

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of August 4, 2010

The following activity, as more fully described in the attached litigation report, has occurred since the report dated June 1, 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)	Jul 9	FERC grants PSEG Complaint, directing the ISO use the historical capacity levels for the BH Units for FCA4
1	ICAP Import Contract Complaints - CT DPUC/OCC (EL09-48); CT AG (EL09-47) (consolidated)	Jun 9 Jun 10 Jun 17 Jul 7 Aug 3	Parties jointly file transcript corrections Trial ALJ Judge H. Peter Young adopts transcript corrections and closes evidentiary record CT Representatives, FERC Enforcement Staff, Brookfield, Constellation, and Shell file Initial Briefs CT Representatives, FERC Enforcement Staff, Brookfield, and Constellation file Reply Briefs Chief Judge extends deadline for issuance of initial decision to Sep 30

II. Rate/ROE Filings

4	2013/2014 Power Year ICRs, HQICCs and Related Values (ER10-1182)	Jun 25	FERC accepts 2013/2014 values
4	ICR-Related Values for 2010/2011 Final ARA and Jump Ball Market Rule Changes (ER10-438)	Jun 7	FERC accepts Mar 11 compliance filing
* 4	2010/2011 Power Year Transmission Rate Filing (ER09-1532)	Jul 30	PTO AC submits informational filing identifying adjustments to regional transmission service charges for the Jun 1, 2010 to May 31, 2011 period
* 4	CMP Inclusion of MPRP CWIP in RNS Rate; Conforming Changes to Schedule 21-CMP (ER09-938)	Jun 30	CMP submits 2010 informational filing

III. Market Rule Changes, Interpretations And Waiver Requests

* 7	FRM Credit Calculation (ER10-1690)	Jul 1 Jul 22	ISO and NEPOOL jointly file changes to credit formula used to calculate payments in the FRM Constellation intervenes; CT Reserve Providers file supporting comments; RESA files a protest
* 7	Load Reconstitution (ER10-1653)	Jun 30 Jul 20-21	ISO and NEPOOL jointly file to extend practice of not reconstituting load resulting from DR activation Constellation, Hess, and NU intervene; MA DPU and MPUC file supporting comments; RESA files protest
* 8	Recalculation Exemption for PER Adjustment and Seasonal Peak Hour Values Due to Meter Data Error RBA (ER10-1535)	Jun 23 Jul 14	ISO and NEPOOL jointly file changes Constellation and NU intervene
8	eTariff Preparation Filing (ER10-1384)	Jul 13	FERC accepts ministerial changes to ISO Tariff
8	Omnibus 6 and ICR Rule Changes (ER10-1352)	Jun 17 Jul 28	Constellation, Dynegy, Exelon, NRG, NU, UI intervene FERC accepts Omnibus 6 and ICR Rule Changes

9	VELCO request for waiver of Market Rule 1 § 1.8.3.7 (ER10-1347)	Jun 15 Jun 17 Jun 18 Jul 26	ISO opposes VELCO request NEPOOL intervenes VELCO answer ISO opposition FERC denies waiver
9	Change to Designation of Sheet 7013 (ER10-1306)	Jun 22	FERC accepts change
9	Suspension of Secondary FTR Market (ER10-1190)	Jun 11	FERC accepts suspension of secondary FTR Market
9	FCA4 Qualification Informational Filing (ER10-1185)	Jun 3 Jun 4 Jul 15	NEPOOL answers Dominion protest ISO answers Dominion protest FERC accepts filing
10	Market Monitoring Reference Updates (ER10-1183)	Jun 25	FERC accepts updates
10	Application of Overlapping Interconnection Impacts Analysis to DR (ER10-882)	Jun 14	ISO responds to questions in May 14 deficiency letter
10	FCM Re-Design: Revisions to MR1 §§ 12 and 13 (ER10-787; EL10-57; EL10-50)	Jun 2 Jun 14 Jun 30 Jul 1	FERC issues tolling order on requests for rehearing of Apr 23 order ISO, NEPOOL, EMCOS, Joint Filing Supporters file answers to NEPGA's May 28 motion for disclosure of OOM information FERC accepts tariff sheet consolidating previously accepted changes ISO, NEPOOL, Boston Gen, CMMEC, ConEd, HQ, Joint Complainants, Joint Filing Supporters, MA DPU, MA Consumer-Owned Systems, MPUC, NEPGA, NGrid, and Potomac Economics file first briefs
12	De-List Bids for Stations with Common Costs (ER10-750)	Aug 2	FERC accepts joint compliance filing
12	Order 719 And 719-A Compliance Filings (ER10-588; ER09-1051)	Jul 23 Jul 27 Aug 2	FERC accepts ARD/DARD compliance filing ISO and NEPOOL jointly submit changes removing host utility exceptions; comment date Aug 17 FERC denies CT Representatives' request for rehearing of Jan 21 order

