 2024, the midpoint of the IEP 2023-2024 Winter period, until the day that the parties receive notice of approval of the Agreement by the FERC. Canal Marketing will have 10 Business Days from the date that the FERC approves the Settlement Agreement to pay the Settlement Amount to ISO-NE. ISO-NE will have 60 days to distribute the Settlement Amount as appropriate to the average Real-Time Load Obligation for the IEP Winter 2023-2024 period. Details regarding the distribution to IEP Participants will be provided by ISO-NE in a notice and included in the applicable monthly settlement’s job aid. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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<sup>42</sup> 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.

<sup>43</sup> 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.

<sup>44</sup> *Canal Marketing LLC*, 188 FERC ¶ 61,122 (Aug. 12, 2024).



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

In a lengthy compliance Order<sup>45</sup> issued March 1, 2023, the FERC approved in part, and rejected in part, the *Order 2222* compliance filing<sup>46</sup> (“*Order 2222 Compliance Order*”) filed jointly by ISO-NE, NEPOOL and the PTO AC (“*Filing Parties*”).<sup>47</sup> 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.<sup>48</sup> In the order conditionally accepting the 60-day compliance filing,<sup>49</sup> 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.<sup>50</sup> The FERC also granted in part ISO-NE’s request for an extension of time to address directives in the *First Order 2222 Compliance Order*.<sup>51</sup> 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.<sup>52</sup>

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<sup>45</sup> 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.”

<sup>46</sup> 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.

<sup>47</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, 182 FERC ¶ 61,137 (Mar. 1, 2023) (“*First Order 2222 Compliance Order*”).

<sup>48</sup> *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*.

<sup>49</sup> *ISO New England Inc.*, 185 FERC ¶ 61,095 (Nov. 2, 2023) (“*Order 2222 60-Day Compliance Filing Order*”).

<sup>50</sup> Specifically, the FERC directed ISO-NE to revise the *Tariff* to designate the *DER Aggregator* as the entity responsible for providing any required metering information to ISO-NE, and to require that each *DER Aggregator* maintain and submit aggregate settlement data for the *DERA*, so that ISO-NE can regularly settle with the *DER Aggregator* for its market participation. To the extent that ISO-NE proposes in that further compliance filing that metering data come from or flow through distribution utilities, the FERC directed ISO-NE to coordinate with distribution utilities and relevant electric retail regulatory authorities to establish protocols for sharing such metering data, and explain how such protocols minimize costs and other burdens and address concerns raised with respect to privacy and cybersecurity. *Id.* at P 34.

<sup>51</sup> 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*.

<sup>52</sup> *ISO New England Inc.*, 186 FERC ¶ 62,002 (Jan. 4, 2023) (“*Order 2222 60-Day Compliance Filing Order Allegheny Notice*”).



**(-006) Order 2222 60-Day Compliance Filing Order Allegheny Order.**<sup>53</sup> 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*,<sup>54</sup> 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").<sup>55</sup> The FERC found that, under its rule of reason,<sup>56</sup> 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").<sup>57</sup> 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 ATRRs ("ATTR Submetering Tariff Revisions") (see sub-docket -009 below).

**(-007) Further Compliance Changes.** On April 11, 2024, the FERC conditionally accepted ISO-NE's January 31 Further Compliance Filing, subject to a further 60-day compliance filing.<sup>58</sup> 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".<sup>59</sup> Accordingly, the FERC directed ISO-NE "to submit ... Tariff revisions that include the meter data submission deadline in its Tariff"<sup>60</sup> (the "Metering Data Submission Revisions").

**(-008) Metering Data Submission Revisions.** On September 5, 2024, the FERC accepted the Metering Data Submission Revisions,<sup>61</sup> effective as of *November 1, 2026*, as requested. The September 5 order was not challenged and is final and unappealable.

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<sup>53</sup> 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.

<sup>54</sup> *ISO New England Inc.*, 187 FERC ¶ 61,100 (May 23, 2024) ("*Order 2222 60-Day Compliance Filing Order Allegheny Order*").

<sup>55</sup> 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").

<sup>56</sup> "[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.

<sup>57</sup> *Order 2222 60-Day Compliance Filing Order Allegheny Order* at P 6.

<sup>58</sup> *ISO New England Inc.*, 187 FERC ¶ 61,017 (Apr. 11, 2024) ("*Further Order 2222 Compliance Filing Order*").

<sup>59</sup> *Id.* at P 13.

<sup>60</sup> *Id.*

<sup>61</sup> *ISO New England Inc.*, Docket No. ER22-983-008 (Sep. 5, 2024) (unpublished letter order).

**(-009) ATTR Submetering Tariff Revisions.** The ATTR Submetering Revisions required by the *Order 2222 60-Day Compliance Filing Order Allegheny Order*<sup>62</sup> were recommended for Participants Committee support by the Markets Committee at its July 9-10, 2024 Summer Meeting and, because of the compliance deadline, filed by ISO-NE on July 22, 2024. The Participants Committee supported the ATTR Submetering Revisions at its August 1, 2024 meeting (Consent Agenda Item No. 1). Comments on ISO-NE's July 22 compliance filing were due on or before *August 12, 2024*. NEPOOL filed comments reporting on the Participants Committee's August 1 action and supporting the revisions. No other comments or interventions were filed. The July 22 compliance filing is pending before the FERC.

**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](mailto:slombardi@daypitney.com)); Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)); or Rosendo Garza (860-275-0660; [rgarza@daypitney.com](mailto:rgarza@daypitney.com)).

#### IV. OATT Amendments / TOAs / Coordination Agreements

- **VTransco Attachment F App. D Depreciation Rate Changes (ER24-3019)**

On September 11, 2024, VTransco file changes to its Appendix D to Attachment F of the ISO-NE OATT to reflect updated depreciation rates in VTransco's Regional and Local Service formula rate calculations. VTransco stated that implementation of the updated depreciation rates produces a reduction in VTransco's annual revenue requirement by reducing annual depreciation expense by approximately \$877,044. Comments on the VTransco depreciation rate changes were due on or before October 7, 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](mailto:pmgerity@daypitney.com); 860-275-0533).

- **FG&E Attachment F App. D Depreciation Rate Changes (ER24-2766)**

On September 26, 2024, the FERC accepted the changes to Fitchburg Gas & Electric Company's ("FG&E") Appendix D to Attachment F of the ISO-NE OATT to reflect updated depreciation rates in FG&E's Regional and Local Service formula rate calculations.<sup>63</sup> As previously reported, the changes were recommended in a depreciation study based on 2022 data and approved by the MPUC as part of FG&E's retail rate filing. The proposed updates to depreciation rates submitted will result in an estimated annual decrease of \$28,067 to depreciation expense. FG&E said that the revised depreciation rates will have a *de minimus* effect on the transmission rates of Regional and Local Service customers. Unless the September 26 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **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)).

<sup>62</sup> See *Order 2222 60-Day Compliance Filing Order Allegheny Order (-006) infra*.

<sup>63</sup> *ISO New England Inc.*, Docket No. ER24-2766-000 (Sep. 26, 2024) (unpublished letter order).

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](#),<sup>64</sup> 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. On July 5, [Glenvale](#) and [Longroad Energy](#) answered [ISO-NE's Jun 20 Answer](#). On July 19, [ISO-NE](#) answered Glenvale's and Longroad Energy's further July 5 answers. Since the last Report, on August 5, [Longroad Energy](#) answered ISO-NE's July 19 answer (again advocating for why ISO-NE should be required to accept surety bonds for CETU Participation Deposits, as it asserts is required for all commercial readiness deposits per *Order 2023*) ("Additional Answer"). [ISO-NE](#) answered Longroad's August 5 Additional Answer on August 7.

Since the last Report, Allco Finance Limited ("[Allco](#)") intervened out-of-time and protested this filing (asserting that the new proposed ISO-NE practices "will strike a crushing blow to small distributed solar between 1 MW and 5 MW" by "imposing knee-buckling interconnection fees and costs and a crushing interconnection process"). This matter is still pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617- 345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

Also on May 14, 2024, ISO-NE, NEPOOL and the PTO AC ("Filing Parties") 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 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. The Filing Parties requested, contingently, that the *Order 2023 Related Changes* become effective on the same date as the *Order 2023 Revisions* (i.e. August 12, 2024) and that the FERC issue an order for the *Order 2023 Related Changes* concurrently with its order on the *Order 2023 Revisions*. 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. On July 5, [Glenvale](#) and [Longroad Energy](#) answered [ISO-NE's June 20 Answer](#). On July 19, [ISO-NE](#) answered Glenvale's and Longroad Energy's further answers. On August 5, [Longroad Energy](#) answered ISO-NE's July 19 answer (again advocating for why ISO-NE should be required to accept surety bonds for CETU Participation Deposits, as it asserts is required for all commercial readiness deposits per *Order 2023*) ("Additional Answer"). ISO-NE answered Longroad's August 5 Additional Answer on August 7.

