

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of April 6, 2010

The following activity, as more fully described in the attached litigation report, has occurred since the report dated February 28, 2010 was circulated. New matters/proceedings since the last report are preceded by an asterisk '*'. Page numbers precede the matter description.

I. Complaints

* 1	PSEG Complaint (Bridgeport Harbor Units' Qualified Capacity Ratings) (EL10-58)	Apr 2	PSEG files complaint challenging the Capacity Network Resource Capability ratings limitation applied by the ISO to the Qualified Capacity ratings of Unit Nos. 3 and 4; comment date Apr 22
* 1	NRG/PSEG FCM Complaint (EL10-57)	Apr 2	PSEG and NRG file complaint; comment date Apr 22
* 2	NEPGA FCM Complaint (EL10-50)	Mar 23 Mar 26 - Apr 7	NEPGA files FCM Complaint Parties intervene, answer, and file comments in support and opposed to Complaint
2	ICAP Import Contract Complaints - CT DPUC/OCC (EL09-48); CT AG (EL09-47) (consolidated)	Mar 25 Mar 26 Apr 1 Apr 2	Respondents file consent motion to hold procedural schedule in abeyance Trial Judge Young orders procedural schedule held in abeyance Active parties report settlement discussion not, nor likely to be, fruitful and propose revise procedural schedule Trial Judge Young adopts revised procedural schedule; Enforcement Litigation Staff submits testimony

II. Rate/ROE Filings

5	ICR-Related Values and HQICCs - 2011/2012 ARA2 (ER10-714)	Mar 29	FERC accepts values, effective Apr 5, 2010
5	ICR-Related Values for 2010/2011 Final ARA and Jump Ball Market Rule Changes (ER10-438)	Mar 11	ISO and NEPOOL jointly file compliance changes to Section III.12.9 of Market Rule 1
5	2010 Administrative Costs Budget (ER10-154)	Mar 25	FERC denies rehearing requested by Joint Advocates
8	FCA1 Results Filing (ER08-633)	Mar 24	FERC denies rehearing and accepts FCA1 proration results filing

III. Market Rule Changes, Interpretations And Waiver Requests

* 9	FCM Conforming Changes to Market Rule 1 Appendix A (ER10-997)	Apr 1	ISO and NEPOOL jointly file FCM conforming changes to Market Rule 1 Appendix A (Market Monitoring, Reporting and Market Power Mitigation); comment date Apr 22
* 9	Updates to Centralized Tariff Definitions (ER10-996)	Apr 1	ISO files revisions to the Centralized Definitions section of the Tariff to conform that section with changes accepted by the FERC in prior proceedings; comment date Apr 22
* 9	FCM Conforming Changes to Market Rule 1 (ER10-995)	Apr 1	ISO and NEPOOL jointly file FCM conforming changes to Market Rule 1; comment date Apr 22
* 9	Market Settlement Clarifications (ER10-929)	Mar 24	ISO and NEPOOL jointly file ISO Tariff revisions that clarify certain settlement-related issues, most of which relate to NCPC calculations; comment date Apr 14

* 9	Competitive Import Requirements (ER10-902)	Mar 17 Apr 5-7	ISO and NEPOOL jointly file FCM Competitive Import Requirements Constellation, Dynegy, Exelon, GDF Suez, NRG, and NU intervene; CT AG and CT DPUC comment in support of changes; CT DPUC also requests FERC direct Internal Market Monitor to investigate and report on results of requirements semi-annually
* 10	Application of Overlapping Interconnection Impacts Analysis to DR (ER10-882)	Mar 15 Apr 5	ISO and NEPOOL jointly file revisions to FCM Market Rules that provide for the analysis of overlapping interconnection impacts for new active Demand Resources that seek to participate in an FCA Constellation, Exelon, NRG, NU, and PSEG intervene
* 10	Order 719 Reconciliation Filing (ER10-819)	Mar 2 Mar 18	ISO submits ministerial filing to include in the Tariff's centralized definitions section the previously accepted definitions of External and Internal Market Monitor and to correct a cross-reference in III.A.1.5 NEPOOL intervenes
10	FCM Re-Design: Revisions to MR1 §§ 12 and 13 (ER10-787)	Mar 1 Mar 12-26 Mar 23 Apr 2 Apr 6 Apr 7	NEPOOL files supplement providing additional information regarding the stakeholder process that led to NEPOOL's approval of the Revisions Parties file motions to intervene, comments, and protests NEPGA files related complaint in EL10-50 NRG/PSEG file related complaint in EL10-57 ISO and NEPOOL file answers to comments and protests Boston Gen and GDF Suez file answers
11	De-List Bids for Stations with Common Costs (ER10-750)	Mar 9	Dominion, Exelon, NU intervene
11	Pittsfield and Pawtucket Request for Limited Waiver of FCM Rules (ER10-722)	Mar 18	FERC grants Pittsfield and Pawtucket requests
11	Ampersand Request for Limited Waiver of FCM Rules (ER10-600)	Mar 15	FERC <i>denies</i> Ampersand request
12	Order 719 Compliance Filing (ER10-588, ER09-1051)	Mar 8 Mar 9 Mar 23	MPUC/CTDPU, MA AG submit comments in response to FERC technical conference ISO and NEPOOL respond to CT Representative's request for rehearing FERC issues tolling order affording it additional time to consider CT Representatives' request for rehearing; ISO and NEPOOL respond to Mar 8 comments
13	NCPC Mitigation Reform (ER09-1546)	Mar 18	FERC accepts compliance filing; including Market Rule changes effective Jan 1, 2010, as requested

IV. OATT Amendments / TOAs / Coordination Agreements

15	NEITC Operating Agreement (ER10-637)	Mar 26	ISO and NEITC submit compliance filing designating Agreement ISO and NEITC Rate Schedule FERC No. 1; comment date Apr 16
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V. Financial Assurance/Billing Policy Amendments

* 15	Unsecured Credit Filing (ER10-942)	Mar 26	ISO and NEPOOL jointly file a package of changes to the Financial Assurance and Billing Policies that, among other things: (i) provides for twice-weekly settlement for certain charges; (ii) eliminates the use of unsecured credit for certain Market Participants; (iii) reallocates the costs of defaults where unsecured credit is still used; (iv) segregates billing and collateralization of transmission charges from other ISO charges; and (v) improves the quality of security provided pursuant to the Policies; comment date Apr 16
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16	Pre-Payment and Suspension Clarifications (ER10-752)	Mar 23	FERC accepts changes to the Financial Assurance and Billing Policies, effective Apr 18, 2010
16	Glacial Energy Non-Conforming LOC (ER10-725)	Mar 1 Mar 29	NEPOOL intervenes and files comments FERC accepts filing

VI. Schedule 20/21/22 Changes

* 16	Schedule 21-NU Localized Cost Responsibility Agreement (GenConn Devon) (ER10-993)	Apr 1	NU files LCRA to recover Localized Costs from GenConn Devon; comment date Apr 22
* 16	Schedule 21-BHE Change to Formula Rate (ER09-943)	Mar 29	Bangor Hydro proposes changes to Attachment P Exhibits; comment date Apr 19
16	Schedule 21-NU Localized Cost Responsibility Agreements (NextEra/Dynegy) (ER10-641)	Mar 11	FERC accepts LCRA with NextEra (LCRA NU-09-04) and notice of termination of the LCRA with Dynegy (LCRA NU-09-02)
17	Schedule 21-NU Localized Cost Responsibility Agreements (ER10-315)	Mar 12	FERC accepts refund report
17	Schedule 21-CMP KPLD LNS Agreement (ER10-199)	Mar 15 Mar 16	CMP and KPLD indicate that a settlement in principle to resolve all issues set for hearing reached, request procedural schedule be suspended Chief Judge Wagner suspends procedural schedule
17	Schedule 21-BHE Change to Forward Looking Formula Rate (ER09-934)	Mar 15	Bangor Hydro files 10th settlement update

VII. RMR Agreements

No Activity to Report

VIII. Regional Reports

18	ISO's 2009 Q4 Capital Projects Report (ER10-741)	Mar 31	FERC accepts report
18	Quarterly Markets Reports - 2009 Q4 (ZZ10-4)	Mar 22	ISO files 2009 Q4 report
18	Quarterly Reports Regarding Non-Generating Resource Regulation Market Participation (ER08-54)	Mar 19 Apr 5	ISO files its sixth quarterly report Beacon Power files comments
19	Reserve Market Compliance (8th) Semi-Annual Report (ER06-613)	Apr 1	ISO submits 8th semi-annual Reserve Market compliance report; comment date Apr 22

IX. Membership Filings

* 19	April 2010 Membership Filing	Mar 31	New Members (effective Apr 1, 2009): Bridgeport Fuel Cell Park (Provisional Member, Related Person to DFC-ERG Milford, LLC; AR Sector, RG Sub-Sector); DFC ERG CT (Provisional Member, Related Person to DFC-ERG Milford, LLC; AR Sector, RG Sub-Sector); Gallop Power Greenville (Generation Sector, Generation Group Seat); Granite Reliable Power (Related Person to J. P. Morgan Ventures Energy Corp. and Noble Environmental Power; Supplier Sector); Public Power, LLC (Supplier Sector); Town of New Shoreham, Rhode Island (End User Sector); Terminations: CinCap IV and Saracen Energy (Mar 1, 2010); Greenville Steam Co. and Public Power & Utility, Inc. (Apr 1, 2010)
20	February 2010 Membership Filing (ER10-684)	Mar 25	FERC accepts (i) memberships, effective Feb 1, 2010 of Ameresco CT LLC, Macquarie Energy, LLC, Starion Energy, Inc., and VCharge Inc.; and (ii) terminations, effective Jan 1, 2010 of Bridgeport Energy II, LLC, Consolidated Hydro New Hampshire, Galt Power, GenPower Trading, LLC, IPA New Haven, LLC, Lowell Cogeneration Co., Montgomery Energy Billerica Power Partners, and Ridgewood Maine Hydro Partners

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

21	Formal Interpretation – Reliability Standard TOP-002-2a (RD10-3)	Mar 18	FERC approves NERC’s formal interpretation of Reliability Standard TOP-002-2a; FERC strongly encourages NERC to eliminate the current gap in protection for unused physical ports by the end of 2010
21	Revised (Version 2) CIP Reliability Standards – CIP-002 – CIP-009 (RD09-7)	Mar 31	FERC approves NERC’s (i) CIP Version 3 Standards, (ii) revised Implementation Plan for Newly Identified Critical Cyber Assets and Newly Registered Entities, and (iii) updated timetable for plans to address the remaining directives from Order 706; FERC rejected NERC’s revised Implementation Plan for Version 3 of the CIP Standards CIP-002-3 through CIP-009-3
* 23	NOPR – Revision to ERO Definition of Bulk Electric System (RM09-18)	Mar 18	FERC issues NOPR directing NERC to include all electric transmission facilities of 100 kV or more in its “bulk electric system” definition; comment date May 10
23	Revised Reliability Standard - BAL-004-1 (RM09-13)	Mar 18	FERC issues NOPR proposing to remand revisions to BAL-004-1 filed by NERC; comment date Apr 28
24	Reliability Standard on Transmission Relay Loadability (RM08-13)	Mar 18	FERC issues Order 733 approving Reliability Standard PRC-023-1
25	Proposed Clarification to CIP Standards (RM06-22)	Mar 18 Mar 18	FERC approves VSLs for CIP-002-1 through CIP-009-1 and directs NERC to submit certain revised VSLs by May 17 FERC accepts compliance filing and approves Implementation Plan for nuclear generators’ compliance with CIP-002-1 through CIP-009-1 and directs NERC to submit compliance filings for implementation of Version 2 and 3 of Reliability Standards
26	Mandatory Bulk-Power System Reliability Standards (RM06-16)	Mar 18	FERC issues orders setting deadlines for NERC compliance with Order No. 693, noting that almost three years have passed since directives issued in Order 693
* 26	NERC Compliance and Certification Committee – Revised Rules of Procedure (RR10-8)	Mar 15	NERC requests FERC amendments to NERC’s Rules of Procedure to reflect changes to the Compliance and Certification Committee

27	2010 NERC/NPCC Business Plans and Budgets (RR09-9)	Mar 3 Mar 8	FERC accepts NERC's Dec 11 compliance filing FERC accepts NERC's Jan 11 compliance filing and directs NERC to file additional information by May 3
* 28	Modification of ERO Rules of Procedure (RR09-6)	Mar 18	FERC directs NERC to modify procedures used to develop bulk electric system reliability standards
28	Reliability Standard Violation Severity Levels (RR08-4)	Mar 1 Mar 5	FERC extends NERC compliance filing deadline to Mar 5 NERC submits filing in compliance with VSL Rehearing Order

XI. Misc. - of Regional Interest

* 29	FPL, New Hampshire Transmission, LLC 203 Application (EC10-58)	Apr 1	FPL and NHT submit joint application for authorization for the transfer of FPL's 88.29% undivided ownership interest in the Seabrook Substation to NHT; comment date Apr 22
* 29	CMP/TransCanada Engineering and Procurement Agreement – Termination (ER10-946)	Mar 29	CMP files to terminate E&P Agreement (CMP-EP-1); comment date Apr 19
* 29	CMP/Fox Islands Engineering and Procurement Agreement – Termination (ER10-945)	Mar 29	CMP files to terminate E&P Agreement (CMP-EP-3); comment date Apr 19
* 29	CMP/Record Hill Wind Engineering and Procurement Agreement – Second Amendment (ER10-988)	Mar 26	CMP files second revised E&P Agreement (CMP-EP-2); comment date Apr 16
* 29	LGIA with Green Mountain Power (ER10-919)	Mar 22	ISO and GMP file nonconforming LGIA under Schedule 22 to govern interconnection of GMP's proposed Colchester, VT Large Generating Facility to the GMP Gorge Substation (LGIA-ISONE/GMP-10-01); comment date Apr 12
* 30	CMP/Spruce Mountain Wind E&P Agreement (ER10-821)	Mar 3	CMP files E&P Agreement; comment date Mar 24
30	FERC Penalty Guidelines (PL10-4)	Mar 18 Mar 24 Mar 30	FERC issues Policy Statement on Penalty Guidelines Workshops scheduled for Apr 7 (DC), Apr 14 (TX), and Apr 15 (CA); FERC provides details for DC workshop FERC provides details for TX and CA workshops
31	Integrays Complaint - NBP Generation Market Power in NMISA (EL09-32)	Mar 12 Mar 15 Mar 31	NBP requests extension of time until Jun 17 to submit additional information required by FERC FERC grants NBP extension of time until Apr 7 NERC submits additional information requested by FERC

XII. Misc. - Administrative & Rulemaking Proceedings

32	RTO/ISO Performance Metrics (AD10-5)	Mar 2-5 Mar 16-19	Parties, including NEPOOL, file comments Parties file reply comments
33	Technical Conference on MBR Filings and EQR Reports (AD10-4)	Mar 3	FERC holds technical conference on mechanics of MBR applications and required filings
* 33	Technical Conference Reviewing Submitted OFA Costs (AD10-1)	Mar 11	FERC announces technical conference to be held Apr 14 to review submitted OFAs costs related to Part I of the FPA
33	National Action Plan on Demand Response (AD09-10)	Mar 11 Apr 6	FERC Staff releases draft for comment of National Action Plan on Demand Response Parties file comments

34	FERC-NRC MOA (AD06-6)	Mar 2	FERC and NERC issue notice of joint meeting on Mar 16 to discuss grid reliability
* 35	NOPR – Demand Response Compensation in Organized Wholesale Energy Markets (RM10-17)	Mar 18	FERC issues NOPR proposing requiring organized wholesale energy markets pay demand response providers the market price for energy for reducing consumption below expected levels; comment date May 13
35	NOPR - Credit Reform (RM10-13)	Mar 15-29	Over 70 parties, including NEPOOL, file comments
36	NOI: Market Transparency / EQR (RM10-12)	Mar 18-30	Parties file comments
36	NOI: Variable Energy Resources (RM10-11)	Mar 3 Mar 3 - Apr 2	FERC grants EEI's and BPA's request to extend comment period until Apr 12 Parties file comments
* 32	Order 732 - Revisions to Form, Criteria, and Procedures for QF Status (RM09-23)	Mar 19	FERC issues final rule clarifying and revising form, content, and procedures used in certifying the QF status of existing or proposed small power production or cogen facilities of greater than 1 MW
36	NOPR – Exempting Non-Controlling Investments in Utilities from MBR Requirements (RM09-16)	Mar 29	Parties file comments
37	e-Tariff Filing Procedures (RM01-5)	Mar 16 Mar 19	FERC hold technical conference FERC issues order establishing staggered baseline filing schedule

XIII. State Proceedings & Federal Legislative Proceedings

38	Congressional Developments - CFTC/FERC Jurisdiction Issues	Mar 9	Senate Committee on Energy and Natural Resources hears testimony from: G. Gensler, CFTC Chairman; J. Kelliher, former FERC Chairman and Exec. VP, FPL Group (on behalf of EEI and EPSA); G. Brown, NY PSC Chairman (on behalf of NARUC); V. Duane, PJM General Counsel (PJM); and M. Henderson, VP and CFO, Arkansas Electric Coop
38	MPUC Review of CMP Petition for MPRP CPCN (MPUC 2008-255)	Mar 2 - Apr 5 Mar 25	Parties file briefs and comment Settlement conference held

XIV. Federal Court Appeals

40	FCM Settlement and Transition Rules (06-1403)	Mar 1 Mar 30	Court orders parties to file supplemental briefs by Mar 30, 2010 Parties file supplemental briefs
40	RTO ROE Proceeding (08-1199)	Mar 15	Public Parties' file petition for Panel Rehearing or Rehearing <i>En Banc</i> of DC Circuit denial of Public Parties' petition for review
41	ROE Incentives - UI Bethel-Norwalk Upgrade (09-1039); NU M-N Project (09-1040)	Mar 4 Mar 19	Parties file motions to govern future proceedings Cases to remain held in abeyance pending further orders of the court; Parties directed to file new motions to govern future proceedings within 30 days of the court's disposition of Case No. 08-1199 above
41	ISO 2009 Revenue Requirement (09-1220)	Mar 11 Apr 1	Petitioners' file reply brief Parties file final briefs; oral argument scheduled for May 7, 2010
42	ICAP Import Contract Complaints (09-1320)	Mar 8 Mar 11 Mar 12 Mar 18	CT DPUC files response in support of FERC's motion to dismiss Brookfield filed a response to FERC's motion to dismiss DC Circuit grants FERC's motion to suspend the deadline for its filing, pending a decision on its motion to dismiss FERC files a reply to Brookfield's Mar 11 filing

MEMORANDUM

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: April 8, 2010

RE: Status Report on Current Regional Wholesale Power and Transmission Arrangements Pending Before the Regulators, Legislatures, and Courts

We have summarized below the status through April 6, 2010 of key ongoing proceedings relating to NEPOOL matters before the Federal Energy Regulatory Commission (“FERC”), state regulatory commissions, and the Federal Courts and legislatures. If you have questions, please contact us.¹

I. Complaints

- **PSEG Complaint (Bridgeport Harbor Units’ Qualified Capacity Ratings) (EL10-58)**

On April 2, 2010, PSEG Power Connecticut (“PSEG”) filed a complaint against the ISO challenging the Capacity Network Resource Capability (“CNRC”) ratings limitation applied by the ISO to Bridgeport Harbor Unit Nos. 3 and 4 (the “BH Units”). As set out more fully in the Complaint, PSEG asserts that the ISO had misinterpreted, and thereby violated, its Tariff by insisting that the Qualified Capacity ratings for the BH Units can not be increased beyond the CNRC ratings for the units without a new interconnection request. PSEG further asserts that the ISO’s interpretation has, and continues to, impose financial hardship and harm. Accordingly, PSEG requested that the FERC (i) find that the ISO’s limitations on the CNRC rating for the BH Units are unjust and unreasonable; (ii) direct the ISO to adopt CNRC ratings for the BH Units based on their documented historic capability; (iii) grant expedited treatment for the complaint, with an order issued by (x) May 4, 2010 (in time for the corrected ratings to be included in the ISO’s Informational Filing for FCA4), or, (y) in the alternative, by June 1, 2010 (instructing the ISO to permit PSEG to offer the Qualified Capacity for the BH units unlimited by the CNRC ratings). Comments on this Complaint are due April 22. If you have any questions concerning this matter, please contact , Dave Doot (860-275-0102; dt_doot@daypitney.com) or Michelle Gardner (617-345-4697; mcgardner@daypitney.com).