IV. OATT Amendments / TOAs / Coordination Agreements

* 14	OATT Attachment E (Local Networks) ER10-1445	Jun 15	TOs file changes to Attachment E to reflect results of corporate restructurings
15	Schedule 2 (VAR Support) Amendments - Transition Period Double Recovery Issue (ER07-397)	Jun 2 Jun 17	MPUC, NHPUC, VPSB, and MA AG file joint protest to May 12 compliance filing ISO and NEPOOL file a joint answer to Jun 2 protest

V. Financial Assurance/Billing Policy Amendments

15	Unsecured Credit Filing (ER10-942)	Jul 15 Aug 4	FERC largely accepts, but rejects in part, the changes jointly filed on Mar 26 ISO requests an extension of time to Sep 24, 2010 to submit revised tariff sheets in response to Jul 15 order; comment date Aug 9
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VI. Schedule 20/21/22 Changes

16	Schedule 21-BHE eTariff Clean-up & Preparation (ER10-1371)	Jun 22 Jul 29	MPUC files notice of intervention FERC accepts changes, but requires corrections to tariff sheet designations to be filed within 15 days
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17	Schedule 21-CMP KLPD LNS Agreement (ER10-199)	Jun 11	CMP and KPLD submit revised service agreement reflecting a revised designation pursuant to Order 614
		Jun 30	FERC approves settlement agreement
17	Schedule 21-NSTAR Annual Informational Filing (ER09-1243)	Jun 1	NSTAR submits annual informational filing containing billings true-up for Jan 1, 2009 through Dec 31, 2009 period
		Jun 29	NSTAR files "CWIP Settlement"
17	Schedule 21-BHE Change to Forward Looking Formula Rate (ER09-934)	Jun 15	BHE files updated rates that became effective on Jun 1, 2010

VII. RMR Agreements

17	All Remaining RMR Agreements	Jun 1	Terminated contractually with the Jun 1, 2010 commencement of the First Capacity Commitment Period
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VIII. Regional Reports

17	ISO's 2010 Q1 Capital Projects Report (ER10-1248)	Jun 4	NU intervenes; NEPOOL submits comments
		Jun 11	FERC accepts Capital Projects Report
18	Quarterly Reports Regarding Non-Generating Resource Regulation Market Participation (ER08-54)	Jun 18	ISO files its seventh quarterly report
		Jul 27	Beacon Power files comments
18	Quarterly Status Reports on LFTR Implementation (ER07-476; RM06-08)	Jul 15	ISO files its seventh quarterly status report
* 18	Load Response Status Reports (ER03-345)	Jun 30	ISO files 15th status report

IX. Membership Filings

* 19	August 2010 Membership filing (ER10-2084)	Jul 29	New Members (effective Aug 1, 2010): Choice Energy (Supplier Sector); Galt Power (Provisional Member, AR Sector); Hannaford Bros. and Hannaford Energy (End User Sector); Laidlaw Berlin Biopower (Provisional Member, AR Sector); and South Jersey Energy Solutions (Supplier Sector); comment date Aug 20
* 19	July 2010 Membership filing (ER10-1650)	Jun 30	New Members (effective Jul 1, 2010): Centre Lane Trading (Supplier Sector) and Covanta Projects of Wallingford (AR Sector); Termination (effective Jun 1, 2010): v2g NE
19	June 2010 Membership Filing (ER10-1364)	Jun 24	FERC accepts the membership of the following, each effective Jun 1, 2010: Ameresco DR; BlueStar Energy Services; Dynegy Marketing & Trade; Mercuria Energy America; NH Transmission; Verso Maine Energy; Acushnet Co.; Cambridge Energy Alliance; MA DCAM; Energy Curtailment Specialists; North Amer. Power Partners; UMass Amherst; URI; and Univ. Sys. of NH