Since the last Report, Allco Finance Limited ("[Allco](#)") intervened out-of-time and protested this filing (asserting that the new proposed ISO-NE practices "will strike a crushing blow to small distributed solar between 1 MW and 5 MW" by "imposing knee-buckling interconnection fees and costs and a crushing

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<sup>64</sup> "Clean Energy Associations" are, collectively, AEU, ACPA, Natural Resources Defense Council ("NRDC"), and SEIA.

interconnection process”). This matter is still pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617- 345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

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

On July 8, 2024, the FERC accepted 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”).<sup>65</sup> As previously reported, the LTTP Phase 2 Changes incorporate the following processes: (i) a comprehensive core process (which 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); and (ii) an add-on supplemental process (which 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). The FERC addressed, but ultimately found misplaced, arguments made regarding the right of first refusal (“ROFR”), and found that even if aspects of the LTTP Phase 2 Changes “make it more difficult for nonincumbent transmission developers to submit comprehensive proposals than it would be for incumbent transmission owners, such potential difficulty does not render the proposed LTTP Phase 2 Changes unjust and unreasonable or unduly discriminatory or preferential.”<sup>66</sup> The LTTP Phase 2 Changes were accepted effective July 9, 2024, as requested. The *LTTP Phase 2 Changes Order* was not challenged as is final and unappealable.

**Compliance Filing Accepted.** In addition, the FERC accepted, on September 30, 2024, ISO-NE’s proposed corrections (filed on July 27, 2024, after the *LTTP Phase 2 Changes Order*) to Tariff Section I.1.2 to remove the revisions to the definition of the term “Regulation Resources” and the addition of the terms “Storage as Transmission-Only Asset (SATO)” and “Real-Time SATOA Obligation” that were not yet intended to be in effect but had been included with the LTTP Phase 2 Changes in error (ER24-1978-001).<sup>67</sup> Unless the September 30 order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Eric Runge (617- 345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)).

## V. Financial Assurance/Billing Policy Amendments

- **FAP Revisions to Mitigate Risk of PFP Penalty Payment Defaults (ER24-3071)**

On September 18, 2024, ISO-NE proposed Financial Assurance Policy (“FAP”) revisions for participants that are determined not to have adequate corporate liquidity relative to potential obligations that may be incurred under the pay for performance (“PFP”) construct of the Forward Capacity Market (“FCM”). Beginning with the 2025 – 2026 Capacity Commitment Period (“CCP”), ISO-NE will perform a corporate liquidity assessment on each FCM participant holding a Capacity Supply Obligation (“CSO”) (or its guarantor, if such guarantor is guaranteeing the payment of PFP penalties), to determine its ability to pay potential penalty payment obligations associated with its CSO within the applicable Capacity CCP, over a forward-looking rolling six months. “Low risk” participants will continue to be subject to the current FCM Delivery Financial Assurance methodology; “medium and high risk” participants will be subject to higher collateral requirements (risk adders). ISO-NE proposed a February 1, 2025, effective date for these changes. The changes were considered, but were not supported, by the Participants Committee at its September 5, 2024 meeting (Agenda Item #5). Comments on these changes are due on or before October 9, 2024. Thus far, NEPOOL submitted comments summarizing consideration of the changes in the stakeholder process. Interventions have been filed by: Calpine, Dominion, HQ US, NEPGA, MA DPU, and Public

<sup>65</sup> *ISO New England Inc. and New England Power Pool*, 188 FERC ¶ 61,010 (July 8, 2024) (“*LTTP Phase 2 Changes Order*”).

<sup>66</sup> *Id.* at P 40.

<sup>67</sup> *ISO New England Inc.*, Docket No. ER24-1978-001 (Sep. 30, 2024) (unpublished letter order).

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

- **Updates to Non-Commercial Capacity FA Amount Multiplier (ER24-3040)**

On September 13, 2024, ISO-NE and NEPOOL jointly filed FAP revisions to: (i) ensure that the post-auction Non-Commercial Capacity Financial Assurance (“NCCFA”) Multiplier continues to increase annually during the three-year delay of the next FCA; (ii) ensure that the formula for calculating the NCCFA Amount directly before an FCA (“pre-auction NCCFA Amount”) remains generally consistent with the formula for calculating NCCFA required upon completion of an FCA (“post-auction NCCFA Amount”), and (iii) eliminate an NCCFA provision which is no longer relevant due to the passage of time (“ministerial revision”). ISO-NE proposed a November 13, 2024 effective date for these changes. The changes were supported by the Participants Committee at its August 1, 2024 meeting (Agenda Item #2A). Comments on these changes were due on or before October 4, 2024; none were filed. Calpine, National Grid and Public Citizen intervened. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Rosendo Garza (860-275-0660; [rgarza@daypitney.com](mailto:rgarza@daypitney.com)).

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

- **Schedule 22: ISO-NE/CMP/Andro Hydro LGIA (ER24-2970)**

On September 4, 2024, ISO-NE and CMP filed a revised LGIA with Andro Hydro to clarify the relationship between Andro Hydro (Interconnection Customer) and JGT2 Redevelopment LLC (“JGT2”), the owner of a closed paper mill located on Andro Hydro’s side of the interconnection, and the status of the Interconnection Facilities governed by the LGIA. While the LGIA is based on the Schedule 22 *pro forma* LGIA, it contains limited revisions that are necessary given the Large Generating Facility’s unique interconnection to the system, including the interconnection of its facility through shared facilities co-owned, and used by, JGT2 Redevelopment LLC to serve its own load,<sup>68</sup> thus making it non-conforming and requiring it to be filed with the FERC. The Parties requested an August 8, 2024 effective date (the date on which all of the parties to the LGIA executed the agreement). Comments on the LGIA filing were due on or before September 25, 2024; none were filed. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

- **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.<sup>69</sup> 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](mailto:pmgerity@daypitney.com); 860-275-0533).

<sup>68</sup> The original non-conforming LGIA was filed in Docket No. ER24-1477. Reporting on that docket has concluded as the Filing Parties indicated that filing will be withdrawn upon action on this instant filing. Details concerning Docket No. ER24-1477 can be found in the last Report.

<sup>69</sup> *ISO New England Inc.*, Docket No. ER24-24-000 (Nov. 30, 2023) (unpublished letter order).



- **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”).<sup>70</sup> 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 requirement<sup>71</sup> 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.<sup>72</sup> The FERC found that the Filing Parties did not make the required showing of extraordinary circumstances to warrant waiver of the prior filing requirement. Accordingly, the FERC directed the Filing Parties to make Time Value Refunds. On December 4, 2023, Filing Parties requested, and on December 6, 2023 the FERC granted, a 45-day extension of time (to January 22, 2024) to make the Time Value Refunds, with the corresponding refund report to be filed no later than February 21, 2024.

**Time Value Refunds Report.** On February 21, 2024, National Grid filed a refund report (“Report”) detailing the Time Value Refunds National Grid paid to GMP on January 22, 2024. Comments on the Report were due on or before March 13, 2024; none were filed. The Report remains pending before the FERC. If you have any questions concerning these matters, please contact Pat Gerity ([pmgerity@daypitney.com](mailto: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”).<sup>73</sup> 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.<sup>74</sup> On August 29, 2023, Versant 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](mailto:pmgerity@daypitney.com); 860-275-0533).

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<sup>70</sup> The LSA was designated as Service Agreement No. TSA-NEP-114 under the ISO-NE OATT.

<sup>71</sup> 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.

<sup>72</sup> *ISO New England Inc.*, Docket No. ER23-2804-000 (Nov. 7, 2023) (unpublished letter order).

<sup>73</sup> *ISO New England Inc.*, Docket No. ER23-2035-000 (July 28, 2023) (“*Versant Black Bear LSAs Order*”).

<sup>74</sup> 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.



- **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](mailto:pmgerity@daypitney.com)).

## VII. NEPOOL Agreement/Participants Agreement Amendments

- **135<sup>th</sup> Agreement; PA13 (Unused Provisional Member Voting Share Allocation Changes) (ER24-2636)**

On September 24, 2024, the FERC accepted the 135th Agreement Amending New England Power Pool Agreement (“135<sup>th</sup> Agreement”) and Amendment No. 13 to the PA (together, the “Unused Provisional Member Voting Share Allocation Changes” or “Changes”).<sup>75</sup> As previously reported, the Changes modify the allocation of any unused Provisional Member Group Seat voting share to all six Sectors. The Changes were accepted effective August 1, 2024, as requested. Unless the September 24 order is challenged, this proceeding will be concluded. If you have any questions concerning the Changes, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

## VIII. Regional Reports<sup>76</sup>

- **Capital Projects Report – 2024/Q2 (ER24-2769)**

On September 6, 2024, the FERC accepted, effective July 1, 2024, ISO-NE’s Capital Projects Report and Unamortized Cost Schedule covering the second quarter (“Q2”) of calendar year 2024 (the “Report”).<sup>77</sup> As previously reported, Q2 2024 Report highlights included:

- One new project -- Automatic Ring Down Circuit Continuity Modernization and Reliability Enhancements (\$897,200).
- Two projects with significant changes: (i) Energy Management System Short-Term Load Forecast Replacement (increased in 2024 by \$327,300); and (ii) IT Asset Workflow Integration and Updates (2024 budget increased by \$116,400); and
- Three projects completed in Q2: (i) Settlement Technology Improvements; (ii) Control Room Voice Recorder Update; and (iii) On Call Notification Systems. Each cost less than planned.