- **NRG/PSEG FCM Complaint (EL10-57)**

Also on April 2, PSEG and NRG filed a separate FCM complaint against the ISO and NEPOOL in order to remove any potential procedural obstacles that would prevent the FERC from considering the fixes to FCM proposed by their witness Dr. Miles Bidwell, as well as the alternatives they proposed in their protest to the FCM Revisions in Docket No. ER10-787. NRG and PSEG assert that the current and proposed FCM Rules are ineffective at preventing artificial price distortions due to, *inter alia*, the lack of proper zonal formation and that, as a consequence, the capacity prices arising out of these Rules are not just and reasonable. In order to alleviate this problem, they contend, the FCM rules should be amended to more fully allow for zonal formation. Accordingly, NRG and PSEG request that the FERC find the

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

existing FCM construct not just and reasonable, and order the ISO to adopt the following three changes proposed by Dr. Bidwell:

1. Model all possible zones before each FCA in order to identify potentially binding constraints, and thus to allow locational price separation when doing so is warranted,
2. allow all static de-list bids that have been submitted in accordance with ISO mitigation rules and that have been certified by the Internal Market Monitor, and approved by the FERC, as complying with those mitigation rules, to set zonal clearing prices, and
3. allow all dynamic de-list bids that have been submitted in accordance with ISO mitigation rules to set zonal clearing prices.

Comments on this Complaint are due April 22. If you have any questions concerning this matter, please contact, Dave Doot (860-275-0102; dtdoot@daypitney.com) or Michelle Gardner (617-345-4697; mcgardner@daypitney.com).

- **NEPGA FCM Complaint (EL10-50)**

On March 23, the New England Power Generators Association (“NEPGA”) filed a complaint against the ISO and NEPOOL arising, it stated, out of several unjust and unreasonable provisions of the ISO Tariff related to FCM which were not substantially corrected in the proposed FCM Re-Design Changes. NEPGA stated that its Complaint replicated its protest in Docket No. ER10-787, making only a few additional narrow points. As with the NRG/PSEG complaint, NEPGA noted that it was filing its Complaint “in order to eliminate any argument that the relief [it seeks] cannot be granted in response to [its] protest.” In addition to the other relief sought in its protest in ER10-787, NEPGA requests the FERC:

1. Order the ISO to make a compliance filing incorporating NEPGA’s OOM proposal into the Tariff before FCA4;
2. Direct the Internal Market Monitor to determine whether the existing classification of resources in New England as OOM, or as “in-market” resources, is in fact supported by the underlying facts, and to make appropriate changes;
3. Require that all Zones be modeled, including include the modeling of local reliability needs to the fullest extent possible;
4. Direct that properly mitigated de-list bids be considered in forming zonal prices;
5. Reset CONE to more reasonable levels

Over 30 motions to intervene in this proceeding were filed. The ISO and NEPOOL each filed answers on April 6. Comments in support of the NEPGA Complaint were separately filed by EPSC and Exelon. Protests were filed by a number of parties, including NECPUC, NHPUC, MA AG, CT OCC, NGrid, NSTAR, CMEEC/MMWEC/NHEC, Eastern MA Consumer-Owned Systems and UI. The NEPGA Complaint, and all related motions and pleadings, are pending before the FERC. If you have any questions concerning this matter, please contact , Dave Doot (860-275-0102; dtdoot@daypitney.com) or Michelle Gardner (617-345-4697; mcgardner@daypitney.com).

- **ICAP Import Contract Complaints - (EL09-48 and EL09-47) (consolidated)**

On August 24, 2009, the FERC established hearing procedures for, and consolidated the proceedings in, Docket Nos. EL09-48 and EL09-47.² As previously reported, the Connecticut Attorney

² Richard Blumenthal, Att’y Gen. for The State of Conn. v. ISO New England Inc., Brookfield Energy Marketing Inc., H.Q. Energy Services (U.S.) Inc., Constellation Energy Commodities Group, Inc., and Other Unidentified Installed Capacity Resources Committed to Import over the Northern N. Y. AC Interface and The Conn. Dept. of Pub. Util. Control and the Conn. Office of Consumer Counsel v. ISO New England Inc., Brookfield

General (“CT AG”) (EL09-47) and the Connecticut Department of Public Utility Control (“CT DPUC”) and the Connecticut Office of Consumer Counsel (“OCC”) (EL09-48) filed complaints against the ISO and certain unidentified Installed Capacity Resources committed to import over the Northern New York AC interface (“NNY Capacity Resources”). The FERC was asked to investigate and conduct a hearing on allegedly unlawful conduct of the NNY Capacity Resources during the December 2006 through January 2009 period. The complaints further sought orders (i) requiring the NNY Capacity Resources to disgorge any unlawful profits and be subject to such other civil penalties as the FERC determines appropriate; (ii) directing the ISO to identify the NNY Capacity Resources and the amount of capacity payments each received over the two-year period; and (iii) directing “substantial reforms to [the ISO’s] market monitoring structure to protect New England ratepayers” that exceed the changes to the market monitoring arrangements accepted in New England’s Order 719 compliance filing.

In the Capacity Imports Hearing Order, the FERC, noting the unique history of the allegations regarding the capacity importers’ bidding strategy raised in the complaints, including the inconsistency in the ISO’s position regarding those allegations, set the bidding strategy allegations for a trial-type evidentiary hearing before an administrative law judge pursuant to its authorities under FPA sections 306 and 307.³ The FERC declined, however, to set for hearing under FPA Section 206 the claims that the region’s market monitoring provisions are unreasonable, directing comments on that topic to the Order 719 compliance proceeding which have since been accepted (*see* ER09-1051 below).⁴ On October 23, the FERC granted in part and denied in part the Constellation and Brookfield requests,⁵ clarifying that the FERC intended to set for hearing inquiry into the three requisite elements to establish market manipulation and therefore granted rehearing, in part, clarifying that the scope of the hearing is whether capacity importers’ submission of energy supply offers at or near the \$1,000 per MWh price cap satisfied the three elements required to establish market manipulation (which elements do not include effects of the alleged behavior on market prices or applicable remedies).⁶

Since the last report, the active Parties in the proceeding conducted brief settlement negotiations. While those negotiations were held to facilitate those settlement discussions (March 26 – April 1), the hearing’s procedural schedule was held in abeyance. On April 1, 2010, the active participants reported that they were unable to reach a comprehensive settlement in principle, did not believe further negotiations would be fruitful, and proposed a revised procedural schedule. Under the revised schedule, proposed by FERC Enforcement Litigation Staff and ordered by Trial Judge Young, pre-hearing discovery and proceedings have resumed. Hearings are still scheduled to begin May 12, with an initial decision to be issued by August 4, 2010. On April 2, FERC Enforcement Staff submitted its Answering Testimony & Exhibits. Respondent/Intervenor Cross-Answering testimony and exhibits are due April 19. If you have any questions concerning these complaint proceedings, please contact Michelle Gardner (617-345-4697; mcgardner@daypitney.com) or Dave Doot (860-275-0102; dt_doot@daypitney.com).

Energy Marketing Inc., H.Q. Energy Services (U.S.) Inc., Constellation Energy Commodities Group, Inc., and Other Unidentified Installed Capacity Resources Committed to Import over the Northern N.Y. AC Interface, 128 FERC ¶ 61,182 (2009) (“Capacity Imports Hearing Order”), *clarification and reh’g granted in part*, 129 FERC ¶ 61,057 (2009).

³ *Id.* at PP 53-55.

⁴ *Id.* at P 57.

⁵ Richard Blumenthal et al., 129 FERC ¶ 61,057 (2009) (“Capacity Imports Re-Hearing Order”).

⁶ *Id.* at P 22.

- **NECPUC ROE Complaint (EL08-69)**

Rehearing of the FERC's September 25, 2008 order⁷ denying NECPUC's complaint against the TOs remains pending. As previously reported, the FERC denied the June 12, 2008 complaint which sought, among other things, to limit application of the ROE adder for certain qualified project costs that substantially exceed the 2004 regional transmission expansion plan ("RTEP04") estimates. NECPUC had also proposed in the complaint a higher ROE (i.e., in excess of 100 basis points) be allowed if a project was completed below its estimated cost, with the ROE calibrated so that the total incentive return dollars would equal the incentive related income had the project been completed at its estimated cost. In denying the complaint, the FERC found that the cost increases identified by NECPUC did not change the circumstances underlying the FERC's decision to authorize the ROE incentive and did not render the cost of the incentive unjust and unreasonable. The FERC also found that NECPUC's attempt to restrict application of the ROE incentive to the originally estimated costs of incentive-eligible projects should have been raised in the Opinion No. 489 proceeding (ER04-157), and therefore denied the complaint and rejected the argument as a collateral attack on Opinion No. 489. In addition, the FERC explained the public purpose served by applying an approved incentive to prudently-incurred costs, and in this case, found that NECPUC had not made a showing sufficient to call into question whether costs associated with the identified projects were imprudently incurred. Rehearing of the NECPUC ROE Order was filed by NECPUC *et al.*⁸ and MA AG/CT OCC (sub-docket -001) on October 24, 2008. On November 21, 2008, the FERC issued a tolling order affording it additional time to consider the NECPUC and MA AG requests, which remain pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **MPS LSCPR Complaint (EL08-48)**

As previously reported, the FERC, on July 2, 2009, denied two separate requests for rehearing of the MPS LSCPR Order⁹ that were filed on August 18, 2008 by MPS, and NSTAR and NGrid.¹⁰ The MPS¹¹ petitioned the United States Court of Appeals for the DC Circuit for review of the MPS LSCPR Order and Rehearing Orders (09-1231). Developments with respect to that appeal, which is being held in abeyance, will be reported in Section XIV below.

On October 28, 2009, the FERC accepted the ISO's July 17, 2009 Compliance Report,¹² agreeing with the ISO's proposal that the SEMA zone should not be modified, either prospectively or for the period extending back to the refund effective date (March 28, 2008) established by the FERC. The FERC also rejected the MPS' objections to the ISO's reliance on the "guideline document," rejected requests for additional procedures, and found that the MPS were properly allocated a share of the costs to meet the reliability criteria.¹³ On November 30, the MPS requested rehearing of the LSCPR Compliance Order. The FERC issued a tolling order on December 30, 2009, affording it additional time to consider the MPS

⁷ NECPUC v. Bangor Hydro-Electric Co., et al., 124 FERC ¶ 61,291(2008) ("NECPUC ROE Order"), *reh'g requested*.

⁸ NECPUC was joined in its request for rehearing by the VT DPS, VT PSB, MA DPU, RI AG, RI DPU, and the MA AG.

⁹ Braintree Municipal Light Dep't et al. v. ISO New England Inc., 124 FERC ¶ 61,061 (2008) ("MPS LSCPR Order"), *reh'g denied*, 128 FERC ¶ 61,008 (2009).

¹⁰ Braintree Municipal Light Dep't et al. v. ISO New England Inc., 128 FERC ¶ 61,008 (2009) ("MPS LSCPR Rehearing Order").

¹¹ "MPS" are, collectively, Braintree, Hingham, Hull, Mansfield, Middleborough, and Taunton.

¹² Braintree Municipal Light Dep't et al. v. ISO New England Inc., 129 FERC ¶ 61,077 (2009) ("LSCPR Compliance Order").

¹³ Id. at PP 47-54.

request, which remains pending before the FERC.

If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dt_doot@daypitney.com).

II. Rate/ROE Filings

- **ICR-Related Values and HQICCs - 2011/2012 ARA2 (ER10-714)**

On March 29, 2010, the FERC accepted the Installed Capacity Requirement (“ICR”), Local Sourcing Requirements (“LSR”), Maximum Capacity Limits (“MCL”) (collectively, the “ICR-Related Values”) and Hydro Quebec Interconnection Capability Credits (“HQICCs”) for the second annual reconfiguration auction for the 2011/2012 Capability Year (to be held in May 2010) that had been jointly filed by the ISO and NEPOOL. The ICR-Related Values and HQICCs became effective April 5, 2010, as requested. Unless the March 29 letter order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact either Eric Runge (617-345-4735; ekrunge@daypitney.com) or Dave Doot (860-275-0102; dt_doot@daypitney.com).

- **ICR-Related Values for 2010/2011 Final ARA and Jump Ball Market Rule Changes (ER10-438)**

As previously reported, the FERC accepted the ISO-proposed ICR and ICR-Related Values for the final FCM reconfiguration auction for the 2010/2011 Capability Year (1,860 MW), after evaluating alternative ISO and NEPOOL proposals pursuant to the “jump ball” provisions of Participants Agreement.¹⁴ The 2010 ARA3 ICR and Jump Ball Order was not challenged and is final.

In the 2010 ARA3 ICR and Jump Ball Order, the FERC also directed that the ISO include language in the Market Rules establishing a two-year sunset provision requiring the ISO to file Market Rule changes, as necessary, applicable to the third reconfiguration auction for the 2012/2013 commitment period, consistent with the language proposed by NEPOOL.¹⁵ That language, which provides that “[b]y December 31, 2010 the ISO shall review with Market Participants and as necessary, file proposed Market Rule amendments reflecting a methodology for tie benefit calculations to apply to future third annual reconfiguration auctions beginning with the third annual reconfiguration auction for the 2012/2013 Capacity Commitment Period,” was jointly filed by the ISO and NEPOOL on March 11 (sub-docket - 001). The compliance changes were unanimously supported at the March 5, 2010 Participants Committee meeting. No comments on the compliance filing were submitted by the April 1, 2010 comment date, and the compliance filing is pending before the FERC.

If you have any questions concerning these matters, please contact either Eric Runge (617-345-4735; ekrunge@daypitney.com) or Dave Doot (860-275-0102; dt_doot@daypitney.com).

- **2010 Administrative Costs Budget (ER10-154)**

On March 25, the FERC denied rehearing of its 2010 ISO Budget Order.¹⁶ As previously reported, the FERC accepted the ISO’s filings for the recovery of its 2010 administrative costs (the “2010

¹⁴ ISO New England Inc. and New England Power Pool, 130 FERC ¶ 61,105 (2010) (“2010 ARA3 ICR and Jump Ball Order”).

¹⁵ Id. at P 80.

¹⁶ ISO New England Inc., 130 FERC ¶ 61,236 (2010) (“2010 Budget Rehearing Order”).

Revenue Requirement”).¹⁷ On January 29, the CTAG and CT OCC (together, the “Joint Advocates”) requested rehearing of the 2010 Budget Order, urging the FERC to hold a full hearing to rehear the portion of the 2010 Budget Order that addressed the ISO’s requested executive compensation and salary structure. In denying rehearing, the FERC stated that the Joint Advocates had not provided any new, or newly persuasive, argument against its approval of the ISO’s proposed executive compensation and salary structure and, therefore, denied their request.¹⁸ Unless the 2010 Budget Rehearing Order is challenged in federal court, this proceeding will be concluded. If there are any questions on this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **CMP Inclusion of MPRP CWIP in RNS Rate; Conforming Changes to Schedule 21-CMP (ER09-938)**

Rehearing of the FERC’s August 7, 2009 CMP Revenue Requirement Order remains pending. As previously reported, the FERC accepted CMP’s revisions to the regional and local formula rates contained in the Attachment F Implementation Rule and Schedule 21-CMP of the ISO Tariff¹⁹ that implement certain incentive rate treatment for MPRP authorized by the FERC²⁰ (See “ROE Incentives for MPRP (CMP) (EL08-74)” below), effective June 1, 2009. In accepting the revisions, the FERC directed the ISO to remove the requirement that *all* changes to the Attachment F Implementation Rule filed pursuant to section 3.04(a) of the TOA must be approved by the PTO AC, in light of the FERC’s finding that the TOs preserved their right under TOA section 3.04(a) to unilaterally file revisions to their own revenue requirements, and thus, to the Attachment F Implementation Rule, and to file a revised tariff sheet reflecting this change on or before October 6, 2009 (see October 6 Compliance Filing immediately below).

On September 8, the PTO AC, NEPOOL, NHEC and MMWEC, and the New England Consumer-Owned Systems (“NECOS”)²¹ requested rehearing and/or clarification of the CMP Revenue Requirement Order (sub-docket -001). On September 21, CMP filed a response to statements made in the NHEC and MMWEC requests. Answers were also filed by NGrid, NU and UI on September 23. On October 7, NEPOOL responded to the UI and NGrid/NU answers, and noted that NEPOOL and the PTOs had concluded that they were not going to be able to achieve a mutually satisfactory agreement regarding stakeholder review and votes on regional rate changes under the TOA that would allow NEPOOL to withdraw its request for rehearing.

October 6 Compliance Filings. The October 6 Compliance Filings and related pleadings are also currently pending before the FERC. On October 6, 2009, the PTO AC, on behalf of the PTOs and the ISO, submitted a compliance filing (sub-docket -003) as directed in the CMP Revenue Requirement Order proposing to delete the following sentence in Attachment F: “Any changes to that rule must be approved by the PTO Administrative Committee, and filed with the Commission.” No comments were filed by the October 27, 2009 comment date. Also on October 6, CMP submitted its compliance filing (i) specifying a method for allowing the FERC and other parties to review the cost schedules associated with the MPRP and (ii) submitting the attestation of a corporate officer verifying cost of service statements and supporting data previously submitted by CMP in this proceeding (sub-docket -002). The MPUC and NECOS each challenged the CMP Compliance Filing on the grounds that the method for allowing the

¹⁷ ISO New England Inc., 129 FERC ¶ 61,299 (2009) (“2010 ISO Budget Order”), *reh’g denied*, 130 FERC ¶ 61,236 (2010).