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

19	Proposed Clarification to CIP Standards (RD10-11; RD10-12; RD10-13; RM06-22)	Jul 15	FERC approves CIP-006-2
20	Reliability Standard on Transmission Relay Loadability (RD10-10; RM08-13)	Jul 16	NERC files action plan and timetable for implementing Mar 18 order, and requests extension of one-year compliance timeframe

22	Revised Reliability Standards - PER-004-2 and PER-005-1 (RM09-25)	Jun 17	FERC issues NOPR regarding NERC-proposed 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; comment date Aug 23
23	Order 729-A - Revised MOD Reliability Standards (RM09-5; RM08-19; RM06-16)	Jun 4 Jul 6 Jul 15	Parties file requests for clarification/rehearing of Order 729-A FERC issues tolling order to consider clarification/rehearing requests FERC grants requests for clarification/rehearing of Order 729-A
24	Order 717-C – Standards of Conduct for Transmission Providers (RM07-1)	Jun 15	FERC issues tolling order on TAPS request for clarification and rehearing of Order 717-C
24	Mandatory Bulk-Power System Reliability Standards (RM06-16)	Jun 11 Jul 21	FERC denies rehearing of Mar 18 order regarding TPL-002-0 and open-ended stay of compliance; FERC extends compliance regarding TPL-002-0 until Mar 31, 2011 Party files comments
* 26	Revised Reliability Standard Processes Manual (RR10-12)	Jun 10 Jul 12	NERC requests FERC approval to replace in its entirety the Reliability Standards Development Procedure with the Standard Processes Manual Parties file comments
* 26	Revised Regional Entity Delegation Agreements (RR10-11)	Jun 9 Jun 17 Jul 9 Jul 26	NERC files revised delegation agreements with its 8 regional entities; comment date Jul 9 NERC submits supplemental filing; comment date Jul 9 Parties, including ISO-NE, file comments NERC files answer to parties' comments
26	NERC Compliance and Certification Committee – Revised Rules of Procedure (RR10-8)	Jun 10	FERC approves NERC's request for several amendments to NERC's Rules of Procedure to reflect changes to the CCC program
27	2010 NERC/NPCC Business Plans and Budgets (RR09-9)	Jun 10	FERC accepts NERC's May 3 compliance filing evaluating Regional Entity resources
28	Modification of ERO Rules of Procedure (RR09-6)	Jun 15	FERC extends the initial NERC compliance period following the Mar 18 order from 90 day to 180 days
29	Reliability Standard Violation Severity Levels (RR08-4)	Jul 6	FERC grants NERC an extension of time through Dec 1 to submit VSL assignments files information supplementing the March 5 VSL compliance filing

XI. Misc. - of Regional Interest			
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* 29	203 Application - Milford Power Company (EC10-74)	Jun 4 Jul 12	Milford Power requests authorization for an indirect change in ownership due to the acquisition of equity interests in Merrill Lynch Credit Products acquiring equity interests in Milford Holdings FERC authorizes Milford Power's requested change in ownership
29	203 Application - Mirant/Reliant (EC10-70)	Jun 17 Jun 21 Aug 2	PJM and AMP intervene; First Energy submits comments Applicants respond to First Energy comments FERC authorizes proposed transaction
29	203 Application – BHE/Maine & Maritimes (EC10-67)	Jun 16 - Jun 28	BHE Holdings, MAM, NMISA and Northern Maine Customer Group file answers and responses to answers regarding the NMISA and Northern Maine Customer Group protests
30	UI Declaratory Order – Sales to Elm Electric Coop (EL10-67)	Jun 9-11 Jun 28	CT DPUC, CT OCC, Elm Electric Coop, NU intervene and comment UI responds to comments