Unless the September 6 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](mailto:rgarza@daypitney.com)).

<sup>75</sup> *ISO New England Inc.*, Docket No. ER24-2636-000 (Sep. 24, 2024) (unpublished letter order).

<sup>76</sup> 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.

<sup>77</sup> *ISO New England Inc.*, Docket No. ER24-2769-000 (Sep. 6, 2024) (unpublished letter order).

- **Interconnection Study Metrics Processing Time Exceedance Report 2024 Q2 (ER19-1951)**

On August 14, 2024, ISO-NE filed, as required,<sup>78</sup> public and confidential<sup>79</sup> versions of its Interconnection Study Metrics Processing Time Exceedance Report (the “Exceedance Report”) for the Second Quarter of 2024 (“2024 Q2”). ISO-NE reported that with respect to:

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

- One IFS Report was delivered to an Interconnection Customer in 2024 Q2 and was delivered later than the best efforts completion timeline of 90 days.
- 32 IFSs that are not yet completed have already 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 307 days (which is approximately 134 days longer than the previous quarter).

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

- 4 SIS Reports were delivered to Interconnection Customers in 2024 Q2. 3 of those 4 SIS Reports were delivered later than the best efforts completion timeline of 270 days.
- 31 SISs that are not yet completed have already 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 416 days (a decrease of approximately 120 days from 2024 Q1’s average).

- ◆ **Facility Study Reports**

- No Facility Study Reports were delivered to Interconnection Customers in 2024 Q2.
- 3 Facility Studies in process have exceeded the 90-day completion expectations for a 20% level of cost estimate.

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. On September 13, 2024, ISO-NE corrected the Exceedance Report to remove QP1121 from the list of project dependencies for Queue Position No. 1320 (“Correction”). Neither the Exceedance Report nor the Correction were noticed for public comment.

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

On July 22, 2024, the IMM filed with the FERC its Spring 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. The Spring 2024 Report was reviewed with the Markets Committee at the Markets Committee’s September 10, 2024 meeting. These filings are not noticed for public comment by the FERC.

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<sup>78</sup> 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.

<sup>79</sup> 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.

- **ISO-NE FERC Form 3Q (2024/Q2) (not docketed)**

On August 23, 2024, ISO-NE submitted its 2024/Q2 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. Form 3-Q filings are not noticed for public comment.

**IX. Membership Filings**

- **October 2024 Membership Filing (ER24-3139)**

On September 30, 2024, NEPOOL requested that the FERC accept: (i) the following Applicant’s membership in NEPOOL as of October 1, 2024: Castleton Commodities Energy Services LLC and Castleton Commodities Energy Trading LLC [Related Persons to Castleton Commodities Merchant Trading (Supplier Sector)]; Alan Sliski (End User Sector, Governance Only Member); and Stony Creek Energy LLC [Related Person to Invenergy Energy Management (Supplier Sector)]; and (ii) the termination of the Participant status of Gas Recovery Systems. Comments on this filing are due on or before **October 21, 2024**.

- **September 2024 Membership Filing (ER24-2925)**

On July 30, 2024, NEPOOL requested that the FERC accept: (i) the following Applicant’s membership in NEPOOL as of September 1, 2024: Elytra LLC (Supplier Sector) and Halia Energy LLC (Supplier Sector); and (ii) the termination of the Participant status of the Town on Hanover, New Hampshire. Comments on this filing were due on or before September 20, 2024; none were filed. This matter is pending before the FERC.

- **August 2024 Membership Filing (ER24-2623)**

On September 24, 2024, the FERC accepted the membership in NEPOOL as of August 1, 2024 of Twig Redwood Inc. and the termination of the Participant status of MFT Energy US 1 LLC.<sup>80</sup> Unless the September 24 order is challenged, this proceeding will be concluded.

- **Suspension Notices (not docketed)**

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

<i><b>Date of Suspension/ FERC Notice</b></i>	<i><b>Participant Name</b></i>	<i><b>Default Type</b></i>	<i><b>Date Reinstated</b></i>
Sep 9/11, 2024	Excelsior Billerica, LLC	Financial Assurance	--
Sep 9/11, 2024	Excelsior Bondsville, LLC	Financial Assurance	--
Sep 9/11, 2024	Excelsior Lexington, LLC	Financial Assurance	--
Sep 9/11, 2024	Hudson Energy Services, LLC	Financial Assurance	--
Sep 9/11, 2024	Wolverine Holdings, L.P.	Financial Assurance	--

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

<sup>80</sup> *New England Power Pool Participants Comm.*, Docket No. ER24-2623-000 (Sep. 24, 2024) (unpublished letter order).

**X. Misc. - ERO Rules, Filings; Reliability Standards<sup>81</sup>**

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](mailto:pmgerity@daypitney.com)).

- **Revised Reliability Standards: CIP-002-7 through CIP-013-3 (Virtualization) (RM24-8)**

On July 10, 2024, NERC filed for approval 11 revised Critical Infrastructure Protection (“CIP”) Reliability Standards,<sup>82</sup> as well as 18 new or revised definitions for inclusion in NERC’s Glossary,<sup>83</sup> to facilitate the full implementation of virtualization and to address the risks associated with virtualized environments. The proposed CIP Reliability Standards would permit Responsible Entities with more “traditional” architecture to continue with their current configurations. As of the date of this Report, the FERC still has not notice a proposed rulemaking proceeding or otherwise invited public comment.

- **2025 NERC/NPCC Business Plans and Budgets (RR24-5)**

On August 23, 2024, NERC submitted its proposed Business Plan and Budget, as well as the Business Plans and Budgets for the Regional Entities, including NPCC, for 2025. FERC regulations<sup>84</sup> require NERC to file its proposed annual budget for statutory and non-statutory activities 130 days before the beginning of its fiscal year (January 1), as well as the annual budget of each Regional Entity for their statutory and non-statutory activities, including complete business plans, organization charts, and explanations of the proposed collection of all dues, fees and charges and the proposed expenditure of funds collected. NERC reports that its proposed 2025 funding requirement represents an overall increase of approximately 8.2% over NERC’s 2024 funding requirement. The NPCC U.S. allocation of NERC’s net funding requirement is \$13.12 million. NPCC has requested \$25.69 million in statutory funding (a U.S. assessment per kWh (2023 NEL) of \$0.000023) and \$1.22 million for non-statutory functions. Comments on this filing were due on or before September 13, 2024; none were filed. This matter is pending before the FERC.

- **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,<sup>85</sup> 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 remains pending before the FERC.

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<sup>81</sup> 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.*).

<sup>82</sup> The revised Cyber Security Standards are: CIP-002-7 (BES Cyber System Categorization); CIP-003-10 (Security Management Controls); CIP-004-8 (Personnel & Training); CIP-005-8 (Electronic Security Perimeter(s)); CIP-006-7 (Physical Security of BES Cyber Systems); • CIP-007-7 (Systems Security Management); CIP-008-7 (Incident Reporting and Response Planning); CIP-009-7 (Recovery Plans for BES Cyber Systems); CIP-010-5 (Configuration Change Management and Vulnerability Assessments); CIP-011-4 (Information Protection); and CIP-013-3 (Supply Chain Risk Management).

<sup>83</sup> The new and/or revised Glossary Terms are: BES Cyber Asset (“BCA”), BES Cyber System (“BCS”), BES Cyber System Information (“BCSI”), CIP Senior Manager, Cyber Assets, Cyber Security Incident, Cyber System, Electronic Access Point (“EAP”); External Routable Connectivity (“ERC”), Electronic Security Perimeter (“ESP”), Interactive Remote Access (“IRA”), Intermediate System, Management Interface, Physical Access Control Systems (“PACS”), Physical Security Perimeter (“PSP”), Protected Cyber Asset (“PCA”), Removable Media, Reportable Cyber Security Incident, Shared Cyber Infrastructure (“SCI”), Transient Cyber Asset (“TCA”), and Virtual Cyber Asset (“VCA”).

<sup>84</sup> 18 CFR § 39.4(b) (2014).

<sup>85</sup> 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”).

- **IBR ROP Compliance Filing (RR24-2)**

On August 26, 2024, in response to the requirements of the *IBR ROP Order*,<sup>86</sup> NERC submitted a compliance filing clarifying that the term “generating resources” as used in the ROP Appendices 2 and 5B definitions of Generator Operator (“GOP”) and Generator Owner (“GO”) includes those inverter-based resources (“IBRs”) that provide energy for load, including resources that are battery energy storage systems (“BESS”) or fuel cells. Comments on the compliance filing were due on or before September 16, 2024; none were filed. This matter is pending before the FERC.