¹⁸ 2010 ISO Budget Order at P [].

¹⁹ Central Maine Power Co., 128 FERC ¶ 61,143 (2009) (“CMP Revenue Requirement Order”), *reh’g requested*.

²⁰ Central Maine Power Co., 125 FERC ¶ 61,079 (2008) (“MPRP ROE Order”), *reh’g requested*.

²¹ “NECOS” are Belmont, Braintree, Concord, Groton, Hingham, Littleton (MA), Middleborough, Pascoag, Reading, Taunton, Templeton, and Wellesley.

FERC and other parties to review the cost schedules associated with the MPRP would be insufficient. On November 12, CMP filed an answer to the NECOs and MPUC protests. The October 6 CMP Compliance Filing and related pleadings are currently pending before the FERC.

If you have any questions concerning this matter, please contact either Eric Runge (617-345-4735; ekrunge@daypitney.com) or Dave Doot (860-275-0102; dtdoot@daypitney.com).

- **ROE Incentives for MPC Project (CMP and MPS) (EL08-77)**

Rehearing of the FERC's MPC Rehearing Order,²² requested December 18, 2009 by CMP and Maine Public Service Company ("MPS"), remains pending. As previously reported, in the MPC Rehearing Order, the FERC dismissed requests for rehearing of the MPC ROE Order,²³ finding that they had been overtaken by subsequent events (the FERC noted that the MPC Project, as described in the petition for declaratory order,²⁴ had ceased to exist). The FERC stated that any transmission rate incentive pursuant to Order No. 679 sought in connection with a redesigned MPC Project would require a new filing that demonstrates a nexus between their redesigned project. Addressing abandonment costs, the FERC found that CMP and MPS may not recover costs pursuant to the conditionally granted abandonment *incentive*, but could submit a section 205 filing seeking to recover prudently incurred, abandonment-related costs associated with the Project. On December 18, CMP and MPS requested clarification and/or rehearing of the statements in the MPC Rehearing Order that the recovery of the abandonment incentive was conditional and subject to the conditions that (1) the ISO include the MPC Project in the RSP as a Market Efficiency Transmission Upgrade; and (2) CMP and MPS submit a subsequent filing explaining how the Project's designation as a Market Efficiency Transmission Upgrade satisfies Section 219's eligibility requirement. Also on December 18, Horizon Wind filed a statement indicating that the Aroostook Wind Energy Project has not been cancelled. Answers to the CMP/MPS request were filed by the CT DPUC and Houlton Water Company on January 4 and 5, respectively. CMP and MPS jointly filed a reply to the CT DPUC and Houlton answers on January 20, 2010. On January 19, 2010, the FERC issued a tolling order affording it additional time to consider the CMP/MPS request, which remains pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **ROE Incentives for MPRP (CMP) (EL08-74)**

Rehearing of the MPRP ROE Order remains pending before the FERC. As previously reported, the FERC conditionally granted,²⁵ with one modification (a reduced 125-basis point, rather than the requested 150-basis point, incentive adder), CMP's request that the FERC authorize specific rate incentives for its \$1.4 billion Maine Power Reliability Program ("MPRP").²⁶ The ROE incentive will be bounded by the upper end of the zone of reasonableness established in Opinion 489 (13.5%), and is

²² Central Maine Power Co. and Maine Public Service Co., 129 FERC ¶ 61,153 (2009) ("MPC Rehearing Order").

²³ Central Maine Power Co. and Maine Public Service Co., 125 FERC ¶ 61,182 (2008) ("MPC ROE Order"), *reh'g dismissed*, 129 FERC ¶ 61,153 (2009) ("MPC Rehearing Order"), *reh'g requested*.

²⁴ The MPC Project was proposed as a 200-mile, 345kV transmission line and the construction of new and upgraded substations, to be developed jointly by CMP and MPS, that would provide a direct electrical connection between northern Maine and the New England Control Area, and end MPS' dependence on its interconnection with New Brunswick to reach markets in the United States.

²⁵ Central Maine Power Co., 125 FERC ¶ 61,079 (2008) ("MPRP ROE Order"), *reh'g requested*.

²⁶ The MPRP Project is 485 miles of proposed transmission line construction, including a new 245-mile, 345kV transmission line that will run alongside CMP's and MEPCO's existing 345kV and 115kV transmission line from Orrington, Maine to the Maine-New Hampshire interconnection, and other proposed transmission line additions and upgrades to the existing transmission system.

contingent upon the MPRP being approved as a Reliability Transmission Upgrade in the RSP. Public Parties²⁷ and MMWEC, individually, requested rehearing of the MPRP ROE Order on November 19. The FERC issued a tolling order on December 17, 2008, affording it additional time to consider the Public Parties and MMWEC requests, which remain pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **ROE Incentives for NEEWS (NU and NGrid) (ER08-1548)**

Rehearing of the NEEWS ROE Order remains pending before the FERC. As previously reported, the FERC granted,²⁸ with one modification, the joint request by NU²⁹ and NGrid for specific rate incentives for their \$2.1 billion New England East-West Solution project (“NEEWS”) and accepted the associated proposed tariff amendments, effective November 18, 2008. The NEEWS ROE Order was challenged on December 17, 2008 by the Massachusetts Municipals³⁰ and jointly by a number of Public Parties³¹ and the Massachusetts Municipals. On January 16, 2009, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC. On April 17, 2009, National Grid submitted FERC Form 730 (Report of Transmission Investment Activity), which identified actual and projected annual capital spending and certain project detail. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FCA1 Results Filing (ER08-633)**

On March 24, 2010, the FERC denied pending requests for rehearing of the FCA1 Results Order.³² As previously reported, the FERC accepted on June 20, 2008 the results of the first FCA (held February 4-6, 2008) (“FCA1”) filed by the ISO.³³ PSEG, CT DPUC, and the CT AG requested rehearing of the June 20 order on July 21, 2008. The FERC also accepted the November 18, 2008 informational filing reporting the prorations from FCA1. In accepting the FCA1 proration results filing, the FERC confirmed that its determination reflected the results of its consideration of PSEG’s then-pending rehearing request, and rejected the arguments put forth by the CT DPUC. Unless the March 24 order is challenged in federal court, this proceeding will be concluded. If you have any questions concerning these matters, please contact either Pat Gerity (860-275-0533; pmgerity@daypitney.com) or Dave Doot (860-275-0102; dt_doot@daypitney.com).

- **RTO ROE Proceedings (ER04-157 et al.)**

On February 19, 2010, CMP submitted a refund report illustrating the resettlement of charges for services provided under Schedule 21-CMP, as required by FERC’s March 24, 2008 order³⁴ in this

²⁷ “Public Parties” are: CT DPUC, CT OCC, MA AG, MA DPU, MMWEC, MPUC, Maine Public Advocate, and NECPUC.

²⁸ Northeast Utilities Service Co. and National Grid USA, 125 FERC ¶ 61,183 (2008) (“NEEWS ROE Order”), *reh’g requested*.

²⁹ Northeast Utilities Service Co., on behalf of its transmission-owning affiliates, CL&P, WMECO, PSNH, Holyoke Power and Electric Co., and Holyoke Water Power Co. (collectively, “NU”).

³⁰ “Massachusetts Municipals” are MMWEC, Chicopee, and South Hadley.

³¹ In this proceeding, “Public Parties” are NECPUC, CT DPUC, CT OCC, MA DPU, MA AG, MPUC, NHPUC, RI AG, and RI DPUC.

³² ISO New England Inc., 130 FERC ¶ 61,235 (2010).

³³ ISO New England Inc., 123 FERC ¶ 61,290 (2008) (“FCA1 Results Order”), *reh’g denied*, 130 FERC ¶ 61,235 (2010).

³⁴ Bangor Hydro-Electric Co. et al. and Florida Power & Light Co. – New England Div., 122 FERC ¶ 61,265 (2008) (“March 24 ROE Rehearing Order”), *order granting clarification*, 124 FERC ¶ 61,136 (2008).

proceeding. No comments on this filing were submitted by the March 15, 2010 comment date, and 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).

III. Market Rule Changes, Interpretations and Waiver Requests

- **FCM Conforming Changes to Market Rule 1 Appendix A (ER10-997)**

On April 1, 2010, the ISO and NEPOOL jointly filed revisions to Appendix A to Market Rule 1, the market monitoring and mitigation provisions, to conform that Appendix to the FCM Market Rules. Specifically, the changes conform to the FCM Market Rules Sections A.4 (Physical Withholding), A.5.2.1.1 (Resources with Partial Capacity Supply Obligations), A.5.6.1 (Methods for Determining Reference Levels), and A.5.9 (Determination of Offer Competitiveness During Shortage Event). A June 1, 2010 effective date was requested. These changes were supported by way of the February 5 Consent Agenda. Comments on this filing are due April 22, 2010. If you have any questions concerning this matter, please contact Emile Buzaid (860-275-0282; ebuzaid@daypitney.com) or Michelle Gardner (617-345-4697; mcgardner@daypitney.com).

- **Updates to Centralized Tariff Definitions (ER10-996)**

Also on April 1, 2010, the ISO filed revisions to the centralized definitions section of the Tariff to reflect a number of FERC-accepted definitional additions and changes from recent proceedings. The ISO stated that the changes made were merely ministerial and accurately reflect the language accepted by the FERC in the prior proceedings. Comments on this filing are due April 22, 2010. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FCM Conforming Changes to Market Rule 1 (ER10-995)**

Again, also on April 1, 2010, the ISO and NEPOOL jointly filed FCM conforming changes to Market Rule 1 itself. Specifically, the changes: (i) update terminology; (ii) remove Transition Period-specific rules; (iii) remove or relocate Rules in Section 8; (iv) eliminate redundancy; and (v) distinguish the retirement of Capacity Resources. A June 1, 2010 effective date was requested. These changes were supported by way of the February 5 Consent Agenda. Comments on this filing are due April 22, 2010. If you have any questions concerning this matter, please contact Emile Buzaid (860-275-0282; ebuzaid@daypitney.com) or Michelle Gardner (617-345-4697; mcgardner@daypitney.com).

- **Market Settlement Clarifications (ER10-929)**

In another new matter since the last report, the ISO and NEPOOL jointly filed, on March 24, 2010, revisions to the ISO Tariff that clarify certain settlement-related issues, most of which relate to Net Commitment Period Compensation (“NCPC”) calculations. The changes also remove certain obsolete and inoperable provisions relating to Day-Ahead Local Second Contingency Protection NCPC costs, External Transactions and the defined term Effective Offer Price. A June 1, 2010 effective date was requested. The changes were supported by the Participants Committee at the March 5, 2010 meeting. Comments are due by April 14, 2010. If you have any questions concerning this matter, please contact Emile Buzaid (860-275-0282; ebuzaid@daypitney.com) or Michelle Gardner (617-345-4697; mcgardner@daypitney.com).

- **Competitive Import Requirements (ER10-902)**

In yet another new matter since the last report, the ISO and NEPOOL jointly filed on March 17, 2010, revisions to the FCM Market Rules to require capacity importers to submit energy offers at

competitive prices and to subject capacity importers to penalties for failing to comply with certain FCM participation requirements (collectively, the “FCM Competitive Import Requirements”). A June 1, 2010 effective date was requested. The changes were supported by the Participants Committee at the February 5, 2010 meeting. Doc-less motions to intervene were filed by the Constellation, Dynegy, Exelon, GDF Suez, NRG, and NU by the April 7 comment date. The CT AG and CT DPUC submitted comments supporting the changes. The CT DPUC also requested that the FERC direct the Internal Market Monitor to “to investigate and report on the [FCM Competitive Import Requirements] and to file those analyses semi-annually in this docket.” This matter is pending before the FERC. If you have any questions concerning this matter, please contact Emile Buzaid (860-275-0282; ebuzaid@daypitney.com) or Michelle Gardner (617-345-4697; mcgardner@daypitney.com).

- **Application of Overlapping Interconnection Impacts Analysis to DR (ER10-882)**

In a new matter since the last report, the ISO and NEPOOL jointly filed on March 15, 2010, revisions to the FCM Market Rules that provide for the analysis of overlapping interconnection impacts for new active Demand Resources that seek to participate in an FCA, similar to the analysis that is currently conducted for New Generating Capacity Resources. A May 15, 2010 effective date was requested. The changes were supported by the Participants Committee by way of the February 5, 2010 Consent Agenda. Doc-less motions to intervene were filed by Constellation, Exelon, NRG, NU, and PSEG. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Emile Buzaid (860-275-0282; ebuzaid@daypitney.com) or Michelle Gardner (617-345-4697; mcgardner@daypitney.com).

- **Order 719 Reconciliation Filing (ER10-819)**

On March 3, the ISO submitted a ministerial filing to include in the consolidated definitions section, previously accepted in ER10-108, the definitions of External and Internal Market Monitor accepted in the Order 719 filing (ER09-1051). In addition, the ISO’s reconciliation filing also amends Market Rule Section III.A.1.5 to update the cross-reference in that section to point to Section 1 of the Tariff. No comments were received by the March 18 comment date. This filing is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FCM Re-Design: Revisions to MR1 §§ 12 and 13 (ER10-787)**

As previously reported, the ISO and NEPOOL jointly filed on February 22, 2010, changes to Market Rule 1 (§§12 and 13) that re-design some aspects of the FCM Market Rules. The Rule changes address the following areas:

- ▶ Revisions to APR
- ▶ Increased transparency in the review of offers below 0.75 times CONE
- ▶ Extension of the floor price
- ▶ Compensation where a resource’s proration election is rejected for reliability reasons
- ▶ Decoupling the FCA starting price from CONE
- ▶ Determination of CONE
- ▶ Clarifications regarding ISO requests for Energy
- ▶ Calculation of Zonal requirements
- ▶ Improved modeling of Capacity Zones

An April 23, 2010 effective date, which would permit the Rule changes to be in place for FCA4 (beginning August 2, 2010), was requested. The Re-Design Changes, which were addressed in the FCMWG process, were supported by the Participants Committee at its February 5, 2010 meeting.

Nearly 50 motions to intervene were received. Comments on this filing were due March 15, 2010. Comments, including protests and comments in support of the filing were filed by more than 20 parties, including: NECPUC, VT DPS and PSB, NH PUC, CT DPUC, MA DPU, EPSA, NEPGA, Boston Gen, Joint Protestors, NextEra, Dynegy, GDF Suez, ANP Funding, Brookfield, Potomac Economics, the Internal and External Market Monitors, and BG Dighton. Answer to the comments and protest were filed by the ISO and NEPOOL on April 6. In addition, as noted in Section I above, companion complaints were filed by NEPGA and by NRG/PSEG, with answers and protests filed with respect to each by a number of parties including the ISO and NEPOOL. The FCM Re-Design changes and all pleadings and motions related to those changes, are now pending before the FERC.

If you have any questions concerning this matter, please contact , Dave Doot (860-275-0102; dt_doot@daypitney.com), Eric Runge (617-345-4735; ekrunge@daypitney.com), or Michelle Gardner (617-345-4697; mcgardner@daypitney.com).

- **De-List Bids for Stations with Common Costs (ER10-750)**

As previously reported, the ISO and NEPOOL jointly filed on February 16, 2010, revisions to Market Rule 1 that specify the methodology that the Internal Market Monitor will use to evaluate de-list bids submitted by resources at stations with common costs, as well as the methodology that the Internal Market Monitor will use to establish appropriate compensation for resources at a station with common costs that submit de-list bids that are rejected for reliability reasons in an FCA. An April 18, 2010 effective date was requested. The changes were supported by the Participants Committee at its February 5, 2010 meeting. Interventions were filed by NRG, Dominion, Exelon, and NU. No comments, however, were filed by the March 9, 2010 comment date, and this matter is pending before the FERC. If you have any questions concerning this matter, please contact Emile Buzaid (860-275-0282; ebuzaid@daypitney.com) or Michelle Gardner (617-345-4697; mcgardner@daypitney.com).

- **Pittsfield and Pawtucket Request for Limited Waiver of FCM Rules (ER10-722)**

On March 18, the FERC granted the requests by Pittsfield Generating Company and Pawtucket Power Associates (“Generators”) for waivers of the FCM Rules to allow them to increase the Summer Qualified Capacity for FCA4 for Pittsfield’s Altresco generating facility and for Pawtucket’s Pawtucket Power generating facility.³⁵ As previously reported, Pittsfield and Pawtucket indicated that the waiver would permit them to offer into FCA4 an additional 11 MW in the case of Altresco, and an additional 7 MW in the case of Pawtucket. The Generators indicated that in each case the increased capacity would be consistent with the amount authorized in their respective Interconnection Agreements, the amounts used in prior FCAs, and the amounts recently approved by the ISO under I.3.9 of the Tariff following Reliability Committee review on January 19, 2010. Unless the March 18 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Ampersand Request for Limited Waiver of FCM Rules (ER10-600)**

On March 15, the FERC, for the first time, denied a requested a waiver of the FCM Rules.³⁶ As previously reported, On January 14, 2010, Ampersand Energy Partners requested a waiver of the FCM Rules to allow it to correct an error in the qualification package it submitted for FCA4. Ampersand

³⁵ Pittsfield Generating Co., L.P. and Pawtucket Power Assoc., L.P., 130 FERC ¶ 61,182 (2010).

³⁶ Ampersand Energy Partners, LLC, 130 FERC ¶ 61,176 (2010).

indicated that the waiver would permit it to offer into FCA4 all of its capacity (10.37 MW), rather than the amount it listed in its qualification package (5 MW), should the auction price fall below 0.75 times CONE. In denying the request, the FERC concluded that the Ampersand request did not contain sufficient explanation regarding the underlying error for it to conclude that Ampersand had satisfied its previously articulated reasons for granting such requests.³⁷ Unless the March 15 order is challenged, with any challenges due on or before April 14, 2010, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Order 719 Compliance Filings (ER10-588; ER09-1051)**

As previously reported, the FERC accepted on January 21, 2010, with certain modifications, a *portion* of the ISO's April 28, 2009 Order 719 compliance filing.³⁸ The FERC did not make any findings with respect to the Responsiveness issues, which will be addressed in a later order. The FERC accepted all the changes filed by ISO and NEPOOL with respect to the Long-Term Power Contracting and Market Monitoring issues with no further compliance filing necessary (other than if the ISO voluntarily elects to use the PJM-operated bulletin board). On Demand Response issues, the FERC ordered a further compliance filing to address additional concerns regarding demand response participation in the region's Ancillary Services Markets, particularly with respect to compensation in the Forward Reserve Market. The FERC ordered that the current stakeholder process for evaluating the treatment of Price-Responsive Demand ("PRD") should consider how demand response resources are compensated in the reserve and regulation markets. Further, the FERC stated that if the region committed to retaining the Dispatchable Asset Related Demand ("DARD") structure, it would require an examination of the current rules that require a minimum 5 MW peak load size requirement and do not provide DARDs the ability to aggregate. On February 22, 2010, Connecticut Representatives requested (i) rehearing of the portions of the January 21 order that addressed the Market Monitoring (PP 116 – 137) and (ii) that the related issues raised by the CT DPUC's comments for be set for full evidentiary hearing procedures. On March 9, 2010, both the ISO and NEPOOL responded to the arguments raised in the request for rehearing. On March 23, 2010, the FERC issued a tolling order affording it additional time to consider the Connecticut Representatives' request, which remains pending before the FERC.