30	Central Transmission –v– PJM: Merchant Transmission Cost Recovery (EL10-52)	Jun 17	FERC clarifies that PJM has the existing right to designate Central to construct and own a transmission project under the PJM OATT and Operating Procedures
		Jul 19	PSEG Companies file request for rehearing
* 31	ISO Request for Limited Waivers of NAESB WEQ Standards (ER10-1749)	Jul 9, 20	ISO requests limited waiver of specific WEQ Version 002.1 standards; comment date Aug 10, 2010
* 31	SGIA – CL&P/Covanta (ER10-1654)	Jun 30	NU files non-conforming agreement with Covanta Projects of Wallingford (IA-NU-16)
		Aug 2	FERC accepts the non-conforming SGIA
31	LGIA – PSNH/Merrimack (ER10-1266)	Jul 1	FERC accepts the non-conforming LGIA filed by ISO and NU (for PSNH)
32	Amendment to External Market Monitor Contract (ER10-1250)	Jun 4	NEPOOL intervenes
		Jul 13	FERC accepts Amendment No. 1
32	Champlain Hudson HVDC Transmission Project (ER10-1175)	Jul 1	FERC authorizes CHPE to charge negotiated rates for sale of transmission rights on proposed HVDC transmission project
32	FERC Penalty Guidelines (PL10-4)	Jun 14	Over 40 parties file comments
33	PSNH Application to Terminate Mandatory Purchase Obligation from QFs > 5MW (QM10-4)	Jun 11	FERC issues tolling order affording it additional time to consider PSNH's request for clarification of Apr 15 order
33	Integrays Complaint - NBP Generation Market Power in NMISA (EL09-32)	Jul 30	Integrays asks the FERC to "expeditiously revoke[e] NBP Generation's market-based rate authority"
34	NYISO Report on Regional Markets; Long-Term Solutions to Lake Erie Loop Flow (ER08-1281)	Jul 15	FERC conditionally accepts NYISO Report subject to NYISO and certain other parties providing additional requested information

XII. Misc. - Administrative & Rulemaking Proceedings

* 35	Technical Conference – Mandatory Reliability Standards for the Bulk-Power System (AD10-14)	Jun 15	FERC schedules mandatory reliability standards for bulk-power system technical conference for Jul 6
		Jun 18	FERC releases agenda for technical conference: Panel 1 – current state of standards development; Panel 2 – views on development process; Jul 26 comment date following conference
		Jul 7	Speaker materials posted on FERC website
		Jul 7	Technical conference Final Agenda posted on FERC website
		Jul 23-26	Parties file comments on issues discussed at technical conference
35	Increasing Market and Planning Efficiency Through Improved Software (AD10-12)	Jun 2-3	FERC holds technical conf. on enhanced day-ahead unit-commitment market models
		Jun 10	FERC establishes agenda and procedures for Jun 23-24 technical conf.
		Jun 23	FERC issues final agenda for Jun 23-24 technical conf.
		Jun 30	Speaker materials posted on FERC website
		Jul 27	Sept 10 comment date for technical conf.
36	Frequency Regulation Compensation in RTO/ISO Markets (AD10-11)	Jun 16	Eleven parties, including ISO-NE, submit comments
36	RTO/ISO Performance Metrics (AD10-5)	Jun 15	APPA submits supplemental comments
37	Technical Conference Reviewing Submitted OFA Costs (AD10-1)	Jun 8 - Jun 23	Department of the Interior responds to parties' comments

* 39	NOPR – Transmission Planning and Cost Allocation (RM10-23)	Jun 17	FERC issues a NOPR proposing to amend the transmission planning and cost allocation requirements established in Order No. 890 to ensure that FERC-jurisdictional services are provided on a basis that is just, reasonable, and not unduly discriminatory or preferential; comment date Aug 30
		Jul 1-22	Parties intervene
39	NOPR – Promoting a Competitive Market for Capacity Reassignments (RM10-22)	Jul 6-12	Parties file comments
40	NOPR – Demand Response Compensation in Organized Wholesale Energy Markets (RM10-17)	Jun 18 - Jun 29 Aug 2	Five parties file reply comments FERC issues supplemental NOPR and Notice of Technical Conference
40	NOPR - Credit Reform (RM10-13)	Jun 7 - Jun 11	Fifteen parties, including NEPOOL, file comments regarding counterparty proposal following FERC technical conference

XIII. State Proceedings & Federal Legislative Proceedings

42	MPUC Review of CMP Petition for MPRP CPCN (MPUC 2008-255)	Jun 10 Jun 11 Jul 30 Aug 4	MPUC approves stipulation to resolve proceeding and issues MPRP CPCN, with limited exceptions CMP files Supplemental Case Management memorandum regarding the Lewiston Loop Hearing examiner issues procedural schedule concerning Lewiston Loop MPUC accepts Examiner’s Recommended Modifications of the Jun 10, 2010 Order and provisions governing the selection of an ombudsman, subject to certain conditions identified in the order
42	Congressional Developments - CFTC/FERC Jurisdiction Issues	Jun 10 Jun 30 Jul 15 Jul 21	House-Senate conference committee convenes House approves conference report Senate approves conference report President Obama signs Dodd-Frank Act into law