## XI. Misc. - of Regional Interest

- **203 Application: Carlyle Group (Nautilus)/Q-Generation (Trafigura) (EC24-114)**

On August 23, 2024, Applicants, including Nautilus Power, Bridgeport Energy LLC; Essential Power Massachusetts, LLC; Essential Power Newington, LLC; Rumford Power LLC; and Tiverton Power LLC (collectively, the “ISO-NE Companies”) requested authorization for Q-Generation Partner’s acquisition of 100% of the interests of CPP II Master Holdco, LLC (“CPP II”), a company indirectly owned by investment fund vehicles managed/advised by The Carlyle Group. Following consummation of the proposed transaction, the ISO-NE Companies will no longer be Related Persons to The Carlyle Group and will become Related Persons to Trafigura Trading LLC (whose upstream parent will own or control more than 10% of the equity interests in Q-Generation Partners). Comments on this application were due on or before September 13, 2024 and were filed by Old Dominion Electric Cooperative (“ODEC”) and [Public Citizen](#). Applicants [answered the ODEC comments](#) on September 23, 2024. On September 30, 2024, PJM intervened (out-of-time). This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **203 Application: Berkshire Power/Gate City Power (EC24-104)**

On September 13, 2024, the FERC authorized Gate City Power – NE Generation LLC’s (“Gate City Power”) acquisition of 100% of the membership interests in Berkshire Power’s parent, Tenaska Hampden Partners, LLC (“Tenaska Hampden”), from Tenaska Energy, Inc. (“Tenaska Energy”) and Tenaska Energy Holdings, LLC (“Tenaska Holdings”).<sup>87</sup> Gate City Power filed a notice of the *September 30, 2024* consummation of the transaction. Berkshire Power is no longer a Related Person to Tenaska Power Services *et al.* and instead is a Related Person to Millennium Power Company, a member of the Generation Sector Group Seat. This concludes reporting on this proceeding. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto: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”).<sup>88</sup> Upon consummation, GIP Whale will hold: (i) Eversource Investment’s 50% interest in North East Offshore and will thereby also indirectly hold a 50% interest in Revolution Wind; and (ii) Eversource Investment’s 50% 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](mailto:pmgerity@daypitney.com); 860-275-0533).

<sup>86</sup> *N. Am. Elec. Reliability Corp.*, 187 FERC ¶ 61,196 at P 43 (June 27, 2024) (“*IBR ROP Order*”).

<sup>87</sup> *Berkshire Power Co., LLC*, 188 FERC ¶ 62,137 (Sep. 13, 2024).

<sup>88</sup> *North East Offshore, LLC, et al.*, 187 FERC ¶ 62,151 (June 7, 2024).

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

On September 6, 2024, the FERC authorized BlackRock Funding Inc.'s acquisition of 100% of the LLC interests in Global Infrastructure Management, LLC ("GIM") d/b/a Global Infrastructure Partners, thereby creating an indirect controlling interest in the GIM public utility subsidiaries, including, among others, Clearway Power Marketing and GenConn Energy.<sup>89</sup> 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](mailto:pmgerity@daypitney.com); 860-275-0533).

- **D&E Agreement: NSTAR / Vicinity Energy Boston (ER25-49)**

On October 7, 2024, NSTAR filed a Design and Engineering Agreement ("D&E Agreement") between itself and Vicinity Energy Boston, Inc. ("Vicinity") to initiate the D&E process required to develop a non-binding cost estimate for the development of Kneeland Substation, which will incorporate Vicinity's proposed 100 MW electrode boiler load into the overall design, at Vicinity's expense. Comments on the D&E Agreement are due on or before **October 28, 2024**. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Wholesale Distribution Tariff – NSTAR (ER24-3154)**

On September 30, 2024, NSTAR filed a new Wholesale Distribution Tariff ("WDT") to provide for NSTAR's recovery of costs associated with the provision of Wholesale Distribution Service ("WDS") to customers who own electric energy storage systems ("ESS") connected to NSTAR's distribution system. The WDT allows such customers to utilize NSTAR's distribution system when charging their ESS for the purpose of participating in the wholesale (New England) market. A December 1, 2024 effective date was requested. Comments on the NSTAR WDT are due on or before **October 21, 2024**. Thus far, MA DPU has filed an intervention. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Wholesale Distribution Tariff – CL&P (ER24-3153)**

Also on September 30, 2024, CL&P filed a new WDT to provide for CL&P's recovery of costs associated with the provision of WDS to customers who own ESS connected to CL&P's distribution system. The WDT allows such customers to utilize CL&P's distribution system when charging their ESS for the purpose of participating in the wholesale (New England) market. A December 1, 2024 effective date was requested. Comments on the CL&P WDT are due on or before **October 21, 2024**. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Construction Services Agreement Cancellation: NEP/WMECO (ER24-3056)**

On September 16, 2024, NEP filed a notice of cancellation of a Construction Services Agreement ("CSA") with Western Massachusetts Electric Company ("WMECO") pursuant to which NEP performed work to facilitate the interconnection of a 15 MW facility to WMECO's distribution system. The CSA is no longer required because all work pursuant to the CSA is complete and all invoices for that work paid. A November 16, 2024 effective date was requested for the cancellation notice. Comments on the CSA cancellation were due on or before October 7, 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](mailto:pmgerity@daypitney.com); 860-275-0533).

- **LGIA - Versant / Eagle Point Energy Center (ER24-2982)**

On September 6, 2024, Versant Power filed a fully executed, non-conforming LGIA by and among Versant Power and Eagle Point Energy Center, LLC.<sup>90</sup> The Eagle Point Facility LGIA is based fundamentally on the PERC LGIA

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<sup>89</sup> *Global Infrastructure Management, LLC and BlackRock, Inc.*, 188 FERC ¶ 61,166 (Sep. 6, 2024).

<sup>90</sup> Eagle Point is the owner and operator of a solid waste-fired generating facility (the "Eagle Point Facility") with a maximum nameplate capability of 25.3 MW. The Eagle Point Facility is directly interconnected with Versant Power's 115 kV Line 247—an approximately 4 mile radial transmission line that interconnects the Eagle Point Facility with Versant Power's Orrington Substation, which is



originally executed by Versant Power and PERC. An August 8, 2024 effective date was requested. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Wholesale Distribution Tariff – UI (ER24-2939)**

On August 30, 2024, UI filed a new Wholesale Distribution Tariff to provide for UI's recovery of costs associated with the provision of Wholesale Distribution Service ("WDS") to customers who own front-of-the-meter ("FTM"), distribution-connected battery energy storage systems ("BESS") connected to UI's distribution systems and participate in the ISO-NE markets. The proposed Wholesale Distribution Tariff will enable UI to provide the WDS necessary to facilitate BESS resources' participation in the ISO-NE markets via distribution facilities owned by UI, consistent with FERC *Orders 841* and 2222 and Connecticut's ESS Program.<sup>91</sup> An October 30, 2024 effective date was requested. Comments on the UI Wholesale Distribution Tariff were due on or before September 20, 2024. Supportive comments and were filed by [Alliance for Climate Transition](#) (but requesting clarifications, supporting data, and additional information as to how UI proposes to measure and bill for demand-related charges when a BESS is providing ancillary services in response to ISO-NE dispatch instructions) and [Elevate Renewable F7, LLC](#) (but offering proposed clarifications to improve customer understanding). Interventions were filed by Agilitas, Eversource, and New Leaf. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Cost Reimbursement Agreement Cancellation: NEP/Holden (ER24-2852)**

On August 23, 2024, National Grid filed a notice of cancellation of its Cost Reimbursement Agreement ("CRA") with Holden Municipal Light Department ("Holden") pursuant to which NEP performed work to support Holden's plan to rebuild its Chaffins Substation. The CRA is no longer required because all work pursuant to the CRA is complete and all invoices for that work paid. An October 23, 2024 effective date was requested for the cancellation notice. Comments on the CRA cancellation were due on or before September 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](mailto:pmgerity@daypitney.com); 860-275-0533).

- **Wholesale Distribution Tariffs – National Grid (ER24-2796; ER24-2795)**

On August 16, 2024, National Grid filed two new Wholesale Distribution Tariffs (one for Massachusetts Electric Company (ER24-2796); the other for Nantucket Electric Company (ER24-2795)) to provide for National Grid's recovery of costs associated with the provision of Wholesale Distribution Service ("WDS") to customers who own qualifying standalone electric energy storage systems ("ESS") connected to National Grid's distribution system and who charge those resources via deliveries over National Grid's distribution system for purposes of making wholesale sales through the ISO-NE markets. The proposed Wholesale Distribution Tariffs will enable National Grid to provide the WDS necessary to facilitate ESS resources' participation in the ISO-NE markets via distribution facilities owned by National Grid, consistent with FERC *Order 841* and the Massachusetts Clean Energy Act. A March 1, 2025 effective date was requested. Comments on these Tariffs were due on or before September 6, 2024. Protests and comments were filed by the MA AG and the Alliance for Climate Transition ("ACT") (formerly known as the Northeast Clean Energy Council). Agilitas, BlueWave, Engie, Eversource, New Leaf, MA DPU, and MA DOER intervened. On September 23, 2024, National Grid answered the ACT and MA AG comments. On October 4, 2024, ACT answered National Grid's September 23 answer. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

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a point of interconnection between Versant Power's non-PTF assets and the PTF grid administered by ISO-NE. The Eagle Point Facility is the only generating facility or load directly interconnected with Line 247.