Order 719-A 90-Day Compliance Filing. On October 27, 2009, in response to Order 719-A, the ISO and NEPOOL jointly filed new §§ III.13.1.4.9, III.13.1.4.9.1 and III.E.1.6 to Market Rule 1 to address the treatment of aggregators of retail customers that participate in the wholesale capacity and electricity markets (the "Order 719-A Compliance Amendments"). The Order 719-A Compliance Amendments were supported by the Participants Committee at its October 9, 2009 meeting. On November 10, 2009, EnerNOC filed a protest, asserting that the new sections were not in compliance with the directives of FERC's Order Nos. 719 and 719-A, contain language that creates or condones the ability of utilities who are host to the retail customers aggregated by an ARC, to restrict customers to participate only through the host utility or its designated agent, erecting unnecessary and undesirable barriers to competition, and are unduly discriminatory. On November 25, NEPOOL, the ISO and CMEEC, MMWEC, and NHEC (here, the "Public Systems") filed answers to the November 10 EnerNOC protest. The Order 719-A Compliance Amendments, the EnerNOC protest, and the answers thereto are pending before the FERC.

Order 719-A 180-Day Compliance Filing (ER10-588). On January 12, 2010, in response to Order 719-A, the ISO and NEPOOL jointly filed new Section III.13.1.4.10 to Market Rule 1 to enable load-serving entities to become aware that their end-use customers have enrolled with retail aggregators to become a demand resource (the "Order 719-A 180-Day Compliance Amendments"). The Order 719-A

³⁷ The FERC has previously granted waivers where: (1) the underlying error was made in good faith; (2) the waiver was of limited scope; (3) a concrete problem must be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.

³⁸ ISO New England Inc., 130 FERC ¶ 61,054 (2010), *reh'g requested*.

180-Day Compliance Amendments were supported by the Participants Committee at its January 8, 2010 meeting. No comments on the Order 719-A 180-Day Compliance Amendments were filed by the February 2, 2010 comment date, which remain pending before the FERC.

Technical Conference on RTO/ISO Responsiveness. The FERC held a technical conference on February 4, 2010 to provide a forum for interested participants to discuss the issue of responsiveness of RTOs and ISOs to their customers and other stakeholders. The technical conference had two panels – one on stakeholder process and the other on board process and other governance issues. Ray Hepper participated on both panels. Speaker materials have been posted to the FERC’s eLibrary. Written comments on New England matters, related to the issues raised in the technical conference, were filed on March 8, 2010 by the MPUC and CT DPUC, and by the MA AG. On March 23, both the ISO and NEPOOL responded to those comments.

If you have any questions concerning Order 719-related matters, please contact Michelle Gardner (617-345-4697; mcgardner@daypitney.com), or Emile Buzaid (860-275-0272; ebuzaid@daypitney.com).

- **NCPC Mitigation Reform (ER09-1546)**

On March 18, the FERC accepted a pending compliance filing (sub-docket -001) that (1) justified why the proposed “lower of” 10 percent or \$80/MW-day mitigation threshold was appropriate; and (2) revised the section 205 filing mechanism (that permits a resource owner to request additional compensation in the event it believes it has been unable to recover its fuel and variable O&M costs as a result of mitigation) to be made within 60 days of the receipt of the first invoice (rather than 30 as proposed in the August 5, 2009 filing).³⁹ The proposed Market Rule revisions were effective January 1, 2010, as requested. The NCPC Mitigation Reforms Order⁴⁰ was not challenged and is final. Unless the March 18 order is challenged, with any challenges due on or before April 19, 2010, this proceeding will be concluded. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com), or Emile Buzaid (860-275-0272; ebuzaid@daypitney.com).

- **FCM Phase II Market Rule Changes: Rights and Obligations, Payments and Charges, and Performance (ER09-1144)**

Requests for rehearing of the June 11 Order remain pending. As previously reported, NRG, Mirant, and GDF SUEZ (collectively, the “Competitive Suppliers”) requested clarification or, in the alternative, rehearing of the FERC’s July 14, 2009 Order accepting revisions to the FCM Rules.⁴¹ (The revisions provide additional detail and refinement to a number of areas the FCM Rules, including the rights and obligations of Market Participants, payments and charges, and performance matters.) On August 28, NEPOOL and the ISO filed answers to the Competitive Suppliers’ request. On September 14, 2009, the FERC issued a tolling order affording it additional time to consider the Competitive Suppliers’ request, which remains pending before the FERC. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com), or Emile Buzaid (860-275-0272; ebuzaid@daypitney.com).

³⁹ ISO New England Inc. and New England Power Pool, 130 FERC ¶ 61,188 (2010).

⁴⁰ ISO New England Inc. and New England Power Pool, 129 FERC ¶ 61,008 (2009) (“NCPC Mitigation Reforms Order”).

⁴¹ ISO New England Inc. and New England Power Pool Participants Committee, 128 FERC ¶ 61,023 (2009) (“June 11 Order”), *reh’g requested*.

- **Reports on Future of Load Response Programs (ER08-830)**

March 27, 2009 Report. The compliance report regarding the treatment of price-responsive demand in the New England electricity markets filed jointly by the ISO and NEPOOL,⁴² with the support of NECPUC, on March 27, 2009 (“March 2009 Report”),⁴³ in response to FERC directives,⁴⁴ remains pending before the FERC. The March 2009 Report described stakeholder discussions to date on the topic and recommended that a subsequent report be filed with the FERC no later than July 31, 2009, describing further progress made and requesting, as appropriate, further guidance and direction from the FERC. The March 2009 Report also stated that the ISO expected to extend the present price-responsive programs for an interim period of at least another year and to complete changes to extend such programs through the normal stakeholder process by the end of 2009. On April 13, NICC moved to intervene. On April 14, 2009, the Consumer Demand Response Initiative (“CDRI”) filed comments urging the FERC to accept the report and to permit an extended period of discussion on these issues.

July 31, 2009 Report. On July 31, the ISO and NEPOOL, again with the support of NECPUC, filed a second report (the “July 2009 Report”), to update the FERC on regional efforts to evaluate the future treatment of price-responsive demand (“PRD”) in the New England electricity markets. The July 2009 Report states that “ISO, NEPOOL, and NECPUC have made progress through the stakeholder process since March 2009 toward developing an approach to achieving [PRD] for New England.” The filing parties reported an intention to continue the stakeholder process underway, with a goal of filing with the FERC Market Rules concerning the future treatment of PRD that would be effective June 1, 2012. In order to achieve this goal, the ISO has proposed a schedule that would result in the filing of market rules no later than June 1, 2010. The filing notes that NEPOOL is planning to discuss the ISO’s planned schedule at future stakeholder meetings and a status update will be provided to the FERC if an update is considered desirable or appropriate under the circumstances. The July 2009 Report also states that the ISO will file an additional report with the FERC no later than December 18, 2009 describing the regional progress made on the proposals outlined in the PRD Matrix. No comments on the July 2009 Report were filed by the August 21, 2009 comment date.

December 18, 2009 Report. On December 18, 2009, the ISO and NEPOOL filed a further update (“December 2009 Report”) summarizing stakeholder deliberations since the July 2009 Report, including the actions taken on the PRD DBD at the December 11, 2009 Participants Committee meeting. On January 28, 2010, the Consumer Demand Response Initiative (“CDRI”) submitted a request for FERC policy guidance in response to the December 2009 Report. On February 12, both NEPOOL and the ISO filed responses to the CDRI submission. The NEPOOL response requested that the FERC defer action on the CDRI request, or deny the CDRI request without prejudice to allowing CDRI to re-raise any of its remaining substantive concerns on the issues, at the conclusion of the stakeholder process in response to the filing of any resulting Market Rule changes. The ISO urged the FERC to decline to issue the requested guidance, noting the request was procedurally defective, would not necessarily assist in resolution of the interrelated issues being considered in the Participant Processes, and that it intended to submit in April PRD Market Rules that will provide a vehicle for FERC to exercise its authority regarding the future structure of PRD in New England. CDRI filed a response to the ISO’s pleading also on February 12. Comments were filed by Freedom Logistics on February 16, 2010.

If you have any questions concerning this matter, please contact Michelle Gardner (617-345-4697; mcgardner@daypitney.com).

⁴² NEPOOL joined in the filing based on the March 25, 2009 recommendation of support from the Markets Committee. On Apr. 8, 2009, NEPOOL supplemented the record in this proceeding by indicating that the Participants Committee unanimously supported the Mar. 27 Filing at its Apr. 3, 2009 meeting.

⁴³ As previously reported, the FERC granted an extension of time to March 27, 2009 to file a report detailing the ISO’s decision to either terminate or continue the Load Response Program after June 1, 2010.

⁴⁴ ISO New England Inc., 123 FERC ¶ 61,266 (2008) (“DALRP Order”).

- **Tie Benefits Calculation and Allocation (ER08-41)**

As previously reported, the ISO filed, on January 14, 2010, an update to the joint ISO/NEPOOL November 26, 2008 report⁴⁵ regarding the plan to study and develop proposals to resolve issues related to the modeling of internal transmission constraints and tie benefits associated with individual lines. In the January 14, 2010 Update, the ISO proposed to comprehensively review and attempt to resolve during 2010 all outstanding and identified tie benefits issues (including the so-called “Reserved Issues”, issues raised during 2009 stakeholder meetings, and tie benefits-related issues raised in Docket No. ER10-438 above) through a NEPOOL stakeholder process and to make a filing with the FERC on or before a date that will allow any related Market Rule or Tariff changes to be effective in time for FCA5 (covering the 2014/2015 Capacity Commitment Period). At its February 5 meeting, the Participants Committee considered and voted on the ISO’s January 14 proposal. The ISO’s Proposal received 43.25% support from the Participants Committee. On February 8, NEPOOL filed comments reflecting the results of that consideration and vote. NESCOE submitted a motion to intervene out-of-time and comments on February 12. This matter is currently pending before the FERC. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

IV. OATT Amendments / TOAs / Coordination Agreements

- **NEITC Operating Agreement (ER10-637)**

As previously reported, the FERC conditionally accepted on February 24, 2010 the operating agreement (“Agreement”) governing the operation of transmission infrastructure projects developed by the New England Independent Transmission Company, LLC (“NEITC”) within the New England Control Area. The February 24 letter order was not challenged and is final. The February 24 letter order was not challenged and is final. On March 26, the ISO and NEITC submitted, as required by the February 24 order, a compliance filing that comports with the FERC’s designation and identification requirements of Order Nos. 614 and 714. The Agreement was designated both “ISO Rate Schedule FERC No. 1” and “NEITC Rate Schedule FERC No. 1” Comments on the compliance filing are due April 16. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

V. Financial Assurance/Billing Policy Amendments

- **Unsecured Credit Filing (ER10-942)**

On March 26, 2010, the ISO and NEPOOL jointly filed a package of changes to the Financial Assurance Policy (“FA”) and Billing Policy (the “Policies”) addressing unsecured credit and other financial assurance and billing arrangements. The package of changes are intended to increase the efficiency of the markets by further limiting the Pool’s financial exposure. Specifically, the package includes changes that: (i) provide for twice-weekly, rather than weekly, settlement for certain charges; (ii) eliminate the use of unsecured credit for Market Participants that do not serve retail load at government-established rates; (iii) reallocate the costs of defaults where unsecured credit is still used; (iv) segregate the billing and collateralization of transmission charges from other ISO charges; and (v) improve the quality of security that is provided pursuant to the Policies. An effective date, on or after December 1, 2010, with 60 days’ notice to be provided by the ISO to Participants and to the FERCC, was requested.

⁴⁵ The 2008 Tie Benefits Report indicated that the stakeholder process would begin early during the second quarter of 2009 and would be completed in time for any proposed Market Rule 1 or other Tariff changes to be filed with the FERC before February 1, 2010. See ISO New England Inc. and New England Power Pool, 126 FERC ¶ 61,180 (2009).

The majority of the changes were supported by the Participants Committee at its May 1, 2009 meeting, with the remaining pieces supported at its June 5 meeting. Comments on this filing are due April 16, 2010. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **Pre-Payment and Suspension Clarifications (ER10-752)**

On March 23, the FERC accepted changes to the Financial Assurance and Billing Policies, jointly filed by the ISO and NEPOOL, that clarified the prepayment and suspension provisions of those Policies, effective April 18, 2010, as requested. Unless the March 23 letter order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **Glacial Energy Non-Conforming LOC (ER10-725)**

On March 29, the FERC accepted the informational filing made by Glacial Energy of New England Inc. advising the FERC that it had posted an amendment to its existing Letter of Credit that contained non-conforming provisions approved by the ISO after consultation with the Budget & Finance Subcommittee. As previously reported, the non-conforming language referenced a third party. Unless the March 29 letter order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

VI. Schedule 20/21/22 Changes

- **Schedule 21-NU Localized Cost Responsibility Agreement (GenConn Devon) (ER10-993)**

On April 1, NU submitted a Localized Costs Responsibility Agreement (“LCRA”) under Schedule 21-NU (LCRA NU-10-01). The LCRA is to recover certain Localized Costs associated with regional transmission facilities from GenConn Devon, which will be taking RNS for station service purposes. NU requested that the GenConn Agreement become effective June 1, 2010. Comments on this filing are due April 22. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-BHE Change to Formula Rate (ER09-943)**

On March 29, Bangor Hydro (“BHE”) submitted changes to Schedule 21-BHE to modify certain Attachment P Exhibits in order to properly account for new representative loads, both wholesale and retail, in the calculation of its monthly adjusted peak loads, as well as the calculation of certain retail conversion factors that develop certain retail rates. In addition, Bangor Hydro proposes to correct certain references in the Schedule. A June 1, 2010 effective date was requested. Comments on this filing are due April 19, 2010. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-NU Localized Costs Responsibility Agreements (NextEra/Dynegy) (ER10-641)**

On March 11, the FERC accepted NU’s LCRA under Schedule 21-NU with NextEra (LCRA NU-09-04) and notice of termination of the LCRA with Dynegy (LCRA NU-09-02), effective as of December 1, 2009 as requested. The termination of the Dynegy LCRA and new NextEra LCRA recognize that NextEra is now the RNS customer with respect to the 527 MW Bridgeport Energy facility. Unless the March 11 order is challenged, this proceeding will be concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-NU Localized Cost Responsibility Agreements (Dynergy, Waterbury Gen, Kleen Energy) (ER10-315)**

As previously reported, the FERC accepted three LCRAs under Schedule 21-NU filed by NU on November 24, 2009, but denied the waiver of the its 60-day notice requirement with respect to the Waterbury Generation and Dynergy Power LCRAs, directing NU to refund the time value of the revenues collected under those LCRAs prior to their effective dates. NU filed on February 10, 2010 a refund report indicating that it had issued the refunds, and that report was accepted on March 12, 2010. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-CMP KLPD LNS Agreement (ER10-199)**

On December 30, the FERC accepted, effective January 1, 2010, but suspended and set for hearing, the unexecuted service agreement for Local Network Transmission Service between CMP and Kennebunk Light & Power District (“KLPD”) (designated as Service Agreement No. LNSA-CMP-4 under Schedule 21-CMP).⁴⁶ As previously reported, there exists a dispute between CMP and KLPD regarding the imposition of charges for Local Network transmission service (“LNS”) on KLPD loads served from CMP’s West Kennebunk substation, which KLPD asserts is directly connected to PTF for purposes of Section II.12.2(c) of the ISO Tariff and is therefore exempt from LNS charges. In the December 30 order, the FERC found that, based on the information available in the record before it, it could not determine the appropriate charges for the load served from KLPD’s West Kennebunk substation or whether, under the proposed Agreement, KLPD should be charged the PTF rate alone, or the local network rate or direct assignment cost.

The FERC directed that a presiding Administrative Law Judge be designated by the Chief ALJ for the hearing. On January 15, Chief Administrative Law Judge Curtis L. Wagner, Jr. designated Administrative Law Judge Joseph R. Nacy as the replacement trial judge. On March 15, CMP and KLPD submitted a joint motion to suspend the procedural schedule previously established, indicating that they’d reached a settlement in principle that would resolve fully and finally all issues set for hearing. On March 16, Chief Judge Wagner suspended the procedural schedule in the proceeding pending filing of a Settlement Agreement, which CMP and KLPD indicated would take approximately 30 days. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-BHE Local Service Agreements (ER10-111)**

On October 26, Bangor Hydro submitted seven local service agreements under Schedule 21-BHE to reflect the terms of a settlement agreement that extends the discounted LNS rates through 2020 for PPL Maine and PPL Energy Plus and their successors in interest. The service agreements were designated as Original Service Agreement Nos. 71-77 under Schedule 21-BHE. Interventions were filed by PPL Maine, MPUC, and Black Bear Hydro. On December 22, BHE asked the FERC to defer action on the October 26 filing, noting that certain errata had been identified in that filing. On February 23, BHE filed the errata and requested that the FERC accept the agreements, as corrected, and to become effective as requested in the October 26 filing. No comments on the errata filing were filed by the March 16, 2010 comment date, and the agreements are pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-BHE Change to Forward Looking Formula Rate (ER09-934)**

As previously reported, the FERC accepted, on May 28, 2009, changes to Schedule 21-BHE that added components that effectively change the BHE formula rate to a “forward-looking” formula.⁴⁷ The

⁴⁶ Central Maine Power Co., 129 FERC ¶ 61,302 (2009).

⁴⁷ Bangor Hydro-Electric Co., 127 FERC ¶ 61,186 (2009).

changes were accepted effective June 1, 2009, as proposed, but were suspended, subject to refund, further FERC order, and discussions between the MPUC and BHE concerning the issue the allocation of common costs between transmission and distribution.⁴⁸ BHE and the MPUC continue to report on the status of negotiations to resolve the open cost allocation issues, noting that they continue to make a good-faith effort to bring these discussions to a conclusion. Most recently (March 15, 2010), BHE committed to provide FERC with a further update no later than April 15, 2010. If there are questions on these matters, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

VII. RMR Agreements

No Activity to Report

Information regarding RMR Agreements in the region can be found on the ISO's website at http://www.iso-ne.com/genrtion_resrcs/reports/rmr/index.html#top.