XIV. Federal Court Appeals

44	ISO 2010 Revenue Requirement (10-1104)	Jun 23	DC Circuit grants FERC’s motion requesting the case be held in abeyance pending disposition of 09-1220 (which, as noted below, occurred on Jul 16) and directs parties to file motions to govern future proceedings in the case within 30 days of that disposition
44	FCA1 (10-1103)	Jun 28 July 15	FERC files amended unopposed motion for sixty-day briefing period DC Circuit orders intervenors to show cause by August 20 why they should not be limited to a single joint brief (and reply brief) on the side of the party they support
45	ICAP Import Contract Complaints (09-1320)	Jun 21	DC Circuit grants FERC’s motion to dismiss this case for lack of jurisdiction
44	ISO 2009 Revenue Requirement (09-1220)	Jul 16	DC Circuit denies CT AG/CT OCC petition for review

MEMORANDUM

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: August 5, 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 August 4, 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 July 9, the FERC granted a complaint by PSEG Power Connecticut (“PSEG”) challenging the Capacity Network Resource Capability (“CNRC”) ratings limitation applied by the ISO to Bridgeport Harbor Unit Nos. 3 and 4 (the “BH Units”).² As set out more fully in the Complaint, PSEG asserted 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 asserted that the ISO’s interpretation had imposed financial hardship and harm. In granting the Complaint, the FERC concluded that PSEG’s megawatt output under section 5.2.3 of the LGIP must be determined by reliance on the historical capacity levels of the BH Units. Accordingly, it directed the ISO to use the BH Units’ historical capacity levels for FCA4. The FERC also “encourage[d] parties to make every effort to resolve disputes within [the stakeholder] processes prior to filing a complaint with the Commission.”³ Unless the BH Units’ Order is challenged, with any challenges due on or before August 9, this proceeding will be concluded. 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)**

As previously reported, the hearings contemplated by the August 24, 2009 Capacity Imports Hearings Order⁴ were held and concluded. Summaries of the hearings were separately circulated by

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”).

² PSEG Power Connecticut LLC v. ISO New England Inc., 132 FERC ¶ 61,022 (2010) (“BH Units Order”).

³ Id. at P 41.

⁴ 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 Energy Marketing Inc., H.Q. Energy Services (U.S.) Inc., Constellation Energy Commodities Group, Inc., and Other

NEPOOL counsel to Participants Committee members and alternates (May 24 and June 1). Since the last report, hearing transcripts were corrected and the evidentiary record closed. Initial Briefs were filed by the Connecticut Representatives, FERC Enforcement Staff, Brookfield, Constellation, and Shell. A summary of those briefs was circulated to Participants Committee members and alternates on June 21. Reply Briefs were filed on July 7 by the Connecticut Representatives, FERC Enforcement Staff, Brookfield, and Constellation and summarized in materials circulated to Participants Committee members and alternates on July 13. An Initial Decision is now expected on or before September 30, 2010.

By way of background, the Connecticut Attorney General (“CT AG”) (EL09-47) and the Connecticut Department of Public Utility Control (“CT DPUC”) and the Connecticut Office of Consumer Counsel (“OCC”, and together with the CT AG and CT DPUC the “Connecticut Representatives”) (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 307.⁵ On October 23, the FERC granted in part and denied in part Constellation and Brookfield requests,⁶ 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).⁷

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; dtdoot@daypitney.com).

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

Rehearing of the FERC’s September 25, 2008 order⁸ 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

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).

⁵ *Id.* at PP 53-55.

⁶ Richard Blumenthal et al., 129 FERC ¶ 61,057 (2009) (“Capacity Imports Re-Hearing Order”).

⁷ *Id.* at P 22.

⁸ NECPUC v. Bangor Hydro-Electric Co., et al., 124 FERC ¶ 61,291(2008) (“NECPUC ROE Order”), *reh’g requested*.

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.*⁹ 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 Order¹⁰ that were filed on August 18, 2008 by MPS, and NSTAR and NGrid.¹¹ The MPS¹² 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,¹³ 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.¹⁴ 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 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).