<sup>91</sup> The ESS Program provides incentives for residential and commercial customers to install energy storage systems at their homes or businesses. See State of Conn. Pub. Utils. Regul. Auth., PURA Investigation into Distrib. Sys. Plan. of the Elec. Distrib. Cos. – Elec. Storage, Decision, CT PURA Docket No. 17-12-03RE03 at 5, 50 (July 28, 2021), <https://portal.ct.gov/-/media/pura/electric/final-decision-17-12-03re03.pdf>.

- **LGIA: ISO-NE/CL&P/Brookfield Husky Solar (ER24-2740)**

On September 26, 2024, the FERC accepted a non-conforming LGIA covering the interconnection of Brookfield's ~50 MW solar facility located in Sterling, CT (non-conforming only in that it was unexecuted), effective *August 10, 2024*, as requested.<sup>92</sup> Unless the September 26 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **D&E Agreement Cancellation: NSTAR/Hingham (ER24-2695)**

On September 9, 2024, the FERC accepted the notice of cancellation of the Design & Engineering Agreement ("D&E Agreement") between NSTAR and Hingham Municipal Lighting Plant ("Hingham").<sup>93</sup> As previously reported, NSTAR stated that it had completed all work pursuant to the Agreement and reconciliation of billings was complete. The notice of cancellation was accepted effective as of *August 5, 2024*. Unless the September 9 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **E&P Agreement 3d Amendment: Seabrook/NECEC Transmission (ER24-2588)**

On September 20, 2024, the FERC accepted a third amendment to the Engineering and Procurement ("E&P") Agreement between NextEra Energy Seabrook, LLC ("Seabrook") and NECEC Transmission LLC ("NECEC") (the "A&R E&P Agreement"), effective *July 3, 2024*, as requested.<sup>94</sup> As previously reported, the A&R E&P Agreement covers the final engineering drawings through the procurement and delivery of the 24.5 kV generator circuit breaker and ancillary equipment to Seabrook Station in advance of the Fall 2024 outage. The third amendment seeks approximately \$3 million in additional funding to cover "higher costs driven by increased engineering scope, outage planning, and higher internal project support". Unless the September 20 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

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

Versant Power's MPD OATT Order 2023 Compliance filing remains pending. As previously reported, 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* in a May 16, 2024 filing. 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. As noted, this matter remains pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

- **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").<sup>95</sup> 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*

<sup>92</sup> *ISO New England Inc.*, Docket No. ER24-2740-000 (Sep. 26, 2024) (unpublished letter order).

<sup>93</sup> *NSTAR Electric Co.*, Docket No. ER24-2695-000 (Sep. 9, 2024) (unpublished letter order).

<sup>94</sup> *NextEra Energy Seabrook, LLC*, Docket No. ER24-2588-000 (Sep. 20, 2024) (unpublished letter order).

<sup>95</sup> *Central Maine Power Co.*, 187 FERC ¶ 61,002 (Apr. 1, 2024) ("*CMP ESF Rate 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.<sup>96</sup> 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.<sup>97</sup> 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.<sup>98</sup> There have been three settlement conferences (May 3, July 17, and September 19, 2024); a fourth settlement conference is scheduled to take place over two days from **December 10-11, 2024**. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

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

On September 9, 2024, Versant asked that the FERC "un-pause" action on its January 22, 2024 notice of cancellation of an Interconnection Agreement ("IA") between itself and Penobscot Energy Recovery Company ("PERC"). As previously reported, Versant had 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 to agree to a course of action. Versant reported that it filed a LGIA between itself and the new owner of the PERC Facility, Eagle Point Energy Center, LLC (see ER24-2982 above). Versant asked that the cancellation be accepted effective as of November 20, 2023, as originally requested. This matter is again pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity ([pmgerity@daypitney.com](mailto:pmgerity@daypitney.com); 860-275-0533).

## XII. Misc. - Administrative & Rulemaking Proceedings<sup>99</sup>

- **Large Loads Co-Located at Generating Facilities (AD24-11)**

On **November 1, 2024**, the FERC will hold a Commissioner-led technical conference to explore whether co-located loads require the provision of wholesale transmission or ancillary services, related cost allocation issues, and potential resource adequacy, reliability, affordability, market, and customer impacts. In a second supplemental notice issued on September 10, 2024, the FERC invited individuals interested in participating as panelists to submit a self-nomination email by September 19, 2024. Speakers will be asked to provide pre-conference background materials and a written opening statement to facilitate the discussion during the technical conference. The preliminary agenda identifies 3 panels: Overview of Large Co-Located Load Issues (Panel 1); Exploration of Issues Presented by Large Co-Located Loads (Panel 2); and Roundtable with State Representatives (Panel 3). The list of panelists will be included in a further supplemental notice. The technical conference will be open to the public. Advance registration is not required, and there is no fee for attendance. Information will also be posted on the Calendar of Events on the FERC's website prior to the event.

<sup>96</sup> *Id.* at P 29.

<sup>97</sup> *Id.*

<sup>98</sup> *Central Maine Power Co.*, Docket No. ER24-1177-000 (Apr. 5, 2024) (unpublished letter order).

<sup>99</sup> 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).

- **Annual Reliability Technical Conference (AD24-10)**

On **October 16, 2024**, the FERC will convene its annual Commissioner-led Reliability Technical Conference to discuss policy issues related to the reliability and security of the Bulk-Power System. In a second supplemental notice issued on October 7, 2024, the FERC attached an agenda, including expected panelists on the following two topics: Managing Reliability Risks and Challenges (Panel 1); and Resource Adequacy and Expected Load Growth (Panel 2). The technical conference will be open to the public. Advance registration is not required, and there is no fee for attendance. Information will also be posted on the Calendar of Events on the FERC's website prior to the event.

- **Innovations and Efficiencies in Generator Interconnection (AD24-9)**

On September 10-11, 2024, the FERC held a workshop for the presentation and discussion of opportunities for further innovation and increased efficiency in the generator interconnection process. The three September 10 panels addressed: Integrated Transmission Planning and Generator Interconnection, Exploring Different Approaches to Processing and Studying Generator Interconnection Requests, and Prioritizing Certain Generator Interconnection Requests. The three September 11 panels addressed: Further Efficiencies in the Generator Interconnection Process, Automation and Advanced Computing Technologies, and Post-Generator Interconnection Agreement Construction Phase. Panelists materials are posted in the FERC's eLibrary.

Interested parties are now invited to submit post-technical conference comments, on or before **November 14, 2024**, on the questions presented in the workshop agenda or on issues raised during the workshop that they believe would benefit from further discussion. Commenters were urged to organize their comments by panel topic and question presented at the workshop, to be brief, and when possible, to provide examples and quantitative data in support of their answers.

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

On September 17, 2024, the FERC issued a notice announcing that the first public meeting of the Federal and State Current Issues Collaborative ("Collaborative")<sup>100</sup> will be held on **November 12, 2024**, from approximately 2:30 pm—5:00 pm PST, at the Anaheim Marriott in Anaheim, California. The meeting will be open to the public for listening and observing and on the record. There is no fee for attendance and registration is not required. The public may also attend via Webcast.

- **ANOPR: Implementation of Dynamic Line Ratings (RM24-6)**

On June 27, 2024, the FERC issued an advanced notice of proposed rulemaking ("ANOPR")<sup>101</sup> seeking comments on both the need for a dynamic line ratings ("DLRs")<sup>102</sup> requirement and proposed framework of DLR reforms to improve the accuracy of transmission line ratings. Proposed reforms would require transmission providers to implement, on all transmission lines, DLRs that reflect solar heating, based on the sun's position and

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<sup>100</sup> *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*"). The Collaborative will provide a venue for federal and state regulators to share perspectives, increase understanding, and, where appropriate, identify potential 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 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 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.

<sup>101</sup> *Implementation of Dynamic Line Ratings*, 187 FERC ¶ 61,201 (Jun. 27, 2024) ("*DLR ANOPR*"). The ANOPR reflects public comments in response to the FERC's February 17, 2022, Notice of Inquiry ("NOI") on DLRs. The NOI, in turn, found its roots in *Order 881*, which required transmission line ratings to reflect ambient air temperatures to improve efficiency in operating transmission lines.

<sup>102</sup> DLRs, are transmission line ratings that reflect up-to-date forecasts of weather conditions, such as ambient air temperature, wind, cloud cover, solar heating, and precipitation, in addition to transmission line conditions such as tension or sag.

forecastable cloud cover, and on certain transmission lines, DLRs that reflect forecasts of wind speed and wind direction. The FERC seeks comments about whether to reflect hourly solar conditions and wind conditions in all transmission line ratings, how transmission congestion levels and environmental factors could identify locations of transmission lines that would most benefit from DLR, and what other technical details of transmission line ratings reflect wind conditions. Comments in response to the ANOPR are due **October 15, 2024**.<sup>103</sup> Reply comments are due **November 12, 2024**. A more detailed summary of the ANOPR was provided to and reviewed with the Transmission Committee. Since the last Report, comments were submitted by Topolonet Corporation and Laki Power.