VIII. Regional Reports

- **ISO's 2009 Q4 Capital Projects Report (ER10-741)**

On March 31, 2010 FERC accepted the ISO's Capital Projects Report and Unamortized Cost Schedule covering the fourth quarter of calendar year 2009 ("2009 Q4"). The ISO is required to file the Report under Section 205 of the FPA pursuant to Section IV.B.6.2 of the ISO Tariff. Unless the March 31 letter order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **Quarterly Markets Reports - 2009 Q4 (ZZ10-4)**

Pursuant to Section 11.2.2 of Appendix A to Market Rule 1, the ISO is required to file quarterly a "Report for Regulators." The Report describes transmission constraints and contains an analysis of market conduct and mitigation activities. On March 22, 2010, the ISO filed with FERC the report for 2009 Q4. These filings are not noticed for public comment by the FERC.

- **Quarterly Reports Regarding Non-Generating Resource Regulation Market Participation (ER08-54)**

As previously reported, the ISO committed in the August 5, 2008 Regulation Filing to provide the FERC with quarterly reports on its progress in implementing and carrying out market rule revisions to allow non-generating resources to provide Regulation, including the Alternative Technologies Pilot Program.⁴⁹ The ISO filed its sixth report on March 19, 2010. On April 5, 2010, Beacon Power submitted comments in which it committed to working towards the design of new rules by Q4 2010, or sooner, that will allow Energy Storage Resources to participate in the New England Regulation Market on comparable terms with generators. Without new rules, Beacon Power asserted, it and other alternative technologies cannot provide Regulation service in the territory, and investment in alternative technologies will continue to shift to other areas of the country. The sixth report, like the fifth report, was not noticed for public comment.

⁴⁸ Id.

⁴⁹ See Market Rule 1 revisions regarding the provision of Regulation by non-generating resources, ISO New England Inc. and New England Power Pool, Docket Nos. ER08-54-000 and -001 (filed Aug. 5, 2008) (the "Regulation Filing").

- **Quarterly Status Reports on LFTR Implementation (ER07-476; RM06-08)**

The ISO filed the fifth of its Quarterly Status Reports regarding LFTR implementation on January 15, 2010. The ISO now reports that, based on current best estimates, completion of the 18-month implementation process described in the LFTR compliance filings will occur no earlier than mid-2012, resulting in the first possible LFTR auction in the third quarter of 2012 for LFTRs that would be effective starting with the 2013 calendar year. The report explains the implementation timeline in greater detail. These status reports are not noticed for public comment.

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

As directed by the original ASM II Order,⁵⁰ as modified,⁵¹ the ISO submitted its eighth semi-annual reserve market compliance report on April 1, 2010 (sub-docket -009). In the eighth report, the ISO explained, as in its prior compliance reports, that due to its efforts on other priority projects (e.g. FCM implementation and conforming changes, Order 719 compliance, PRD), work on the forward TMSR market issues is on hold. The ISO reported that it did not expect to have the available resources needed to revisit this issue until at least 2011. Comments, if any, on the eighth report should be submitted by October 22, 2010. If there are questions on this matter, please contact Dave Doot (860-275-0102; dt_doot@daypitney.com)

- **Load Response Status Reports (ER03-345)**

The ISO is required to file status reports every six months on the status of the Load Response programs.⁵² The ISO filed the 14th such compliance report on December 30, 2009 (sub-docket -012), covering the April 2009 through October 2009 period. No comments on this report were filed.

IX. Membership Filings

- **April 2010 Membership Filing (ER10-972)**

On March 31, NEPOOL requested the FERC's acceptance of (i) the membership of the following Entities each effective April 1, 2010: Bridgeport Fuel Cell Park (Provisional Member, Related Person to DFC-ERG Milford, LLC; AR Sector, RG Sub-Sector); DFC ERG CT (Provisional Member, Related Person to DFC-ERG Milford, LLC; AR Sector, RG Sub-Sector); Gallop Power Greenville (Generation Sector, Generation Group Seat); Granite Reliable Power (Related Person to J. P. Morgan Ventures Energy Corp. and Noble Environmental Power; Supplier Sector); Public Power, LLC (Supplier Sector); Town of New Shoreham, Rhode Island (End User Sector); and (ii) the terminations of CinCap IV (March 1, 2010); Saracen Energy (March 1, 2010); Greenville Steam Company (April 1, 2010); and Public Power & Utility, Inc. (April 1, 2010). Comments on this filing, if any, are due April 21, 2010.

⁵⁰ See NEPOOL and ISO New England Inc., 115 FERC ¶ 61,175 (2006) ("ASM II Order") (directing the ISO to provide updates on the implementation of a forward TMSR market), *reh'g denied* 117 FERC ¶ 61,106 (2006).

⁵¹ See NEPOOL and ISO New England Inc., 123 FERC ¶ 61,298 (2008) (continuing the semi-annual reporting requirement with respect to the consideration and implementation of a forward market for Ten-Minute Spinning Reserve ("TMSR")).

⁵² See ISO New England Inc. and New England Power Pool, 102 FERC ¶ 61,202 (2003).

- **March 2010 Membership Filing (ER10-799)**

On February 25, NEPOOL requested the FERC's acceptance of the membership of Putnam Hydropower (AR Sector, Renewable Generation Sub-Sector, Small Group Seat), effective March 1, 2010. This filing is pending before the FERC.

- **February 2010 Membership Filing (ER10-684)**

On March 25, FERC accepted (i) the membership of the following Entities each effective February 1, 2010: Ameresco CT LLC (AR Sector, Load Response Sub-Sector, Small Group Seat), Macquarie Energy, LLC (Supplier Sector), Starion Energy, Inc. (Supplier Sector), and VCharge Inc. (AR Sector, LR Sub-Sector, Small Group Seat); and (ii) the January 1, 2010 terminations of Bridgeport Energy II, LLC (Related Person of Dynegy, Supplier Sector), Consolidated Hydro New Hampshire (AR Sector, Renewable Generation Sub-Sector, Small Group Seat), Galt Power (AR Sector, LR Sub-Sector, Small Group Seat), GenPower Trading, LLC (Generation Sector, Provisional Member Group Seat), IPA New Haven, LLC (Related Person of ANP Funding, Generation Sector), Lowell Cogeneration Co. (Generation Sector Group Seat), Montgomery Energy Billerica Power Partners (Generation Sector Group Seat), Ridgewood Maine Hydro Partners (Related Person of Ridgewood Rhode Island, AR Sector).

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

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

- **Formal Interpretation – Reliability Standard CIP-006-2b (RD10-8)**

On December 22, 2009, NERC requested FERC approval of two interpretations⁵³ of Critical Infrastructure Protection (“CIP”) Reliability Standard CIP-006-2.1 The interpretations address Requirements R1.1 (physical security perimeter), and R4 (physical access controls). No comments on this filing were submitted by the January 21 comment date and the filing is pending before the FERC.

- **Violation Security Levels –NUC-001-1 (RD10-7)**

On December 18, 2009, and in response to Order No. 716,⁵⁴ NERC requested FERC approval of the Violation Risk Factors (“VRFs”) for the NUC-001-1 Reliability Standard (Nuclear Plant Interface Coordination). Requirement R2 was changed from Lower to Medium; R4, R5, R7, and R8 were changed from Medium to High, and R9 was changed from Lower to Medium. No comments were submitted by the January 8 comment date and the filing is pending before the FERC.

⁵³ All those directly or materially affected by the reliability of the North American bulk power system are permitted to request an interpretation of NERC Reliability Standards. Within 45 days of a request, NERC will present a formal interpretation for balloting. If approved by the ballot pool and the NERC Board of Trustees, the interpretation will be appended to the Reliability Standard and filed for approval with the FERC and the appropriate governmental authorities in Canada to be made effective if and when approved. If approved, the interpretation is incorporated into the Reliability Standard the next time the affected Reliability Standard is revised.

⁵⁴ Mandatory Reliability Standard for Nuclear Plant Interface Coordination, Order No. 716, 125 FERC ¶ 61,065 (2008).

- **Violation Security Levels – CIP-002-2 through CIP-009-2 (RD10-6)**

Also on December 18, 2009, NERC requested FERC approval of (i) the Violation Severity Levels (“VSLs”)⁵⁵ for eight of the nine version 2 CIP Reliability Standards (all but CIP-001) and (ii) VRF assignments for CIP-003-2 (Cyber Security - Security Management Controls) and CIP-006-2 (Cyber Security - Physical Security of Critical Cyber Assets). The filing also a complete listing of all VSLs and VRFs for each FERC-approved Reliability Standard. NERC requested that the VSLs and VRFs be made effective upon approval. One party submitted comments proposing two specific changes. This matter is currently pending before the FERC.

- **Formal Interpretation – Reliability Standard TOP-002-2a (RD10-3)**

On March 18, 2010, the FERC issued an order approving NERC’s formal interpretation of Reliability Standard TOP-002-2a (Normal Operations Planning).⁵⁶ The formal interpretation provides that (i) requirement R11 mandates that each Transmission Operator (“TOP”) review the state of its TOP area both in advance of each day and during each day (with each day required to have “a study”, though not necessarily a “unique” study, that can be applied to it); (ii) that such study or review may be based on complex computer studies or a manual reasonability review of previously existing study results; and (iii) the requirement is meant to include both determining new limits and identifying potential “exceedances” of pre-defined SOLs -- if system conditions indicate that prior studies and SOLs may be outdated, then the TOP must conduct a study to identify SOLs for the new conditions. Following NERC’s initial request, motions to intervene were filed by ISO-NE, Exelon, and Modesto Irrigation District, and a protest of NERC’s interpretation of requirement R11 was filed by Cogeneration Association of California.

In its March 18 order, FERC noted that, like NERC, it is concerned that neither Reliability Standard TOP-002-2a in particular, nor the CIP Reliability Standards in general, adequately address technical opportunities to mitigate risks associated with unused *physical* ports. FERC encouraged NERC’s intention to address physical ports to eliminate the current gap in protection as part of its ongoing CIP Reliability Standards project scheduled for completion by the end of 2010. In addition, since the term “ports and services” is a well-established term of art that refers to logical ports only, FERC strongly encouraged NERC to approach the security of physical ports as a separate provision, apart from the existing logical “ports and services” language, to avoid potential continued confusion and commingling of common and well-established terms of art. FERC noted that should NERC fail to meet its goal of eliminating this gap by the end of 2010, at that time FERC will take appropriate action, which could include directing NERC to produce a modified or new standard that includes the security of physical ports.

- **Revised (Version 2) CIP Reliability Standards – CIP-002 – CIP-009 (RD09-7)**

On March 31, 2010, the FERC approved the compliance filing submitted by NERC on December 29, 2009 in response to FERC’s September 30, 2009 order conditionally approving NERC’s compliance filing and directing NERC make certain modifications.⁵⁷ As previously reported, on September 30, 2009, the FERC conditionally approved NERC’s revised Version 2 CIP Reliability Standards (CIP-002 through CIP-009) and NERC’s proposed Version 2 Implementation Plan, effective April 1, 2010, subject to the development of certain modifications to the Standards and a 90-day compliance filing with respect to the

⁵⁵ VRFs assess the impact to reliability of violating a single compliance requirement. VSLs define the degree to which compliance with a Reliability Standard requirement was not achieved. VSLs are considered in conjunction with VRFs in the determination of the possible base penalty range for a violation of a Reliability Standard requirement.

⁵⁶ N. Am. Elec. Reliability Corp., 130 FERC ¶ 61,184 (2010).

⁵⁷ N. Am. Elec. Reliability Corp., 130 FERC ¶ 61,271 (2010).

Implementation Plan.⁵⁸ The directed modifications include: (i) the addition to CIP-006-2 of a requirement on visitor control programs, including the use of visitor logs to document entry and exit; and (ii) the removal of the last sentence of CIP-008-2 Requirement R1.6.⁵⁹ With respect to the approved Implementation Plan, FERC noted that the Plan “lacks clarity and could be open to multiple interpretations on some topics,” and attached to the order a document reflecting its concerns. FERC directed NERC to submit a 90-day compliance filing addressing or clarifying the matters specified in that attachment.⁶⁰ NERC was also directed to submit as part of that compliance filing an update of the timetable that reflects the plan to address remaining FERC directives from Order 706. On December 17, 2009, FERC denied Edison Electric Institute’s (“EEI’s”) October 30 request for rehearing of certain aspects of the FERC’s September 30 order, but granted EEI’s motion for clarification and request for an extension of time to develop the directed modifications to the visitor control program requirements in CIP-006-2.⁶¹

Compliance Filing – CIP Version 3 Standards. In FERC’s March 31, 2010 order on the compliance filing made by FERC on March 31, 2010 in response to the September 30 CIP Version 2 Order, FERC approved (i) CIP Version 3 Standards with an effective date of October 1, 2010; (ii) a revised Implementation Plan for Newly Identified Critical Cyber Assets and Newly Registered Entities; and (iii) an updated timetable for plans to address the remaining directives from Order 706. FERC rejected NERC’s revised Implementation Plan for Version 3 of the CIP Standards CIP-002-3 through CIP-009-3 finding it unnecessary and confusing, primarily because the Version 3 CIP Implementation Plan is presented as an actionable plan rather than an informational guide. No comments on the compliance filing were submitted by the January 19 comment date and this filing is pending before the FERC.

- **Formal Interpretation – Reliability Standard VAR-002-1a (RD09-5)**

On March 5, NERC requested FERC approval of its formal interpretation of Reliability Standard VAR-002-1a (Generator Operation for Maintaining Network Voltage Schedules), in response to a request to “identify which requirements apply to generators that do not operate generators equipped with automatic voltage regulators.” The formal interpretation provides that “the requirements and associated sub requirements in VAR-002-1a apply to Generator Owners and Generator Operators that own or operate generators whether equipped with an automatic voltage regulator or not.” Motions to intervene were filed by Exelon (which also urged the FERC in comments to accept the interpretation as filed), ISO-NE, ITC Holdings, and Modesto Irrigation District. This matter is pending before the FERC.

- **Revised Reliability Standards – EOP-001-1, EOP-005-2 and EOP006-2 (RM10-16)**

On December 31, 2009, NERC requested approval of reliability standards EOP-001-1 (Emergency Operations Planning), EOP-005-2 (System Restoration from Blackstart Resources), and EOP-006-2 (System Restoration Coordination). NERC also seeks FERC approval of the proposed definition of “Blackstart Resource.” According to NERC, the proposed revisions significantly improve the currently enforceable standards, and will upgrade the overall quality of the standards by eliminating gaps and ambiguity in the requirements, eliminating “fill-in-the-blank” standards, and addressing certain FERC Order 693 directives. The proposed revisions move requirements from five existing reliability

⁵⁸ N. Am. Elec. Reliability Corp., 128 FERC ¶ 61,291 (2009), *reh’g denied and clarification granted*, FERC ¶ 61,236 (2009).

⁵⁹ That sentence read “Testing the Cyber Security Incident response plan does not require removing a component or system from service during the test.” FERC found that such a plan *could* include removing a system or component from service during testing and had not directed NERC to make that modification in Order 706.

⁶⁰ Id. at P 41.

⁶¹ N. Am. Elec. Reliability Corp., 129 FERC ¶ 61,236 (2009).

standards into the three new standards, so NERC additionally proposes that the following five reliability standards be retired in their entirety: EOP-001-0 (Emergency Operations Planning), EOP-005-1 (System Restoration Plans), EOP-006-1 (Reliability Coordination – System Restoration), EOP-007-0 (Establish, Maintain, and Document a Regional Blackstart Capability Plan, and EOP-009-0 (Documentation of Blackstart Generating Unit Test Results). This matter is currently pending before the FERC.

- **Revised Reliability Standards - PER-004-2 and PER-005-1 (RM09-25)**

As previously reported, NERC requested, on September 30, 2009, approval of reliability standards PER-004-2 (Reliability Coordination - Staffing) and PER-005-1 (System Personnel Training), and the simultaneous retirements of standards PER-002-0 (Operating Personnel - Training) and PER-004-1. According to NERC, the proposed revisions significantly improve the currently existing Reliability Standards by strengthening the quality of operator training programs. This matter is currently pending before the FERC.

- **NOPR – Revision to ERO Definition of Bulk Electric System (RM09-18)**

On March 18, 2010, the FERC issued a NOPR⁶² directing NERC to include all electric transmission facilities of 100 kV or more in its definition of what constitutes the “bulk electric system” subject to mandatory reliability standards under EAct 2005. The NOPR generally conforms to the current definition of the bulk electric system used by NERC and seven of the eight regional reliability entities in the U.S. The proposed definition would eliminate the discretion that regional entities currently have to define the transmission facilities comprising their “bulk electric systems,” but would allow regional councils to seek NERC and FERC approval in order to make variations from the 100 kV standard. In the NOPR, FERC noted that there is a strong technical justification for a standard 100 kV threshold, namely that facilities rated at 115 kV and 138 kV have either caused or contributed to significant bulk electric system disturbances and cascading outages. This includes the February 26, 2008 Florida blackout which originated from a fault at a facility connected to the 138 kV transmission system. Comments on the NOPR are due May 10, 2010.⁶³

- **Revised Reliability Standard - BAL-004-1 (RM09-13)**

On March 18, 2010, FERC issued a NOPR⁶⁴ proposing to remand the revisions to Reliability Standard BAL-004-1 (Time Error Correction) developed by NERC in order for NERC to develop several modifications to the proposed Reliability Standard. On March 11, 2009, NERC had filed revisions to reliability standard BAL-004-1, with the principal purpose of preserving the status quo with respect to Interconnection Time Monitors (MISO, in the case of the Eastern Interconnection) while NERC, through its standards development process, considers changes to Time Error Correction management.⁶⁵ In the NOPR, FERC suggested NERC modify BAL-004-1 to (i) describe the Interconnection Time Monitor designation process within a FERC-approved document or within the Reliability Standard itself, (ii) increase clarity and remove ambiguity in some of the requirements within the Reliability Standard, and

⁶² Revision to Electric Reliability Organization Definition of Bulk Electric System, 130 FERC ¶ 61, 204 (2010).

⁶³ The NOPR was published in the Federal Register on Mar. 24, 2010 (Vol. 75, No. 56) pp. 14,097 - 14,103).

⁶⁴ Time Error Correction Reliability Standard, 130 FERC ¶ 61,201 (2010).

⁶⁵ Time error is created when an Interconnection operates on the aggregate at a frequency different than the intended 60 Hertz or cycles. While time error itself is not a reliability issue, correcting for time error can affect reliability, and therefore the methods used for Time Error Correction must be carried out by the Balancing Authorities and the Reliability Coordinators in accordance with NERC Reliability Standards.