⁹ NECPUC was joined in its request for rehearing by the VT DPS, VT PSB, MA DPU, RI AG, RI DPU, and the MA AG.

¹⁰ 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).

¹¹ Braintree Municipal Light Dep't et al. v. ISO New England Inc., 128 FERC ¶ 61,008 (2009) ("MPS LSCPR Rehearing Order").

¹² "MPS" are, collectively, Braintree, Hingham, Hull, Mansfield, Middleborough, and Taunton.

¹³ Braintree Municipal Light Dep't et al. v. ISO New England Inc., 129 FERC ¶ 61,077 (2009) ("LSCPR Compliance Order").

¹⁴ Id. at PP 47-54.

II. Rate/ROE Filings

- **ICRs, HQICCs and Related Values - 2013/2014 Power Year (ER10-1182)**

On June 25, the FERC accepted the ICRs, Hydro Quebec Interconnection Capability Credits (“HQICCs”) and related values (Local Sourcing Requirements, Maximum Capacity Limit) for the 2013/2014 Capability Year filed by the ISO. The values will be used in FCA5 to be held in August 2010. The June 25 order was not challenged as is final. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@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), subject to a compliance filing, after evaluating alternative ISO and NEPOOL proposals pursuant to the “jump ball” provisions of Participants Agreement.¹⁵ The 2010 ARA3 ICR and Jump Ball Order was not challenged and is final. On June 7, the FERC accepted the compliance filing that was jointly filed by the ISO and NEPOOL on March 11, 2010. The compliance filing amended Market Rule 1 Section 12.9 to reflect the ISO’s commitment to hold a stakeholder process during the year 2010 to address outstanding issues pertaining to the calculation of tie benefits for the third annual reconfiguration auction for the 2012/2013 Capacity Commitment Period. The June 7 order was not challenged, is final, and this proceeding has been concluded. 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; dtdoot@daypitney.com).

- **2010/2011 Power Year Transmission Rate Filing (ER09-1532)**

On July 30, 2010, the Participating Transmission Owners (“PTOs”) Administrative Committee (“PTO AC”) submitted a filing identifying adjustments to regional transmission service charges under Section II of the ISO Tariff for the period June 1, 2010 through May 31, 2011. The filing reflected the charges to be assessed under annual transmission formula rates, reflecting actual 2009 cost data, Forecasted Annual Transmission Revenue Requirements associated with projected PTF additions for the 2009 Forecast Period, and the Annual True-up including associated interest. The PTO AC states that the annual updates results in a Pool “postage stamp” RNS Rate of \$64.83 /kW-year effective June 1, 2010, an increase of \$4.88 /kW-year from the charges that went into effect on June 1, 2009. In addition, the annual update to the Schedule 1 formula rate results in a charge of \$1.65 kW-year, a \$0.13/kW-year increase over the Schedule 1 charge that last went into effect on June 1, 2009. This filing will not be noticed for public comment, though comments may be submitted nevertheless. If there are questions on this proceeding, please contact Eric Runge(617-345-4735; ekrunge@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 Tariff¹⁶ that implement certain incentive rate treatment for MPRP authorized by the FERC¹⁷ (See “ROE Incentives for

¹⁵ ISO New England Inc. and New England Power Pool, 130 FERC ¶ 61,105 (2010) (“2010 ARA3 ICR and Jump Ball Order”).

¹⁶ Central Maine Power Co., 128 FERC ¶ 61,143 (2009) (“CMP Revenue Requirement Order”), *reh’g requested*.

¹⁷ Central Maine Power Co., 125 FERC ¶ 61,079 (2008) (“MPRP ROE Order”), *reh’g requested*.

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, 2009, the PTO AC, NEPOOL, NHEC and MMWEC, and the New England Consumer-Owned Systems (“NECOS”)¹⁸ 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 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.

2010 Informational Filing. In a new matter since the last report, CMP filed on June 30 its annual informational filing, reflecting actual cost data for calendar year 2009 plus estimated cost data for calendar year 2010 associated with CMP’s forecasted transmission plant additions and MPRP construction work in progress, that will serve to update the formula rates in Schedule 21-CMP. This filing was not noticed for public comment.

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,¹⁹ 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,²⁰ finding that they had been overtaken by subsequent events (the FERC noted that the MPC Project, as described in the

¹⁸ “NECOS” are Belmont, Braintree, Concord, Groton, Hingham, Littleton (MA), Middleborough, Pascoag, Reading, Taunton, Templeton, and Wellesley.