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

On October 19, 2023, the FERC issued a NOPR<sup>104</sup> 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/EPSCA, 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](#), [EPSCA](#), [Interstate Gas Supply](#), [Macquarie](#), [PG&E](#), [Systrends](#), [Tri-State](#), [XBRL US](#). This matter remains pending before the FERC.

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

On May 16, 2024, the FERC issued *Order 1977*<sup>105</sup> 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*.<sup>106</sup> NEPOOL Counsel prepared a [summary](#) of *Order 1977* which was distributed to the Transmission Committee.

**Requests for rehearing of Order 1977** were filed by the LA PSC, NY PSC, PA PUC, and Public Interest Organizations.<sup>107</sup> On July 15, 2024, the FERC issued an “Allegheny Notice”, noting that the requests for rehearing may be deemed to have been denied by operation of law, but noting that the requests will be addressed in a future order.<sup>108</sup> If you have any questions concerning *Order 1977*, please contact Eric Runge (617-345-4735; [ekrunge@daypitney.com](mailto:ekrunge@daypitney.com)) or Margaret Czepiel (202-218-3906; [mzczepiel@daypitney.com](mailto:mzczepiel@daypitney.com)).

<sup>103</sup> The *ANOPR* was published in the *Fed. Reg.* on July 15, 2024 (Vol. 89, No. 135) pp. 57,690-57,716.

<sup>104</sup> *Revisions to the Filing Process and Data Collection for the Electric Quarterly Report*, 185 FERC ¶ 61,043 (Oct. 19, 2023) (“*EQR NOPR*”).

<sup>105</sup> *Applications for Permits to Site Interstate Elec. Transmission Facilities*, 187 FERC ¶ 61,069 (May 13, 2024) (“*Order 1977*”).

<sup>106</sup> *Order 1977* was published in the *Fed. Reg.* on May 29, 2024 (Vol. 89, No. 104) pp. 46,682-46,740.

<sup>107</sup> “Public Interest Organizations” are Earthjustice, Environmental Defense Fund, NRDC, Sierra Club, Sustainable FERC Project, UCS, WE ACT for Environmental Justice, and the Yurok Tribe.

<sup>108</sup> *Applications for Permits to Site Interstate Elec. Transmission Facilities*, 188 FERC ¶ 61,027 (July 15, 2024).



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

On March 21, 2024, the FERC issued a NOPR<sup>109</sup> 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.”<sup>110</sup> The proposed change may affect revenues received by reactive power resources in New England.<sup>111</sup> The NOPR seeks comments on, among other issues, the following:

- (i) The reliability impact of prohibiting transmission providers from including in their transmission rates any charges associated with the supply of reactive power within the standard power factor range from a generating facility in regions where generating facilities currently receive such compensation;
- (ii) Whether, and if so how, the elimination of separate reactive power payments will affect generating facilities’ ability to recover their costs in the markets that currently provide reactive power compensation within the standard power factor range;
- (iii) Whether, and if so how, eliminating separate reactive power compensation within the standard power factor range may affect investment decisions to build, or finish building, generation facilities, and whether, and if so how, the elimination could otherwise affect generators’ business decisions in those markets; and
- (iv) If the FERC allows existing generation resources that have previously received compensation for reactive power supply to continue to receive compensation for a limited period while prohibiting new generation resources from receiving reactive power compensation, how should it determine eligibility for continued compensation in a manner that is just and reasonable and not unduly discriminatory or preferential.<sup>112</sup>

Initial comments on the *Reactive Power NOPR* were due May 28, 2024; reply comments were due June 26, 2024.<sup>113</sup> 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.

**Comments.** Initial comments were filed on May 28, 2024 by over 30 parties, including by: [ISO-NE](#), [Calpine](#), [CT OCC](#), [EDP Renewables](#), [Glendale](#), [National Grid](#), [New England Consumer Advocates](#), [ACPA/SEI](#), [ACORE](#), [EPSA](#), [National Hydropower Assoc.](#), [NEI](#), and [Reactive Service Providers](#). Reply comments were due by June 26, 2024 and filed by: [NEPOOL](#) in response to ISO-NE’s initial comments, [NEPGA](#), [NESCOE](#), [Elevate Renewables F7](#), [EPSA](#), [IPPNY](#), [MISO TOs](#), [Old Dominion Electric Coop](#), [PJM IMM](#), and [Dr. C. Gaunt](#). [Onward Energy](#) filed supplemental comments on July 23, 2024.

The Reactive Power NOPR is pending before the FERC.

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

On May 13, 2023, the FERC issued *Order 1920*,<sup>114</sup> its final rule on proposed reforms to existing the transmission planning and cost allocation requirements. In *Order 1920*, the FERC explained that under existing processes, transmission providers are not required to: (i) perform a sufficiently long-term assessment of

<sup>109</sup> *Compensation for Reactive Power Within the Standard Power Factor Range*, 186 FERC ¶ 61,203 (Mar. 21, 2024) (“*Reactive Power NOPR*”).

<sup>110</sup> *Reactive Power NOPR* PP 51-53.

<sup>111</sup> Generating facilities in New England are compensated for reactive power under a flat, inflation-adjusted rate design.

<sup>112</sup> *Id.* at PP 47, 49, 56.

<sup>113</sup> The *Reactive Power NOPR* was published in the Fed. Reg. on Mar. 28, 2024 (Vol. 89, No. 61) pp. 21,454-21,468.

<sup>114</sup> *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 187 FERC ¶ 61,068 (May 13, 2024) (“*Order 1920*”).



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*,<sup>115</sup> 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* took effect on *August 12, 2024*.<sup>116</sup> 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](#). On July 15, 2024, the FERC issued an “Allegheny Notice”, noting that the requests for rehearing may be deemed to have been denied by operation of law, but noting that the requests will be addressed in a future order.<sup>117</sup>

**Petitions for Federal Court Review.** *Order 1920* has been challenged in several federal circuits, including the DC, First, Fourth, Fifth, Sixth, Ninth, Tenth, and Eleventh Circuits. Further developments on the federal court appeals will be reported in Section XVI below.

<sup>115</sup> *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 179 FERC ¶ 61,028 (Apr. 21, 2022) (“*Transmission NOPR*”).

<sup>116</sup> *Order 1920* was published in the Fed. Reg. on Jun. 11, 2024 (Vol. 89, No. 113) pp. 49,280-49,586.

<sup>117</sup> *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 188 FERC ¶ 62,025 (July 15, 2024).

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

### XIII. FERC Enforcement Proceedings

#### Electric-Related Enforcement Actions

- **Big Rivers Electric Corporation Stipulation and Consent Agreement (IN24-9)**

On August 6, 2024, the FERC approved a Stipulation and Consent Agreement with Big Rivers Electric Corporation (“BREC”)<sup>118</sup> to resolve OE’s investigation following a MISO IMM referral of whether BREC violated FERC regulations and/or the MISO Tariff through false and misleading communications with MISO and the MISO IMM<sup>119</sup> and by submitting bids to MISO at full availability when BREC knew or was reckless in not knowing that the plant could not run at full availability.<sup>120</sup> Under the Stipulation and Consent Agreement, BREC agreed to **disgorge \$308,341** to MISO, to pay a **civil penalty of \$336,870** to the United States Treasury, and to provide compliance training to its personnel about the MISO Tariff and the FERC’s Anti-Manipulation Rule, to review its compliance procedures for potential improvements, and to provide compliance monitoring. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

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

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.<sup>121</sup> 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.”<sup>122</sup>

On September 4, 2024, the FERC Secretary issued a notice that Respondents were served with a copy of the *Ketchup Caddy Show Cause Order* on July 26, 2024. Respondents have not, as of the date of this Report,

<sup>118</sup> BREC is a member-owned, not-for-profit, electric generation and transmission cooperative headquartered in Owensboro, Kentucky. BREC is a member of MISO and provides services under the terms of the MISO Tariff.

<sup>119</sup> To avoid penalties, BREC falsely told MISO that a planned outage ended on June 29, 2023 and that its outages from that date until July 6, 2023 were forced, when in fact the outages from June 29 to July 6, 2023 were a continuation of the planned outage. BREC also submitted false and misleading information to the MISO IMM about its expectations for its unit running at full availability.

<sup>120</sup> *Big Rivers Electric Cop.*, 188 FERC ¶ 61,155 (Sep. 5, 2024). On 33 days during Summer 2022 (“Relevant Period”), Vista submitted inaccurate/low expected Initial State of Charge values as part of its Regulation Down bids when the Vista Battery actual State of Charge was otherwise much higher based on Regulation Up awards in the final hour of the day before. Because VES submitted low Initial State of Charge values, VES obtained Bid Cost Recovery payments and Regulation Down awards it would not have otherwise obtained.

<sup>121</sup> *Ketchup Caddy, LLC and Phillip Mango*, 186 FERC ¶ 61,132 (Feb. 21, 2024) (“*Ketchup Caddy Show Cause Order*”).