(iii) consider developing compliance evaluation measure that assess the reliability risk associated with each action, and tie any penalty to each action. Comments on the NOPR are due April 28, 2010.⁶⁶

- **Order 729 - Revised MOD Reliability Standards (RM09-5; RM08-19; RM06-16)**

Requests for rehearing of Order 729 remain pending. As previously reported, the FERC issued Order 729⁶⁷ approving and directly modifying six Modeling, Data and Analysis (“MOD”) Reliability Standards on November 24, 2009. In issuing the Order, the FERC indicated that Order 729 would address the potential for undue discrimination by requiring industry-wide transparency and increased consistency regarding all components of the available transfer capability (“ATC”) calculation methodology and certain definitions, data, and modeling assumptions. Rehearing and/or clarification of aspects of Order 729 was requested by NERC, EEI, Duke, APPA/TAPS, and ISO-NE (whose request focused on clarification of the implementation date of the Standards approved by Order 729). The FERC issued a tolling order on January 20, 2010, affording it additional time to consider the requests for rehearing/clarification, which remain pending.

- **Reliability Standard on Transmission Relay Loadability (RM08-13)**

On March 18, 2010 the FERC issued Order 733⁶⁸ approving a new reliability standard on Transmission Relay Loadability (PRC-023-1). The purpose of the standard is to set protective relays so as not to limit transmission loadability or interfere with system operators’ ability to protect system reliability, while at the same time reliably detecting and protecting the electrical network from all fault conditions. The reliability standard requires Transmission Owners, Generator Owners and Distribution Providers with load-responsive phase protection systems to set protective relays to prescribed limits for the purpose of protecting systems and ensuring settings do not contribute to cascading outages, and to establish agreements with Planning Coordinators with respect to which transmission lines operated from 100 kV to 200 kV are subject to this new standard. Specifically, the protective relays should detect and protect the electric network from all fault conditions, not limit transmission loadability, thus allowing system operators the flexibility and time to help maintain system reliability. Development of the Standard addresses key August 14, 2003 blackout recommendations regarding relay loadability issues.

FERC found that the Standard is a significant step towards improving the Bulk-Power System in North America because it requires load-responsive phase protection relay settings to provide essential facility protection for faults, while allowing the Bulk-Power System to be operated in accordance with established facility ratings. In approving this Reliability Standard, the FERC emphasized that (1) protective relay setting determined and applied in accordance with its requirements must be included in determining system performance, System Operating Limits and Interconnection Reliability Operating Limits, and must be coordinated with other protective relay settings as required by the applicable IRO, TOP, and TPL Reliability Standards and (2) the Reliability Standard’s requirements govern all relays subject to the Reliability Standard applied to protect, in any capacity, the applicable facilities defined in the Reliability Standard. The FERC also approved NERC’s proposed VRF and VSL assignments of the Reliability Standard, and directed NERC to file certain new assignments within 30 days.

⁶⁶ The NOPR was published in the Federal Register on March 29, 2010, 2010 (Vol. 75, No. 59) pp. 15,371-15,376.

⁶⁷ Mandatory Reliability Standards for the Calculation of ATC, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability Standards for the Bulk-Power System, 129 FERC ¶ 61,155 (2009) (“Order 729”), *reh’g requested*.

⁶⁸ Transmission Relay Loadability Reliability Standard, 130 FERC ¶ 61,221 (2010) (“Order 733”).

- **Order 722 – Revised Reliability Standards for Facilities Design, Connections and Maintenance (FAC-010-002, FAC-011-002, and FAC-014-002) (RM08-11)**

Requests for rehearing of Order 722 remain pending. As previously reported, on March 20, 2009, FERC issued Order 722⁶⁹ approving three revised Reliability Standards and accompanying VRFs: FAC-010-002 (System Operating Limits Methodology for the Planning Horizon), FAC-011-002 (System Operating Limits Methodology for the Operations Horizon), and FAC-014-002 (Establish and Communicate System Operating Limits). These new reliability standards became effective on April 29, 2009.⁷⁰ However, on April 20, 2009, NERC filed a request for clarification or, in the alternative, rehearing of Order 722, to address which VSLs should be used for FAC-010-2, FAC-011-2, and FAC-014-2. On May 20, 2009, FERC issued a tolling order affording it additional time to consider NERC's request for clarification or rehearing. NERC's rehearing request remains pending before the FERC. In response to the requirements of Order 722, NERC filed new VSLs for the three FAC Standards on May 29. Comments on the May 29 compliance filing were due July 6, and were filed only by the Transmission Agency of Northern California.

- **Proposed Clarification to CIP Standards (RM06-22)**

On March 18, 2010, FERC approved NERC-proposed VSL assignments for eight Reliability Standards (CIP-002-1 through CIP-009-1) submitted in a June 30, 2009 filing (in sub-docket -008) in compliance with Order 706.⁷¹ The FERC also directed NERC to revise certain VSL assignments and submit those revisions to FERC in a compliance filing by May 17, 2010. As previously reported, the FERC approved the revised Reliability Standards (CIP-002-1 through CIP-009-1) on January 27, 2009,⁷² and accepted the VRFs submitted to accompany the revised Reliability Standards on August 20, 2009 (in sub-docket -009).

Implementation Plan. On March 18, 2010,⁷³ FERC accepted the compliance filing NERC submitted on January 19, 2010 that provided the additional information FERC requested in its December 17, 2009 order⁷⁴ addressing NERC's plan to implement eight Version 1 Reliability Standards (CIP-002-1 through CIP-009-1) for owners and operators of U.S. nuclear power plants. As previously reported, NERC submitted its plan for the implementation of CIP-002-1 through CIP-009-1 on September 15, 2009 in response to the requirements of Order 706-B, and FERC directed NERC to make a further compliance filing providing additional information regarding the scope of systems determination.

In the March 18, 2010 order approving NERC's Implementation Plan, FERC also directed NERC to make a compliance filing submitting implementation plans for the implementation of Versions 2 and 3 of the CIP Standards by owners and operators of U.S. nuclear power plants on the same schedule established for Version 1 under the Implementation Plan.

⁶⁹ Version Two Facilities Design, Connections and Maintenance Reliability Standards, 126 FERC ¶ 61,255 (2009) ("Order 722"), *reh'g requested*.

⁷⁰ Order 722 was published in the Federal Register on Mar. 30, 2009 (Vol. 74, No. 59) pp. 14,008-14,040.

⁷¹ Mandatory Reliability Standards for Critical Infrastructure Protection, Order No. 706, 122 FERC ¶ 61,040 (2008), *order on clarification*, Order No. 706-A, 123 FERC ¶ 61,174 (2008), *order on clarification*, Order No. 706-B, 126 FERC ¶ 61,229 (2009), *clarification denied*, 127 FERC ¶ 61,273 (2009).

⁷² Reliability Standards for Critical Infrastructure Protection, 126 FERC ¶ 61,065 (2009).

⁷³ Mandatory Reliability Standards for Critical Infrastructure Protection, 130 FERC ¶ 61,185 (2010).

⁷⁴ Mandatory Reliability Standards for Critical Infrastructure Protection, 129 FERC ¶ 61,224 (2009).

- **Mandatory Bulk-Power System Reliability Standards (RM06-16)**

TIER Report. On September 22, 2009, FERC Staff held a public meeting for the presentation of the results of some initial research intended to help in the identification and ranking of the elements of the Bulk-Power System, and ultimately, in the refining the scope of what constitutes the Bulk-Power System subject to section 215 of the FPA. The University of Wisconsin-Madison, in conjunction with Office of Electric Reliability staff, developed and tested a mathematically-based model intended to reflect the physics of the Bulk-Power System – a “Topological and Impedance Element Ranking” (“TIER”) of the Bulk-Power System. The TIER report⁷⁵ introduces a method for ranking branch elements in the electric grid (typically lines and transformers), with the purpose of (i) developing a process to distinguish those facilities that should not be considered part of the Bulk-Power System from those facilities that should be considered part of the Bulk-Power System, (ii) identifying the elements needed to operate each of the electric interconnections, and (iii) ranking the importance of those elements. FERC extended the comment date on the Report through October 28, 2009 in response to a request from NERC, and over 25 parties submitted comments by that date.

Modifications to Standards Development Procedures. On March 18, 2010 FERC issued two orders setting deadlines for NERC compliance with Order No. 693⁷⁶ which was issued in March 2007. In Order 693, FERC had directed NERC to develop certain modifications to the Reliability Standards, including TPL-002-0 (system performance following the loss of a single bulk electric system element) and BAL-003-0 (frequency response and bias) pursuant to NERC’s Reliability Standards Development Process. In an December 2, 2009 information filing, NERC indicated to the commission that it anticipates submitting a modified set of TPL Reliability Standards, including TPL-002-0, in the second quarter of 2010. In that informational filing NERC also indicated that it was revising its Standard Authorization Request (“SAR”) to obtain the necessary data before drafting a revised frequency response standard in its Standards Development Project No. 2007-12, which includes BAL-003-0. In both of the orders issued by FERC on March 18, FERC notes that while Order 693 did not set a deadline for submitting modifications to these standards, three years have passed since each directive was issued in Order 693. In its March 18 order regarding TPL-002-0,⁷⁷ FERC directed NERC to submit certain modifications responsive to FERC’s directive in Order 693 by June 30, 2010. In its March 18 order regarding BAL-003-0,⁷⁸ FERC directed NERC to submit certain modifications responsive to FERC’s directive in Order 693 within six months from March 18, 2010.

- **NERC Compliance and Certification Committee – Revised Rules of Procedure (RR10-8)**

On March 15, 2010, NERC requested FERC approve several amendments to NERC’s Rules of Procedure to reflect changes to the Compliance and Certification Committee (“CCC”) program. These amendments include (i) establishing procedures for determining whether registered entities or Regional Entities have violated NERC Reliability Standards in the limited circumstances when NERC itself is serving as the Compliance Enforcement Authority, and if so, what the appropriate Mitigation Plans and any remedial actions, penalties, or sanctions should be; (ii) providing a mechanism in which challenges may be heard by a Regional Entity regarding a regional compliance program audit finding; (iii) changes to the fact-finding processes in hearing procedures to promote integrity; (iv) creation of a non-binding mediation process; and (v) changes to NERC’s registration and certification process. No comments were submitted by the April 6, 2010 comment date.

⁷⁵ The TIER Report is available on-line at http://elibrary.ferc.gov/idmws/File_list.asp?document_id=13753678.

⁷⁶ Mandatory Reliability Standards for the Bulk Power System, Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh’g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

⁷⁷ Mandatory Reliability Standards for the Bulk Power System, 130 FERC ¶ 61,200 (2010).

⁷⁸ Mandatory Reliability Standards for the Bulk Power System, 130 FERC ¶ 61,218 (2010).

- **2010 NERC/NPCC Business Plans and Budgets (RR09-9)**

As previously reported, the FERC conditionally accepted the 2010 Business Plans and Budgets for NERC and the Regional Entities on October 15, 2009.⁷⁹ The 2010 plan calls for NERC to allocate to NPCC \$4,788,703. NPCC requested \$11,354,085 in statutory funding and \$1,099,307 for non-statutory functions. In accepting the 2010 budgets, the FERC directed NERC and NPCC to submit in a compliance filing including additional information on the 2010 net energy for load calculations and allocation to load serving entities for the Compliance Program Assessments. In response to the requirements of the October 15 order, NERC has submitted three filings: (1) a November 20 Informational Filing providing information on NERC's "Situational Awareness for NERC, FERC and Regions" ("SAFNR"); and (2) a December 11 filing (i) explaining NERC's rationale for removing working capital reserves from its 2010 budget, (ii) clarifying information related to NERC's compliance monitoring and enforcement program, (iii) providing additional information related to NERC's Compliance Reporting, Analysis, and Tracking System, (iv) discussing the adequacy of the CIP audit levels planned by Texas RE and SERC, (v) providing additional information regarding RE activities and funding, including the application of net energy for load in allocating Compliance Program costs within the U.S. portion of the NPCC region, (vi) addressing the determination of critical assets, and (vii) providing a status report regarding the development of uniform procedures for processing technical feasibility exceptions ("TFE"); and (3) a January 11 filing evaluation of the adequacy of ERO and Regional Entity resources for implementing the processing of TFE within 90 days after the implementation of the activity by the Regional Entities. No comments were filed on any of the three filings. On March 3, 2010 the FERC accepted NERC's December 11 compliance filing. On March 8, 2010 the FERC accepted NERC's January 11 compliance filing and directed NERC to file a further evaluation of Regional Entity resources by May 3, 2010. NERC's November 20 compliance filing remains pending before the FERC.

- **3-Year ERO Performance Assessment Report (RR09-7)**

On July 20, 2009, NERC submitted an assessment of its performance over the three years since it was certified as the ERO (the "Report"), as required under Part 39 of the FERC's regulations.⁸⁰ In the 681-page Report, NERC asserts that it is meeting its statutory requirements, and that it is successfully carrying out its statutory and regulatory responsibilities as the ERO to develop and enforce mandatory reliability standards and to promote and maintain the reliable operation of the North American bulk power system. The Report provides NERC's evaluation of the effectiveness of the Regional Entities, and discusses comments and recommendations received from interested entities concerning the performance of NERC and the Regional Entities. The report also identifies actions that NERC and the Regional Entities plan to take to improve NERC's and the Regional Entities' operations and to continue to enhance the reliable operation of the bulk power system. Comments on the Report were filed by APPA, EEI, EPSA, Exelon, and NRECA. On September 18, NERC filed an answer to the comments filed. In its answer, NERC urged the FERC to find that NERC continues to meet the statutory and regulatory criteria for certification as the ERO. NERC also committed to submit to the FERC 3 comprehensive status reports (to be filed 6, 12, and 24 months following the date of an order concluding this proceeding) on progress that it is making in implementing the specific actions identified in the Report. The Report remains pending before the FERC.

On October 26, 2009, the FERC issued guidance in response to extensive stakeholder concern, noted by NERC in the Report, that NERC has not filed Notices of Penalty concerning numerous self-reported, confirmed or alleged violations of mandatory Reliability Standards that date from 2007 and 2008. In its guidance responding to this Notice of Penalty backlog, the FERC announced that it will accept, in certain circumstances, an abbreviated format that NERC may use to file Notices of Penalty relating to particular classes of alleged and confirmed violations NERC and Regional Entities have

⁷⁹ N. Am. Elec. Reliability Corp., 129 FERC ¶ 61,040 (2009) ("October 15 Order").

⁸⁰ 18 CFR § 39.3(c) (2009).

determined did not pose a significant risk to the reliability of the Bulk-Power System. The FERC directed NERC to work with the Regional Entities, stakeholders and FERC staff to develop such a proposal.

- **Modification of ERO Rules of Procedure (RR09-6)**

On March 18, 2010, FERC issued an order directing NERC to modify the procedures it uses to develop mandatory reliability standards.⁸¹ FERC took this action out of a growing concern that the current voting process at NERC employs a procedure that can be used to prevent compliance with FERC directives to address particular reliability matters. FERC determined NERC's current rules do not provide a reasonable assurance that NERC is capable of complying with FERC reliability directives. Specifically, FERC noted that "balloting down" effectively allows NERC stakeholders to veto a FERC directive by refusing to approve a new or modified reliability standard intended to comply with that directive. NERC directed FERC to submit a filing containing specific proposed modifications to the standards development process within 90 days. When FERC approves NERC's proposal, NERC will then have an additional 90 days to file a document outlining its compliance with the rule requiring transmission and generation owners to determine the ratings of their bulk power system facilities.

- **Reliability Standard Violation Severity Levels (RR08-4)**

As previously reported, the FERC approved on June 19, 2008 the Violation Severity Level ("VSL") assignments filed by NERC for 83 FERC-approved Reliability Standards,⁸² but directed NERC in a 30-day compliance filing to file modifications to the proposed VSLs relevant to five Reliability Standards identified in the Appendix to the June 19 VSL Order. A VSL is a post-violation measurement of the degree to which a requirement was violated and will be used by NERC and the Regional Entities in the determination of a monetary penalty for the violation. In addition, the FERC ordered a number of reports and further compliance filings to bring the remainder of NERC's VSLs into compliance with the FERC's guidelines. Requests for rehearing and/or clarification of the VSL Order were filed by NERC and EEI.

On November 20, 2008, the FERC issued an order⁸³ granting in part and denying in part rehearing and clarification of the VSL Order. In addition, the VSL Rehearing Order accepted the July 21, 2008 compliance filing, but directed NERC to submit a further compliance filing that makes specific revisions discussed in the VSL Rehearing Order. The VSL Rehearing Order was not challenged and is final and unappealable.

On June 24, 2009, FERC accepted the two compliance filings submitted by NERC on December 19, one in response to the requirements of the VSL Rehearing Order (changes to VSL assignments for six Requirements) (sub-docket -003) and one in response to requirements of the VSL Order (six-month compliance filing that modifies VSL assignments to the "Severe" category for 176 binary requirements and sub-requirements) (sub-docket -004). FERC found NERC's compliance filings complied with the VSL Order, and rejected, as previously addressed, the concerns raised by the ISO/RTO Council.

On March 1, 2010, FERC extended the deadline until March 5, 2010 for NERC to submit a compliance filing in response to the VSL Order and the VSL Rehearing Order. On March 5 NERC submitted its compliance filing to FERC, making the specific revisions discussed in the VSL Rehearing Order. No comments on this compliance filing were submitted by the March 26, 2010 comment date.

⁸¹ N. Am. Elec. Reliability Corp., 130 FERC ¶ 61,203 (2010).

⁸² N. Am. Elec. Reliability Corp., 123 FERC ¶ 61,284 (2008) ("VSL Order"), *order on reh'g* 125 FERC ¶ 61,212 (2008).

⁸³ N. Am. Elec. Reliability Corp., 125 FERC ¶ 61,212 (2008) ("VSL Rehearing Order").

XI. Misc. - of Regional Interest

- **FPL, New Hampshire Transmission, LLC 203 Application (EC10-58)**

On April 1, FPL and New Hampshire Transmission, LLC (formed specifically to acquire FPL's interests in the Seabrook Substation and an indirect, wholly-owned subsidiary of FPL Group) ("NHT") submitted a Joint Application for FERC authorization for the transfer by FPL, and the acquisition by NHT, of FPL's 88.29% undivided ownership interest in the Seabrook Substation (the "Transaction"). Comments on this filing are due April 22. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CMP/TransCanada Engineering and Procurement Agreement – Termination (ER10-946)**

On March 29, 2010, CMP filed to terminate the Engineering and Procurement Agreement ("E&P Agreement") with TransCanada Maine Wind Development, Inc. (designated as service agreement CMP-EP-1 under Schedule 22 of the ISO Tariff) for the wind generation project in the Kibby Mountain area of western Maine. CMP reported that work under the E&P Agreement had been completed, an Interconnection Agreement ("IA") executed, and service under the IA begun on February 9, 2010, thus ending the need for the E&P Agreement. Comments on the filing are due April 19.