¹⁹ Central Maine Power Co. and Maine Public Service Co., 129 FERC ¶ 61,153 (2009) (“MPC Rehearing Order”).

²⁰ 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*.

petition for declaratory order,²¹ 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,²² 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").²³ The ROE incentive will be bounded by the upper end of the zone of reasonableness established in Opinion 489 (13.5%), and is contingent upon the MPRP being approved as a Reliability Transmission Upgrade in the RSP. Public Parties²⁴ 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,²⁵ with one modification, the joint request by NU²⁶ and NGrid for specific rate incentives for their \$2.1 billion New England East-West Solution project ("NEEWS") and accepted the

²¹ 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.

²² Central Maine Power Co., 125 FERC ¶ 61,079 (2008) ("MPRP ROE Order"), *reh'g requested*.

²³ 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.

²⁴ "Public Parties" are: CT DPUC, CT OCC, MA AG, MA DPU, MMWEC, MPUC, Maine Public Advocate, and NECPUC.

²⁵ Northeast Utilities Service Co. and National Grid USA, 125 FERC ¶ 61,183 (2008) ("NEEWS ROE Order"), *reh'g requested*.

²⁶ 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").

associated proposed tariff amendments, effective November 18, 2008. The NEEWS ROE Order was challenged on December 17, 2008 by the Massachusetts Municipals²⁷ and jointly by a number of Public Parties²⁸ 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).

- **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 order²⁹ in this 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

- **FRM Credit Calculation (ER10-1690)**

On July 1, 2010, the ISO and NEPOOL jointly filed changes to credit formula used to calculate payments in the Forward Reserve Market ("FRM"). Specifically, the change applies to the Forward Reserve Credit Calculation for a Reserve Zone only if the ISO denies, for reliability reasons, the option for resources to prorate the MWs that are subject to Capacity Supply Obligations in the Forward Capacity Market ("FCM") for the Capacity Zone containing that Reserve Zone. In those narrow circumstances, the Forward Reserve Credit calculation will with the change net the Capacity Clearing Price adjusted as described in Section ill.13.2.7.3(b) of the FCM Rules, rather than the Capacity Clearing Price. On July 22, Constellation intervened, CT Reserve Providers³⁰ filed supporting comments, and the Retail Energy Supply Association ("RESA")³¹ filed a protest. This matter is currently pending before the FERC. If you have any questions concerning this matter, please contact Emile Buzaid (860-275-0282; ebuzaid@daypitney.com).

- **Load Reconstitution (ER10-1653)**

On June 30, 2010, the ISO and NEPOOL jointly filed changes to extend the current practice of not reconstituting the load reductions resulting from the activation of Demand Resources. Specifically, the revisions provide that load will not be reconstituted in the first five FCA delivery periods for the purpose of determining the Capacity Requirement for the load associated with the Demand Resource. The changes were supported by a 71.32% vote at the June 4 Participants Committee meeting with the following understanding:

²⁷ "Massachusetts Municipals" are MMWEC, Chicopee, and South Hadley.

²⁸ In this proceeding, "Public Parties" are NECPUC, CT DPUC, CT OCC, MA DPU, MA AG, MPUC, NHPUC, RI AG, and RI DPUC.

²⁹ 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).

³⁰ "CT Reserve Providers" are the PSEG, NRG, and PPL companies.

³¹ RESA's members include: ConEd Solutions, Constellation, Direct Energy, Energy Plus Holdings, Exelon, GDF SUEZ, Gexa, Green Mountain Energy, Hess, Integrys, Just Energy, Liberty Power, PPL, and Sempra.

The Committee agrees with ISO-NE to defer until September 2011 efforts to implement voluntarily a load reconstitution methodology for Demand Resources with the understanding and agreement that ISO-NE will file a recommendation to institute or not to institute a load reconstitution methodology with the FERC pursuant to Section 205 of the Federal Power Act on or before February 1, 2012 to become effective for the Sixth Forward Capacity Auction on April 2, 2012, and the further understanding that this agreement does not restrict an earlier filing by ISONE and/or an earlier effective date if either is required to comply with any final FERC determinations on this issue in ongoing proceedings.