<sup>122</sup> *Id.* at P 3.

responded to the *Ketchup Caddy Show Cause Order*. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; [pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)).

### Natural Gas-Related Enforcement Actions

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

***Procedural Schedule Suspended.*** As previously reported, on May 24, 2022, the Honorable Judge Karen Gren Scholer of the U.S. District Court for the Northern District of Texas (“Northern District”) issued an order staying this proceeding. Consistent with that order and out of an abundance of caution, ALJ Joel DeJesus, who will be the presiding judge for hearings in this matter,<sup>123</sup> 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,<sup>124</sup> 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 order<sup>125</sup> 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,<sup>126</sup> 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;<sup>127</sup> (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

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<sup>123</sup> 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.

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

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

<sup>126</sup> *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*”).

<sup>127</sup> 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.

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.<sup>128</sup> This matter is pending before the FERC.

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

On April 28, 2016, the FERC issued a show cause order<sup>129</sup> 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.<sup>130</sup>

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

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

On June 14, 2023, the FERC issued an Order on Presiding Officer Reassignment,<sup>133</sup> 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

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<sup>128</sup> *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.

<sup>129</sup> *Total Gas & Power North America, Inc.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) (“*TGPNA Show Cause Order*”).

<sup>130</sup> 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.

<sup>131</sup> *Total Gas & Power North America, Inc. et al.*, 176 FERC ¶ 61,026 (July 15, 2021) (“*Hearing Order*”).

<sup>132</sup> *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).

<sup>133</sup> *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*”).

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, 2023, Judge Patricia M. French was substituted as Presiding Judge (relieving Judge Krolkowski of all of her duties with respect to this proceeding).

**Order Terminating Hearing and Holding Proceeding in Abeyance.** On September 19, 2024, in light of the Supreme Court's decision in *Jarkesy*,<sup>134</sup> the FERC terminated the hearing procedures established in the *Hearing Order*. The FERC stated that "will not impose penalties against [TGPNA] for the conduct alleged in the *Show Cause Order* on the basis of an administrative enforcement proceeding before a FERC ALJ." This proceeding will be held in abeyance until a further FERC order is issued.

## XIV. Natural Gas Proceedings

For further information on any of the natural gas proceedings, please contact Joe Fagan (202-218-3901; [jfagan@daypitney.com](mailto: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.<sup>135</sup> 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

<sup>134</sup> *Jarkesy* was decided by the Supreme Court on June 27, 2024. *Jarkesy* held that the Seventh Amendment to the U.S. Constitution entitles a respondent in an administrative enforcement proceeding to a jury trial in a federal court organized under Article III of the Constitution when the SEC seeks civil penalties for securities fraud. Because the SEC's civil penalties for securities fraud are "designed to punish and deter, not to compensate" they are the "type of remedy at common law that could only be enforced in courts of law" with Seventh Amendment protections. In short, SEC civil penalty actions regarding fraud are "a common law suit in all but name" and therefore the *Jarkesy* respondents were "entitled to a jury trial in an Article III court." The FERC is examining *Jarkesy's* impact on the FERC's existing enforcement procedures and expects to further address its approach to enforcement cases in light of *Jarkesy*. The FERC expects that it will issue a further order regarding the status of this proceeding.

<sup>135</sup> *Iroquois Gas Transmission Sys., L.P.*, 178 FERC ¶ 61,200 (2022) ("*Iroquois Certificate Order*").

needs determination, noticed by NYDEC was open until March 29, 2024. Iroquois has still not yet requested or received authorization to commence construction; accordingly, no construction activities were undertaken in February 2024 and no construction was planned for March 2024.

## XV. State Proceedings & Federal Legislative Proceedings

No activities to report.

## XVI. Federal Courts

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

- **TO Initial Funding Show Cause Order (8<sup>th</sup> Circuit - 24-2714)**

**Case Title: Ameren Services Company, et al v. FERC**

**Underlying FERC Proceeding: EL24-80 et al.<sup>136</sup>**

**Status: Being Held In Abeyance**

On August 23, 2024, Petitioners<sup>137</sup> filed a Petition for Review of the FERC’s *TO Initial Funding Show Cause Order and TO Initial Funding Show Cause Allegheny Notice*. Pursuant to an order of the Court issued on October 3, 2024, the Briefing Schedule in this proceeding is being held in abeyance for an initial period of 90 days (until **January 1, 2025**).

- **Order 1920: Transmission Planning Reforms (4<sup>th</sup> Circuit – 24-1650)**

**Case Title: Appalachian Voices v. FERC**

**Underlying FERC Proceeding: RM21-17<sup>138</sup>**

**Status: Being Held in Abeyance**

As previously reported, on July 18, 2024, AEU/ACPA/SEIA and Invenenergy petitioned the DC Circuit Court of Appeals for review of the FERC’s *Order 1920*.<sup>139</sup> Petitions were also filed in the First, Second, Fourth, Fifth, Sixth, Seventh, Ninth, and Eleventh Circuits. The Judicial Panel on Multidistrict Litigation randomly selected the Fourth Circuit as the Circuit in which to consolidate the petitions for review. The DC Circuit ordered that its cases be transferred to the 4<sup>th</sup> Circuit. The 4<sup>th</sup> Circuit lead case no. is 24-1650. On August 26, 2024, the 4<sup>th</sup> Circuit granted the FERC’s motion to hold the petitions for review in abeyance, with motions to govern due **January 6, 2025**, all filing deadlines— including filing of the agency record—are deferred until the abeyance period expires. The FERC

<sup>136</sup> *Midcontinent Indep. Sys. Op. et al.*, 187 FERC ¶ 61,170 (June 13, 2024) (“*TO Initial Funding Show Cause Order*”); *Midcontinent Indep. Sys. Op. et al.*, 188 FERC ¶ 62,084 (Aug. 15, 2024) (“*TO Initial Funding Show Cause Allegheny Notice*”); *Midcontinent Indep. Sys. Op. et al.*, 188 FERC ¶ 61,211 (Sep. 26, 2024) (“*TO Initial Funding Show Cause Allegheny Order*”).

<sup>137</sup> Petitioners are: Ameren Services Co.; Ameren Illinois Co.; Union Electric Co., d/b/a Ameren Missouri; Ameren Transmission Co. of Illinois; American Transmission Co. LLC; Duke Energy Corp.; Duke Energy Business Services, LLC; Duke Energy Ohio, Inc.; Duke Energy Kentucky, Inc.; Duke Energy Indiana, LLC; Northern Indiana Public Service Co. LLC; Xcel Energy Services Inc.; Northern States Power Co. - Minnesota; Northern States Power Co. - Wisconsin; Southwestern Public Service Co.; Exelon Corp.; Atlantic City Electric Co.; Baltimore Gas and Electric Co.; Commonwealth Edison Co.; Delmarva Power & Light Co.; PECO Energy Co.; Potomac Electric Power Co.

<sup>138</sup> *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*”).

<sup>139</sup> Petitioners for review of *Order 1920* have also been filed in the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, and 9<sup>th</sup> Circuits.



suggested that abeyance will afford the FERC time to respond to the approximately 50 applications for rehearing of *Order 1920*.

- **Mystic Second CapEx Info Filing (24-1077)**  
Case Title: **Constellation Mystic Power, LLC v. FERC**  
Underlying FERC Proceeding: **ER18-1639-028**<sup>140</sup>  
**Status: Being Held In Abeyance**

On April 3, 2024, Constellation Mystic Power, LLC petitioned the DC Circuit Court of Appeals for review of the FERC's orders on Mystic's Second CapEx Info Filing. 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.<sup>141</sup>

In response to a motion by the FERC, the Court ordered that this case be held in abeyance pending further order of the court. Subsequently, in response to a July 16, 2024 unopposed motion by Mystic, the court ordered that the case remain in abeyance pending further order of the Court, with the parties directed to file motions to govern future proceedings in this case by **December 4, 2024**.

- **Orders 2023 and 2023-A (23-1282 et al.) (consolidated)**  
Case Title: **Advanced Energy United, et al v. FERC**  
Underlying FERC Proceeding: **RM22-14**<sup>142</sup>  
**Status: Being Held In Abeyance; Unopposed Proposed Schedule to Govern Future Proceedings Pending**

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. On August 5, 2024, the Court ordered the following briefing schedule: Initial Submissions and Certified Index to the Record (August 21, 2024); Joint Petitioners' Briefs (**October 30, 2024**); Petitioner-Intervenor Brief(s) (November 13, 2024); Respondent's Brief (February 5, 2025); Intervenor for Respondent's Brief (February 19, 2025); Petitioners' Reply Briefs (March 19, 2025); Petitioner-Intervenor Reply Brief(s) (March 19, 2025), Deferred Joint Appendix (April 2, 2025); and Final Briefs (April 16, 2025). The parties will be informed later of the date of oral argument and the composition of the merits panel. The next expected submission will be Joint Petitioners' Briefs.