- **CMP/Fox Islands Engineering and Procurement Agreement – Termination (ER10-945)**

Also on March 29, 2010, CMP filed to terminate the E&P Agreement with Fox Islands Electric Cooperative, inc. (designated as service agreement CMP-EP-3 under Schedule 22 of the ISO Tariff) for the wind project located on Vinalhaven Island. CMP reported that work under the E&P Agreement had been completed, an IA executed, and service under the IA begun on November 17, 2010, thus ending the need for the E&P Agreement. Comments on the filing are also due April 19.

- **CMP/Record Hill Wind Engineering and Procurement Agreement – Second Amendment (ER10-988)**

On March 26, 2010, CMP filed a second revised E&P Agreement with Record Hill Wind. As previously reported, the FERC accepted CMP's original E&P Agreement with Record Hill Wind LLC (designated as service agreement CMP-EP-2 under Schedule 22 of the ISO Tariff), on August 5, 2009. A first amendment, filed in February (see Docket No. ER10-764 below), is pending. The second amendment addresses additional engineering and procurement activities that Record Hill has asked CMP to perform. A March 5, 2010 effective date was requested. Comments on this filing are due April 16, 2010.

- **LGIA with Green Mountain Power (ER10-919)**

On March 22, the ISO and Green Mountain Power ("GMP") filed a non-conforming LGIA to govern the interconnection of GMP's proposed Large Generating Facility, located in Colchester, Vermont, to GMP's transmission system at the Gorge Substation. In recognition of GMP's status as both transmission customer and transmission owners, the LGIA (LGIA-ISONE/GMP-10-01 under Schedule 22 of the ISO Tariff) deviates from the *pro forma* LGIA in two respects: (i) it creates a two (instead of three) party Interconnection Agreement, and (ii) it replaces the "Point of Change of Ownership" with "Point of Change of Function." A May 22, 2010 effective date was requested. Comments on this filing are due April 12. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **CMP/Spruce Mountain Wind E&P Agreement (ER10-821)**

On March 3, CMP filed an E&P Agreement with Spruce Mountain Wind, LLC (designated as service agreement CMP-EP-2-S under Schedule 23 of the ISO Tariff). Spruce Mountain Wind is planning to construct an approximately 20 MW wind farm in Woodstock, Maine and has requested that CMP begin certain engineering and procurement activities. The Agreement sets forth the terms and conditions under which CMP will provide such services. CMP has requested a February 3, 2010 effective date. No comments on this filing were submitted by the March 24 comment date.

- **CMP/Record Hill Engineering & Procurement Agreement – First Amendment (ER10-764)**

On February 9, 2010, the FERC filed a first revised E&P Agreement with Record Hill Wind. As reported most recently in the September 2009 report, the FERC accepted, on August 5, 2009, CMP's original E&P Agreement with Record Hill Wind LLC (designated as service agreement CMP-EP-2 under Schedule 22 of the ISO Tariff). The amendment filed in February addresses engineering and procurement activities that will take place in addition to those set forth in the original E&P Agreement. CMP has requested a December 28, 2009 effective date, the date of execution of the original E&P Agreement by Record Hill. No comments were filed by the March 2, 2010 comment date, and this matter is pending before the FERC.

- **FERC Penalty Guidelines (PL10-4)**

On March 18, 2010, FERC issued a Policy Statement on Penalty Guidelines for the purpose of adding greater fairness, consistency, and transparency to FERC's civil penalty determinations.⁸⁴ The Policy Statement expands FERC's civil penalty authority under EPCA 2005, and that statute expanded FERC's civil penalty authority pursuant to the FPA. The Penalty Guidelines will promote consistency by basing the penalty calculations on a set of uniform facts that are weighted similarly for similar types of violations and similar types of violators. The Penalty Guidelines also provide specific credit to companies for self-reporting violations and for implementing robust compliance programs, thus further encouraging industry compliance. However, FERC retains the discretion to impose a penalty that is not based on an application of the Penalty Guidelines, based on the specific facts and circumstances of a violation. The Penalty Guidelines provide greater transparency and fairness by giving notice to regulated organizations regarding how FERC will determine civil penalties. This method was designed to provide a more straightforward process, while still giving FERC the discretion to depart from the guidelines when appropriate.

FERC staff will hold three workshops to provide a forum for interested participants to ask questions on the interpretation and application of the Policy Statement. The first workshop was held on April 7 in Washington, DC, and may be viewed for 3 months at <http://capitolconnection.gmu.edu/ferc/ferc.htm>. The remaining workshops will be held on April 14 in Houston, TX, and on April 15 in San Francisco, CA.

- **PSNH Application to Terminate Mandatory Purchase Obligation from QFs > 5MW (QM10-4)**

On January 7, 2010, Northeast Utilities Service Co. submitted an application on behalf of its affiliate, Public Service Company of New Hampshire ("PSNH"), requesting FERC terminate, on a service territory-wide basis, the mandatory power purchase obligations required by the FERC for QFs with a net generating capacity of 5 MW or greater. For QFs with a net generating capacity greater than 20 MW ("Large QFs"), PSNH relies on the rebuttable presumption that Large QFs in Day 2 markets have nondiscriminatory access to those markets. For QFs with a net generating capacity between 5 MW and

⁸⁴ Policy Statement on Penalty Guidelines, 130 FERC ¶ 61,220 (2010).

20 MW (“Small QFs”), PSNH intends to overcome the rebuttable presumption that Small QFs do not have nondiscriminatory access to markets. One comment and two protests were submitted by the February 12, 2010 comment date. On February 18, PSNH responded to the two protests. This matter is currently pending before the FERC.

- **Integrys Complaint - NBP Generation Market Power in NMISA (EL09-32)**

On June 10, 2009, the FERC dismissed the Integrys Complaint in part (to the extent the Complaint challenged New Brunswick Power’s authority to make retail sales in northern Maine, which the FERC found was beyond its jurisdiction) and granted the Complaint in part (requiring New Brunswick Power to submit a horizontal market power study of an additional geographic market).⁸⁵ As previously reported, the Integrys Complaint asserted that New Brunswick Power Generation Corporation (“NBP Generation”) should be deemed to have generation market power in the Northern Maine Independent System Administrator, Inc. balancing authority area (“NMISA”) and not authorized to engage in market-based sales in the NMISA unless and until it submits information to the FERC establishing that it does not have market power in the NMISA and is explicitly authorized by the FERC to do so. In the order, the FERC directed New Brunswick Power to file a horizontal market power analysis, including the pivotal supplier and wholesale market share screens, for the New Brunswick System Operator balancing authority area, on or before August 10, 2009. On July 10, 2009, the NBP Generation requested rehearing and clarification of the FERC’s June 10 Order, urging the FERC to find on rehearing (i) that any wholesale sales into the NMISA region should be treated as non-jurisdictional sales, and (ii) that NBP Generation disclosed sufficient facts in its initial market-based rate application to indicate that it is located in the NBSO balancing authority area. On August 10, 2009, the FERC issued a tolling order affording it additional time to consider NBP Generation’s request, which remains pending before the FERC.

Also on August 10, 2009, NBP submitted a filing containing a horizontal market power study in compliance with the FERC’s June 10 order. NBP requested that the FERC accept its compliance filing and immediately terminate proceedings under this Docket. On September 9, Integrys filed a protest to the compliance filing and on September 24 NBP filed an answer to the Integrys protest. On October 16, 2009, the FERC requested NBP submit additional information within 30 days regarding the horizontal market power study, which NBP submitted on November 9, 2009. On November 30, Integrys filed a protest regarding the additional information submitted on November 9, 2009. On January 15, 2010, the FERC requested NBP submit additional information and analyses regarding the horizontal market power study which NBP did not include in its November 9 response. FERC granted NBP two extensions of time to file the requested information, and NBP submitted the additional information requested by FERC on March 31, 2010. The compliance filing submitted by NBP, the protest and answer thereto, and the additional compliance information submitted by NBP remain pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **NYISO Report on Regional Markets; Long-Term Solutions to Lake Erie Loop Flow (ER08-1281)**

On January 12, 2010, NYISO submitted its *Report on Broader Regional Markets; Long-Term Solutions to Lake Erie Loop Flow* (“Report”) in accordance with various FERC directives in this proceeding.⁸⁶ Relevant to New England, and as mentioned in the January 8 CEO Report, the Report notes NYISO plans to coordinate with ISO-NE on the following two initiatives to implement aspects of the proposed Broader Regional Market solutions: (1) Interregional Transaction (Scheduling) Coordination

⁸⁵ Integrys Energy Services, Inc. v. New Brunswick Power Generation Corporation et al., 127 FERC ¶ 61,232 (2009), *reh’g requested*.

⁸⁶ See New York Independent System Operator, Inc., 128 FERC ¶ 61,049 (2009); New York Independent System Operator, Inc., 128 FERC ¶ 61,239 (2009).

and (2) Market-to-Market (Congestion Management) Coordination. The first initiative would create a joint transaction scheduling system in the two markets that accepts transactions and clears them simultaneously based upon the expected prices in the regions, thereby creating a set of transactions and net tie schedule for each hour in a single pass. The second initiative would develop a protocol to: (a) pre-identify constraints that multiple control areas can address through re-dispatch actions; (b) develop an agreed to baseline of allowable usage of each control area's transmission network; and (c) establish data sharing protocols to communicate real-time constraint management costs. The Report notes that, based on current priorities, the project is planned for a sequential, two-phased implementation starting in the fourth quarter of 2010. Phase I will be focused on Interregional Transaction Coordination; Phase II, on Market-to-Market (Congestion Management) Coordination. On February 2, the ISO filed comments supporting these inter-area coordination efforts, noting that the initiatives were highlighted in ISO-NE's 2010 work plan and would, together with any resulting tariff changes, be fully vetted through the Participant Processes. If you have any questions concerning these matters, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com).

XII. Misc. - Administrative & Rulemaking Proceedings

- **RTO/ISO Performance Metrics (AD10-5)**

On February 3, the FERC issued a notice requesting comments on whether proposed RTO/ISO performance metrics will effectively track the performance of RTO/ISO operations and markets. The request is part of a FERC initiative that began with a September 2008 Government Accountability Office (GAO) recommendation that the FERC work with RTOs/ISOs, stakeholders, and other experts to develop standardized measures that track the performance of RTO/ISO operations and markets and report the performance results to Congress and the public annually, while also providing interpretation of (1) what the measures and reported performance communicate about the benefits of RTOs and, where appropriate, (2) changes that need to be made to address any performance concerns.⁸⁷ Over 60 parties filed comments on the metrics by the March 5, 2010 comment date, including the ISO's Internal Market Monitor and NEPOOL. NEPOOL's comments were unanimously approved at the March 5 NPC meeting and filed later that day. Thirteen parties filed reply comments by the March 19, 2010 comment date.

- **Order 732 - Revisions to Form, Criteria, and Procedures for QF Status (RM09-23)**

On March 19, 2010, the FERC issued Order 732,⁸⁸ which clarifies and revises the form, content, and procedures used in certifying the qualifying facility ("QF") status of existing or proposed small power production or cogeneration facilities of greater than 1 MW.⁸⁹ The new QF certification form, which now must be filed electronically only, will continue to be titled "Form 556". However, new Form 556 is substantially revised, employing more narrowly focused questions, electronic data controls and validation options, changing, for example, how small power production facility applicants demonstrate compliance with fuel use requirements, and how cogeneration facilities demonstrate whether or not they are subject to the "productive and beneficial" requirements of the Energy Policy Act of 2005 (and if so, how they are compliant with those requirements). New information is required of all filers in other areas as well. For example, in the absence of a street address, applicants must now provide geographic coordinates of a facility's location.

⁸⁷ See "Electricity Restructuring: FERC Could Take Additional Steps to Analyze Regional Transmission Organizations' Benefits and Performance," GAO-08-987 (Sep. 2008).

⁸⁸ Revisions to Form, Procedures, and Criteria for Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility, Order No. 732, 130 FERC ¶ 61,214 (2010), *reh'g requested*.

⁸⁹ Order 732 creates an exemption from the self-certification or application for FERC certification filing requirements for generating facilities with net power production capacities of 1 MW or less. Order 732 also codifies the FERC's authority to waive the QF certification requirement for good cause.

Order 732 revises FERC policy to require that all self-recertifications (or applications for FERC recertification) contain all of the facility information required in Form No. 556, eliminating procedures that permitted reference only to changes which had occurred with respect to the facility since the prior notice or FERC certification. While Order 732 does not change the requirement that any change in material facts and representations triggers the obligation to recertify the facility, it does clarify that the FERC will not consider a change in ownership to be a change in material facts and representations *if* no owner increases their equity interest by at least 10 percent from the previously-reported equity interest.⁹⁰

Order 732 is intended to facilitate the compilation and publishing of QF data, and to improve the FERC's compliance monitoring by identifying patterns of reporting errors and noncompliance. Order 732 will become effective June 1, 2010.⁹¹ Existing QFs do not need to file a new Form No. 556 unless or until they seek to recertify or apply for FERC recertification.

- **Technical Conference on MBR Filings and EQR Reports (AD10-4)**

On March 3, 2010, the FERC held a technical conference that focused on the mechanics of market-based rate application and subsequent filings, including triennial market power reviews, change in status filings, and the submission of Electric Quarterly Reports. FERC staff addressed the most frequently-asked questions that arise on, the most common errors that are made with, and highlighted what tools are currently available to sellers in order to simplify, such filings.

- **Technical Conference Reviewing Submitted OFA Costs (AD10-1)**

On March 11, 2010 FERC announced it will hold a technical conference on April 14, 2010 to review Other Federal Agencies ("OFAs") costs submitted pursuant to FERC's guideline, set forth in an October 8, 2004 order,⁹² for OFAs to submit their costs related to Part I of the FPA. That order requires OFAs to submit their costs using the OFA Cost Submission Form and also announced that a technical conference would be held for the purpose of reviewing the submitted cost forms and detailed supporting documentation.

- **National Action Plan on Demand Response (AD09-10)**

On March 11, 2010, the FERC Staff released a draft for comment of the National Action Plan on Demand Response.⁹³ The National Action Plan is designed to meet three objectives: (1) technical assistance to states to allow them to maximize the amount of demand response resources developed and deployed; (2) design requirements for implementation of a national communications program; and (3) the identification or development of tools and materials for use by customers, states and demand response providers.

As previously reported, the FERC held a technical conference on November 19-20, 2009 to support the development of the National Action Plan on Demand Response. The purpose of the technical conference was to elicit further input from interested stakeholders on the possible elements of the

⁹⁰ A facility must disclose in Form 556 (i) all direct owners that hold at least 10 percent equity interest in the facility as well as (ii) all upstream owners that both (1) hold at least a 10 percent equity interest in the facility and (2) are electric utilities or holding companies. The addition of an owner not previously reported and that holds an equity interest of 10 percent or more would be a material change that would require recertification.

⁹¹ The Final Rule was published in the Federal Register on Mar. 30, 2010 (Vol. 75, No. 60) pp. 15,950-19,986.

⁹² Order on Rehearing Consolidating Administrative Annual Charge Bill Appeals and Modifying Annual Charges Billing Procedures, 109 FERC ¶ 61,040 (2004).

⁹³ FERC Staff's National Action Plan on Demand Response draft is available on-line at <http://www.ferc.gov/legal/staff-reports/03-12-10-demand-response.pdf>.

National Action Plan. Panel sessions in the afternoon of November 19 discussed the overall approach to and scope of the National Action Plan, followed by three breakout sessions in the morning of November 20 focused on the three statutory objectives set forth in the National Energy Conservation Policy Act.⁹⁴ A closing plenary session summarized the break-out discussions and attempted to identify possible areas of consensus. A Discussion Draft on Possible Elements of a National Action Plan on Demand Response was released on October 28 for comment prior to the technical conferences. Over 40 parties filed comments in response to the technical conference. The draft FERC Staff developed is now being offered for a final round of comments. So far, four parties have filed comments.

- **Technical Conference on Small Hydropower Development (AD09-9)**

On December 2, 2009, the FERC held a technical conference to explore issues related to licensing small non-federal hydropower projects in the United States. Specifically, the technical conference addressed the FERC's program for granting licenses and exemptions from licensing, including 5 MW and conduit exemptions, as well as the processing of applications for small hydropower projects. Parties were invited to submit written comments about small hydropower issues to the FERC. More than 30 parties filed comments, which are pending before the FERC.

- **Technical Conference on Transmission Planning Processes Under Order 890 (AD09-8)**

As previously reported, the FERC held a regional technical conference in Philadelphia on September 21, 2009 as part of FERC staff's assessment of the nation's Order 890 transmission planning processes. Written comments were then submitted by over 100 parties, including comments by NEPOOL that had been approved at the November 19 NPC meeting. Additional comments and reply comments were filed by nearly 50 parties, and together with the initial comments, are pending before the FERC.

- **NOI Regarding Annual Charges Assessments for Public Utilities (AD08-7)**

On April 21, 2008, the FERC issued a notice of inquiry ("NOI") seeking comments on its current methodology for the assessment of electric annual charges to public utilities, in particular, whether that methodology remains fair and equitable, and on alternative methodologies. Comments on the NOI were due May 28.⁹⁵ 23 parties, including Dynegy, FPL, NEPGA, Exelon, EPIC, the ISO/RTO Council, and NGrid, submitted comments, with a wide range of opinion as to the FERC's current assessment methodology and the need to revisit or change that methodology. The NOI and related comments remain pending before the FERC.

- **FERC-NRC MOA (AD06-6)**

As previously reported, on September 2, the FERC and the NRC entered into a second Memorandum of Agreement ("MOA") to facilitate matters pertaining to the nation's electric power grid reliability and nuclear power plants. A division of the NRC has been tasked with coordinating its implementation of action plans for addressing grid concerns that have the potential of impacting the safe operation of nuclear power plants, and the activities at FERC's Office of Electric Reliability involve the reliability, integrity, security, and operation of the bulk power system. The MOA was implemented to

⁹⁴ The statutory objectives identified for the National Action Plan are: (1) identification of requirements for technical assistance to States to allow them to maximize the amount of demand response resources that can be developed and deployed; (2) design and identification of requirements for implementation of a national communications program that includes broad-based customer education and support; (3) development or identification of analytical tools, information, model regulatory provisions, model contracts, and other support materials for use by customers, States, utilities and demand response providers. Pub. L. No. 110-140, § 529, 121 Stat. 1492, 1664 (to be codified at National Energy Conservation Policy Act, 42 USC §§ 8241-8287d, 8279).

⁹⁵ The NOI was published in the Federal Register on Apr. 28, 2008 (Vol. 73, No. 82) pp. 22867-22871.

avoid regulatory conflicts, and it sets forth the basic principles and guidelines under which the two Commissions and their staffs will work together to accomplish these matters of mutual interest, including cyber security, information sharing during emergency response, and other grid-related activities. These cooperative efforts will primarily be accomplished by FERC and NRC consulting with each other with regard to the availability of technical information that would be useful in areas of mutual interest, and promoting and encouraging a free flow of such information.

A joint FERC/NERC meeting was held on March 16, 2010, and continued the agencies' ongoing discussions to address grid reliability and the roles of the respective agencies in addressing this issue.

- **NOPR – Demand Response Compensation in Organized Wholesale Energy Markets (RM10-17)**

On March 18, 2010, FERC issued a NOPR that proposes requiring organized wholesale energy markets to pay demand response providers the market price for energy for reducing consumption below their expected levels.⁹⁶ The NOPR seeks comment on this proposal and on the merits of alternative approaches in comparison to the approach proposed. The NOPR also seeks comments on whether regional differences among the markets justify the current difference in compensation across the RTOs and ISOs. FERC designed the proposal in the NOPR to ensure adequate compensation for demand response resources in organized wholesale electricity markets to enhance their competitiveness with the ultimate goal of lowering consumer prices. The NOPR focuses on the day-ahead and real-time energy markets and does not apply to ancillary service and capacity markets or to demand response programs administered for reliability and emergency conditions. Comments on the NOPR are due May 13, 2010.⁹⁷

- **NOPR - Credit Reform (RM10-13)**

On January 21, 2010, the FERC issued a notice of proposed rulemaking (“NOPR”) seeking comments on a series of proposed credit reforms designed to balance the need for market liquidity with appropriate risk management while ensuring just and reasonable rates for electric customers. FERC’s proposals include the following: (1) shorten the settlement cycle to no more than seven calendar days with no more than an additional seven calendar days for final payment; (2) limit unsecured credit to no more than \$50 million per market participant in energy markets and eliminate unsecured credit in Financial Transmission Rights (“FTR”) markets; (3) clarify the ability of market administrators to offset amounts owed to market participants against amounts owed by market participants and to manage defaults; (4) establish minimum participation criteria for market participants; (5) specify circumstances in which a market administrator may invoke “material adverse change” to require a market participant to post additional collateral; and (6) limit time period allowed for posting additional collateral when additional collateral is requested. These proposals are designed to reduce both the risk of default and the cost of default shared among market participants. A detailed summary of the Credit Reform NOPR was circulated to the Committee on January 29 with the materials for the February 5 meeting. Over 70 parties, including NEPOOL, submitted comments on the Credit Reform NOPR by the March 29, 2010 comment date.⁹⁸ Proposed NEPOOL Comments on the NOPR were considered at the March 5 Participants Committee meeting, and were finalized and filed with the FERC on March 29, 2010. At the April 9 NPC meeting, Participants will be afforded the opportunity, only if and as necessary, to propose additional comments or positions that would be materially different or stake out any new positions beyond those that were filed by NEPOOL on March 29.

⁹⁶ N. Am. Elec. Reliability Corp., 130 FERC ¶ 61,213 (2010).

⁹⁷ The NOPR was published in the Federal Register on March 29, 2010 (Vol. 75, No. 59) pp. 15,362-15,371.

⁹⁸ The NOI was published in the Federal Register on Jan. 27, 2010 (Vol. 75, No. 17) pp. 4310-4316.

- **NOI: Market Transparency / EQR (RM10-12)**

Also on January 21, 2010, the FERC issued a NOI seeking comments on whether the FERC's Electric Quarterly Report ("EQR") filing requirements should be extended to apply to market participants that are excluded from FERC jurisdiction under Section 205 of the FPA. Those participants include publicly owned utilities, municipal utilities, public utility districts, rural cooperatives, and federal entities. FERC noted that the contemplated extension of filing requirements would increase consumer protection in transparent wholesale electric markets by broadening FERC's oversight of transactions in those markets. FERC has already evaluated transparency issues in other proceedings, but because those proceedings did not specifically address price transparency in electric markets, FERC is now evaluating whether the quarterly report requirements should be expanded. The FERC also seeks comments on whether it should consider other refinements to existing EQR filing requirements. A detailed summary of the EQR NOI was circulated to the Committee on January 29 with the materials for the February 5 meeting. The Markets Committee considered the EQR NOI at its February 10 meeting and, based on that discussion, NEPOOL did not submit comments. Over 40 parties submitted comments on the NOI by the March 30, 2010 comment date.⁹⁹

- **NOI: Variable Energy Resources (RM10-11)**

Also on January 21, 2010, the FERC issued a NOI seeking comments on whether to reform any of its rules or procedures to integrate the rapidly increasing number of variable energy resources into the nation's power grid in the most efficient and non-discriminatory manner while maintaining power system reliability. The FERC directed that comments focus on the broad issues concerning the integration of variable generation resources and address any effects of variable energy resources on the following seven subject areas: (1) data and reporting requirements, including accurate forecasting tools; (2) scheduling flexibility and incentives for accurate scheduling of variable energy resources; (3) forward market structure and reliability commitments; (4) balancing authority area size and coordination; (5) suitability of reserve products; (6) capacity market reforms; and (7) redispatch and curtailment practices. A detailed summary of the EQR NOI was circulated to the Committee on January 29 with the materials for the February 5 meeting. As indicated in that memo, a single purpose ad hoc committee will be convened for the purpose of determining whether members would like NEPOOL to comment and, if so, what those comments should be. Comments on the NOI were initially due March 29, 2010,¹⁰⁰ but are now due April 12, 2010 following the Notice of Extension issued by FERC in response to motions by BPA and EEI requesting FERC extend the comment period for an additional 14 days. As of the date of this report, over twenty parties have submitted comments. Draft NEPOOL comments will be considered at the April 9 NPC meeting.

- **NOPR – Exempting Non-Controlling Investments in Utilities from MBR Requirements (RM09-16)**

On January 21, 2010, the FERC issued a NOPR proposing to amend its regulations pursuant to section 203 and 205 of the FPA to ensure that certain acquisitions of public utilities by holding companies that do not influence the control of the utility do not trigger certain market-based rate requirements or cross-subsidization restrictions.¹⁰¹ The NOPR would grant blanket authorization for a holding company to acquire 10 percent or more, but less than 20 percent, of a public utility, provided that the holding company files an Affirmation in Support of Exemption from Affiliation Requirements (the "Affirmation"), a new FERC form. The Affirmation would be designed to ensure a holding company

⁹⁹ The NOI was published in the Federal Register on Jan. 29, 2010 (Vol. 75, No. 19) pp. 4805-4809.

¹⁰⁰ The NOI was published in the Federal Register on Jan. 27, 2010 (Vol. 75, No. 17) pp. 4316-4323.

¹⁰¹ Control and Affiliation for Purposes of Market-Based Rate Requirements under Section 205 of the Federal Power Act and the Requirements of Section 203 of the Federal Power Act, 130 FERC ¶ 61,046 (2010).

purchaser will not change or influence the control of the public utility. This proposed process is designed to allow FERC to monitor and sanction entities that violate any statement made in the Affirmation. Fifteen parties submitted comments on the NOPR by the March 29, 2010 comment date.¹⁰²

- **NOPR - Measurement Standards for Demand Response Services (RM05-5)**

On September 17, 2009, the FERC issued a NOPR to incorporate by reference in its regulations NAESB WEQ standards to categorize various demand response products and services and to support the measurement and verification of these products and services in wholesale electric energy markets (NAESB Phase I M&V Standards).¹⁰³ The NOPR explains that the NAESB Phase I M&V Standards are intended to enhance the transparency and consistency of the methods used to measure and verify demand response products in wholesale electricity markets administered by RTOs/ISOs. They include 40 definitions and 31 business practice standards to identify: (i) basic product categories, (i.e., energy service, capacity service, reserve service and regulation service); and (ii) measurement and verification characteristics of demand response products and services offered in ISO/RTO markets (e.g. reduction deadlines, advance notification instructions, telemetry accuracy, and communication protocols). Comments on the NOPR were filed by 21 parties, including comments by the ISO, prior to the October 22, 2009 comment date.¹⁰⁴ Those comments remain pending before the FERC.

- **e-Tariff Filing Procedures (RM01-5)**

On January 21, 2010, the FERC issued an order establishing certain procedures related to the electronic filing of Tariffs that becomes mandatory on April 1, 2010 pursuant to Order No. 714.¹⁰⁵ The order identifies the ways in which electronic tariff filings will affect aspects of FERC procedures, particularly the determination of statutory filings, statutory action dates, and changes in docketing procedures. On March 19, 2010, FERC issued an order establishing a six-month staggered filing schedule and indicating a date over the next six months when each utility must submit its baseline electronic tariff to FERC.¹⁰⁶ Companies have been given an opportunity to submit a proposed date for making their baseline electronic filing, and those companies that did not submit a proposed date will have the full six month period, until September 30, 2010, to submit their baseline filing. The ISO's baseline filing will be made in August 2010. Tariff changes necessary to support e-Tariff's technical requirements will be presented to the NEPOOL committees during April, with intention that the NPC take action on those changes at its May 7 meeting through a combination of Consent and discussion agenda items.

¹⁰² The NOPR was published in the Federal Register on Jan. 28, 2010 (Vol. 75, No. 18) pp. 4498-4509.

¹⁰³ Standards for Business Practices and Communication Protocols for Public Utilities, 128 FERC ¶ 61,263 (2009). When NAESB adopts a business practice standard as a "Final Action", the standard is considered complete from NAESB's perspective, but, compliance with such a standard is not mandatory until such time as the FERC takes formal action to incorporate such a standard by reference into its regulations. NAESB's Phase I M&V Standards were adopted in the WEQ's 2009 Annual Plan 5(a) Final Action.

¹⁰⁴ The NOPR was published in the Federal Register on Sep. 22, 2009 (Vol. 74, No. 182) pp. 48,173-48,177.

¹⁰⁵ Standards for Business Practices and Communication Protocols for Public Utilities, Order No. 676-E, 129 FERC ¶ 61,162 (2009).

¹⁰⁶ Electronic Tariff Filings, 130 FERC ¶ 61,228 (2010).

XIII. State Proceedings & Federal Legislative Proceedings

- **Congressional Developments - CFTC/FERC Jurisdiction Issues**

As previously reported, the Participants Committee unanimously adopted and supported a *Statement of New England Power Pool in Support of FERC Jurisdiction* at its December 22 special teleconference meeting. In response to the US House of Representatives Committee on Agriculture request for information concerning FTRs, the ISO submitted its response on December 14, 2009. A copy of the ISO's response is posted at <http://www.iso-ne.com/pubs/pubcomm/corr/2009/index.html>. A broad coalition of electric and gas industry associations,¹⁰⁷ asserting they represent all the major segments of the electric power and natural gas industries serving every consumer in the United States, issued a letter on January 21 addressed to US Senators outlining their recommendations to address oversight and transparency of over-the-counter ("OTC") derivatives markets.

In developments since the last report, on March 9, 2010, the Senate Committee on Energy and Natural Resources heard testimony from: Gary Gensler, CFTC Chairman; Joseph Kelliher, former FERC Chairman and Executive Vice President, Federal Regulatory Affairs, FPL Group, on behalf of EEI and EPSA; Garry Brown, NY PSC Chairman; on behalf of NARUC; Vince Duane, PJM General Counsel; and Michael Henderson, Vice President and CFO of the Arkansas Electric Cooperative Corporation. Copies of that testimony can be forwarded upon request. If there are questions on this matter, please contact Flossie Davis (860-275-0360; fkdavis@daypitney.com) or Dave Doot (860-275-0102; dttdoot@daypitney.com).

- **MPUC Inquiry Into Continued Reform of ISO-NE (MPUC 2009-269)**

As previously reported, the MPUC has initiated an inquiry to pursue, with the input and assistance of the Maine stakeholders, the ISO-NE reforms identified in its January 16, 2009 (Phase I) and June 30, 2009 (Phase II) Orders in its Investigation of Maine Utilities Continued Participation in ISO-NE proceeding, MPUC Docket No. 2008-156. In that proceeding, the MPUC's Phase II Order concluded that the Maine TOs should not then withdraw from ISO-NE. Rather, the Maine TOs were directed (i) to allow the August 1, 2009 withdrawal deadline to pass, which would automatically renew the TOA for at least two years effective February 1, 2010, and (ii) to negotiate further ISO-NE reforms. An initial collaborative session was held September 15, 2009 and discussions concerning how future reform efforts should be pursued are on-going. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **MPUC Review of CMP Petition for MPRP CPCN (MPUC 2008-255)**

Hearings on CMP's petition for a CPCN to build the Maine Power Reliability Project ("MPRP"), consisting of transmission lines and related infrastructure, at an estimated costs of \$1.35 billion, most of which will be designated as PTF, are underway. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

¹⁰⁷ The Associations were: America's Natural Gas Alliance, American Exploration and Production Council, American Gas Association ("AGA"), American Public Power Association ("APPA"), American Public Gas Association, American Wind Energy Association ("AWEA"), Edison Electric Institute ("EEI"), Electric Power Supply Association ("EPSA"), Independent Petroleum Association of America, Interstate Natural Gas Association of America, Large Public Power Council, Natural Gas Supply Association, National Rural Electric Cooperative Association, and US Oil & Gas Association.

XIV. Federal Court Appeals (from various FERC Dockets)

The following are petitions for review of FERC decisions in NEPOOL-related proceedings that are currently pending before the United States Court of Appeals for the District of Columbia Circuit (unless otherwise noted). An “*” in the Case No. column 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 appeals, contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

US Court of Appeals for the DC Circuit

Case No.	Filed	Appellant(s)	FERC Proceeding	FERC Decision(s) Appealed	Status/Comments
06-1403* 06-1427 07-1193	12/12/06 12/28/06 6/8/07	MPUC CT AG, MA AG MPUC	ER03-563- 030 -055 (FCM Settlement) ER06-1465 (FCM Transition Rules)	119 FERC ¶ 61,044 (Apr. 13 2007) 117 FERC ¶ 61,133 (Oct 31, 2006) 115 FERC ¶ 61,340 (Jun 16, 2006) 111 FERC ¶ 63,063 (Jun 15, 2005)	In a Jan 13, 2010 8-1 decision, the Supreme Court found that the public interest standard of review (<i>Mobile-Sierra</i>) applies to challenges brought both by contracting and non-contracting parties, reversing the DC Circuit Court of Appeals’ prior decision on this issue. In addition, the Supreme Court remanded back to the DC Circuit for its further consideration the open questions of whether the rates at issue in the FCM proceedings qualify as “contract rates” for purposes of a Mobile Sierra review, and if not, whether the FERC had the discretion to treat them analogously. In light of the Supreme Court’s opinion, the DC Circuit Court on Mar 1 ordered parties to file supplemental briefs by Mar 30, 2010. Supplemental briefs by parties were filed on Mar 30, 2010.
08-1199	5/23/08	Public Parties	ER04-157-004 ER04-157-006 (RTO ROE Proceeding)	117 FERC ¶ 61,129 (Oct 31, 2006) 122 FERC ¶ 61,265 (Mar 24, 2008)	On January 29, 2010, the DC Circuit denied Public Parties’ petition for review (2010 U.S. App. LEXIS 1977). On March 15, the Public Parties’ filed a petition for Panel Rehearing or Rehearing En Banc, arguing that the panel’s opinion departed from Supreme Court and DC Circuit precedent and raised “an exceptionally important question” – “rate incentives should reward the desired behavior and results, not merely to provide an economic

Case No.	Filed	Appellant(s)	FERC Proceeding	FERC Decision(s) Appealed	Status/Comments
					windfall for investors”
09-1039	1/28/09	CT DPUC, CT AG	ER07-653-000; -001 (ROE Incentives for UI Bethel-Norwalk Upgrade Costs)	119 FERC ¶ 61,182 (May 22, 2007) 126 FERC ¶ 61,043 (Jan 16, 2009)	<p>Consolidated with Case No. 09-1040 (ROE Incentives for NU M-N Project). In 09-1039, the CT DPUC and CT AG have challenged the FERC rulings granting UI’s proposed 100 percent CWIP incentive for costs associated with construction of the Bethel-Norwalk 345-kV transmission line and upgrades to the existing 115-kV line from Middletown to Norwalk, CT and UI’s proposed 50 basis point ROE adder for advanced technologies. In 09-1040, the CT Parties have challenged the FERC rulings granting NU’s request for a limited waiver of the Dec 31, 2008 termination date for the 100 basis point ROE incentive, and conditionally granting the 50 basis point advanced transmission technology incentive.</p> <p>Following consideration of the Mar 4 motions to govern further proceedings in the case, cases to remain held in abeyance pending further order of the court. The parties were directed to file new motions to govern future proceedings within 30 days of the court’s disposition of Case No. 08-1199 above.</p>
09-1040	1/28/09	CT DPUC, CT AG, CT OCC	ER08-966-000; -001 (ROE Incentives for NU M-N Project)	124 FERC ¶ 61,044 (Jul 17, 2008) 126 FERC ¶ 61,052 (Jan 16, 2009)	
09-1220	8/12/09	CT AG, CT OCC	ER09-197-000; -001 (ISO 2009 Revenue Requirement)	125 FERC ¶ 61,392 (Dec 31, 2008) 127 FERC ¶ 61,254 (Jun 18, 2009)	A briefing schedule has been set. Petitioners’ Brief was filed on Dec 11, 2009. Respondent’s Brief was filed on Feb 12, 2010. On Feb 25, both NEPOOL and the ISO (intervenor) filed letters adopting the arguments in Respondent’s Brief and stated they would not be filing separate briefs. Petitioners’ reply brief was filed on Mar 11 and final briefs were filed on Apr 1. Oral argument in the case is scheduled for May 7, 2010.
09-1231	8/31/09	MPS	EL08-48-000; -001; -002 (SEMA – Cost Allocation)	128 FERC ¶ 61,008 (Jul 2, 2009)	As previously reported, this case is being held in abeyance pending completion of related FERC proceedings (see EL08-48 above).

Case No.	Filed	Appellant(s)	FERC Proceeding	FERC Decision(s) Appealed	Status/Comments
09-1320	12/22/09	Brookfield Energy Marketing Inc	EL09-48-001 (ICAP Import Contract Complaints)	128 FERC ¶ 61,182 (Aug 24, 2009) 129 FERC ¶ 61,057 (Oct 23, 2009)	Brookfield filed its initial brief on Feb 12, 2010. On Feb 25, the FERC filed a motion to dismiss, arguing the petition was seeking review of non-final FERC orders and therefore not ripe for appellate review. Also on Feb 25, 2010, the FERC filed a motion to suspend the deadline for its filing, pending a decision on its motion to dismiss. On Mar 8, 2010, the CT DPUC filed a response in support of FERC's motion to dismiss; On Mar 11, Brookfield filed a response to FERC's motion to dismiss. On Mar 12, the Court granted FERC's motion to suspend the deadline for its filing, pending a decision on its motion to dismiss. On Mar 18, FERC filed a reply to Brookfield's Mar 11 filing.

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