- **Order 2222 Compliance Orders (23-1167, 23-1168, 23-1169, 23-1170, 23-1335) (consolidated)**  
Case Title: **Eversource Energy Service Company v. FERC**  
Underlying FERC Proceeding: **ER22-983**<sup>143</sup>  
**Status: Being Held in Abeyance**

On June 30, 2023, ISO-NE (23-1168), CMP/UI (23-1170), Eversource (23-1167), and National Grid (23-1169) petitioned the DC Circuit Court of Appeals for review of the FERC's orders related to the FERC's *Order 2222 Compliance Orders*.<sup>144</sup> On July 3, 2023, the Court consolidated the cases, with Case No. 23-1667 as the lead case.

<sup>140</sup> *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*").

<sup>141</sup> Braintree, Concord, Georgetown, Hingham, Littleton (NH), Middleborough, Middleton, Norwood, Pascoag, Reading, Taunton, Wellesley, and Westfield (collectively, the "Eastern New England Consumer-Owned Systems").

<sup>142</sup> *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).

<sup>143</sup> *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*").

<sup>144</sup> 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,

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. 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 had until August 5, 2024 to file motions to govern future proceedings in these consolidated appeals. However, the FERC asked that the Court continue to hold these consolidated petitions for review in abeyance until 90 days after the Commission's issuance of a final order in ER22-983, with parties to file motions to govern future proceedings at the end of the abeyance period. The FERC asked for the additional period of abeyance "because compliance filings in the ER22-983 proceeding remain pending before the Commission, and Commission action on those filings may ultimately result in further petitions for review of ER22-983 orders, or otherwise expand or reduce the issues presented for review". On July 31, 2024, the Court issued an order that these consolidated cases remain in abeyance pending further order of the court. The parties were directed to file motions to govern future proceedings within 90 days of the FERC's issuance of a final order in the ER22-983 proceeding. The FERC was also directed to file status reports at 60-day intervals beginning September 30, 2024. The FERC filed a status report on September 30, 2024 stating that the FERC has not yet issued a final order in ER22-983, and these consolidated appeals should remain in abeyance.

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

**Case Title: NextEra Energy Resources, LLC, et al v. FERC**

**Underlying FERC Proceeding: EL21-6, EL 23-3<sup>145</sup>**

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

**Status: Petition for Review Denied; Issuance of Mandate Withheld**

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.<sup>146</sup> NextEra subsequently petitioned the Court for review of the June 15, 2023 *Seabrook Dispute Allegheny Order*, which was consolidated with Case No. 23-1094. Oral argument was heard on February 6, 2024 by Judges Millett, Katsas and Rao. On October 4, 2024, in a 2-1 Decision, the Court denied Seabrook's Petition for review,

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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.

<sup>145</sup> *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*").

<sup>146</sup> In the Seabrook Dispute Order, the FERC (i) both denied and granted in part the Seabrook Complaint; (ii) dismissed the Seabrook Declaratory Order Petition; and (iii) directed Seabrook to replace the Seabrook Station breaker pursuant to its obligations under the Seabrook LGIA and Good Utility Practice. Specifically, the FERC denied the Seabrook Complaint in part because it found that Avangrid had "not shown that Seabrook is obligated to replace the breaker due to Seabrook failing to meet certain open access obligations or because Seabrook has failed to comply with Schedule 25 of the ISO-NE Tariff". However, the FERC found that, "under Seabrook's LGIA, Seabrook may not refuse to replace the breaker because it is needed for reliable operation of Seabrook Station and required by Good Utility Practice" and thus, given the specific facts and circumstances in the record, granted the Seabrook Complaint in part. With respect to cost issues, the FERC agreed with Avangrid that, in this case, Seabrook should not recover opportunity costs (e.g. lost profits, lost revenues, and foregone Pay for Performance ("PPF") bonuses) or legal costs. In dismissing the Declaratory Order Petition, the FERC noted that the issues raised in the Petition were addressed in the Seabrook Dispute Order, that additional findings were unnecessary, and thus exercised its discretion to not take action on, and to dismiss, the Petition. The breaker replacement is currently expected to take place during the Fall 2024 refueling outage and the commercial operation date for the NECEC Project is December 2024. Seabrook plans to file an agreement governing installation at the earlier of 30 days prior to delivery of the breaker or 120 days prior to the start of the Fall 2024 outage. The FERC noted its expectation that such an agreement would resolve whatever remaining issues exist between the parties to allow replacement of the breaker to move forward during the 2024 outage, or if not, an unexecuted agreement would be filed.

finding that the “FERC did not exceed its statutory jurisdiction, correctly interpreted the governing tariff and LGIA, and permissibly denied Seabrook compensation for any indirect costs”.

- **Mystic II (ROE & True-Up) (21-1198 et al.) (consolidated)**  
**Case Title: Constellation Mystic Power, LLC v. FERC**  
**Underlying FERC Proceeding: ER18-1639-010, -011,<sup>147</sup> -013<sup>148</sup> -017<sup>149</sup>**  
**Petitioners: Mystic (21-1198 (lead), 22-1008, 22-1026), CT Parties,<sup>150</sup> (21-1222, 22-1001) MA AG (21-1223), ENECOS (21-1224)**  
**Status: Being Held in Abeyance; Motions to Govern Future Proceedings Due Nov 27, 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 Decisions 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.

**Abeyance.** As previously reported, these proceedings have been held in abeyance pending disposition of *MISO Transmission Owners v. FERC*, 16-1325 (“*MISO TOs*”), now on remand at the FERC. Most recently, on July 22, 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 July 30, 2024, the Court issued an order that these cases remain in abeyance and that the parties file motions to govern future proceedings by **Nov 27, 2024**. Since the last Report, Mystic filed an opposed Settlement Agreement that would set the ROE at 9.0% and moot these appeals; Mystic asked for a November 1, 2024 effective date for that Agreement. (see Section II, Mystic COSA ROE Settlement Agreement (ER24-2804). On August 14, 2024, Mystic filed an unopposed Settlement Agreement to establish a settled ROE of 9.0% for the Mystic COSA (“Mystic ROE Settlement Agreement”) that would, if approved, moot all of the ROE appeals currently pending before the DC Circuit related to that ROE. Mystic requested a November 1, 2024 effective date for the Settlement Agreement).

- **CASPR (20-1333, 21-1031) (consolidated)\*\***  
**Case Title: Sierra Club, et al v. FERC**  
**Underlying FERC Proceeding: ER18-619<sup>151</sup>**  
**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

<sup>147</sup> *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).

<sup>148</sup> *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).

<sup>149</sup> *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*).

<sup>150</sup> In this appeal, “CT Parties” are the CT PURA CT PURA, CT DEEP, and the CT OCC.

<sup>151</sup> *ISO New England Inc.*, 162 FERC ¶ 61,205 (Mar. 9, 2018) (“*CASPR Order*”).

subsequent *CASPR Allegheny Order*. Appearances, docketing statements, a statement of issues to be raised, and a statement of intent to utilize deferred joint appendix were filed. A motion by the FERC to dismiss the case was dismissed as moot by the Court, referred to the merits panel (Judges Pillard, Katsas and Walker), and is to be addressed by the parties in their briefs.

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

- **Opinion 531-A Compliance Filing Undo (20-1329)**  
**Case Title: Central Maine Power Company, et al v. FERC**  
**Underlying FERC Proceeding: ER15-414<sup>152</sup>**  
**Petitioners: TOs (CMP et al.)**  
**Status: Being Held in Abeyance**

On August 28, 2020, the TOs<sup>153</sup> 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*<sup>154</sup> 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 July 23, 2024.

<sup>152</sup> *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) (“*Order Rejecting Filing*”).

<sup>153</sup> The “TOs” are CMP; Eversource Energy Service Co., on behalf of its affiliates CL&P, NSTAR and PSNH; National Grid; New Hampshire Transmission; UI; Unitol and Fitchburg; VTransco; and Versant Power.

<sup>154</sup> *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) (“*Emera Maine*”).

- ***Chevron Doctrine (US Supreme Ct 20-1329)***<sup>155</sup>

**Status: Overturned**

On June 28, 2024, the Supreme Court overturned the *Chevron* deference doctrine in its decisions in *Loper Bright v. Raimondo* and *Relentless, Inc. v. Dep't of Commerce*.<sup>156</sup> *Chevron*, a landmark and often-cited 1984 decision, required courts to defer to a federal agency's reasonable interpretation of ambiguity in a statute.<sup>157</sup> A more fulsome summary of the *Loper Bright* and *Relentless* Decisions and some of their projected impacts are included as Appendix A to this Report.

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<sup>155</sup> *Loper Bright Enterprises v. Raimondo*, No. 22-451 at 1–2 (U.S. June 28, 2024) (citing *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842 (1984)).

<sup>156</sup> *Loper Bright Enterprises v. Raimondo*, No. 22-451 at 1–2 (U.S. June 28, 2024) (citing *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842 (1984)).

<sup>157</sup> *Chevron* had established a two-step framework for courts to address ambiguity and gaps in statutes. In step one, a court was required to determine whether Congress had “directly spoken to the precise question at issue” using “traditional tools of statutory construction.” If the courts could not determine a clear congressional intent, in step two, the court was required to assess whether the agency’s interpretation was a “permissible construction of the statute.”

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