An August 30, 2010 effective date was requested. Interventions were filed by Constellation, Hess, and NU on July 21. Supporting comments were filed by the MA DPU and MPUC. Opposing comments were filed by RESA. 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).

- **Recalculation Exemption for PER Adjustment and Seasonal Peak Hour Values Due to Meter Data Error RBA (ER10-1535)**

On June 23, 2010, the ISO and NEPOOL jointly filed changes to the settlement procedures for the Meter Data Error Correction Request process that exempt two FCM-related settlement inputs (PER Adjustment and Seasonal Peak Hour Values) from the resettlement processes. The changes are intended to avoid increasing the administrative burden for Market Participants in tracking potential resettlements for a large number of months, and increasing uncertainty as to settlements finality. The changes were unanimously supported by the Participants Committee at its June 23 Summer Meeting. A June 24, 2010 effective date was requested. Interventions were filed by Constellation and NU on July 14 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).

- **eTariff Preparation Filing (ER10-1384)**

On July 13, the FERC accepted ministerial changes to the ISO Tariff jointly filed by the ISO, NEPOOL, NU and MEPCO in preparation for the August 13, 2010 baseline filing of the entire ISO Tariff in electronic form pursuant to Order No. 714. The tariff revisions conform the tariff sheets to the electronic tariff (“e-Tariff”) software standards, correct ministerial errors, and remove from the ISO Tariff provisions that are no longer needed after May 31, 2010 (together, the “eTariff Amendments”). The eTariff Amendments (other than the NU and MEPC-specific changes) were unanimously supported by the Participants Committee at its May 7 meeting. Unless the July 13 order is challenged on or before August 12, this proceeding will be concluded. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Omnibus 6 and ICR Rule Changes (ER10-1352)**

On July 28, the FEC accepted various FCM Rule changes (“Omnibus 6 Changes”) and an ICR Rule Change to the Tariff jointly filed by the ISO and NEPOOL on May 27, 2010. As previously reported, the Omnibus 6 Changes (i) modified the qualification requirements for Existing Import Capacity Resources and the Resource Modeling Assumptions to be used in the ICR and LSR calculations; (ii) revised the formula for prorating of Capacity offered by certain Import Capacity Resources; (iii) added a definition of Handy-Whitman Index; (iv) clarified the definition of Lead Market Participant; and (v) revised the calculation of LSEs’ Capacity Requirement. The ICR Rule Change revised § 12.7.2(c) of Market Rule 1 to provide that ““all Existing Import Capacity Resources backed by a multi-year contract to provide capacity in the New England Control Area, where that multi-year contract requires delivery of capacity for the Commitment Period for which the [ICR] is being calculated.” Unless the July 28 order is challenged on or before August 27, this proceeding will be concluded. If you have any questions

concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com), or Emile Buzaid (860-275-0282; ebuzaid@daypitney.com).

- **VELCO Request for Waiver of Market Rule 1 § 1.8.3.7 (ER10-1347)**

On July 26, the FERC denied a one-time waiver of Section 8.3.7.1 (as in effect during May 2010) that had been requested by the Vermont Electric Power Company (“VELCO”).³² As previously reported, VELCO requested the waiver to permit it and the Vermont Joint Owners³³ to receive ICAP payments for the month of May 2010. VELCO reported that, based on the ISO’s interpretation of the FCM Transition Period Market Rules, it was impossible for it, or for any other capacity import supplier, to tender an import commitment into the ICAP market for May 2010. VELCO’s request was opposed by the ISO. In denying the waiver, the FERC found that, given the ISO’s application of the as-written Tariff provisions, no ICAP payments were due for May 2010, and further that VELCO had failed to meet its waiver criteria.³⁴ Unless the July 26 order is challenged on or before August 25, this proceeding will be concluded. If you have any questions concerning this matter, please contact Emile Buzaid (860-275-0282; ebuzaid@daypitney.com).

- **Change to Designation of Sheet 7013 (ER10-1306)**

On June 22, the FERC accepted a revised Sheet 7013 filed by the ISO on May 25. As previously reported, the revised sheet corrected that sheet’s designation under the FERC’s Order 614 rules so that it accurately consolidated changes previously accepted by the FERC. The June 22 letter order was not challenged and this proceeding has been concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Suspension of Secondary FTR Market (ER10-1190)**

On Jun 11, 2010, the FERC accepted changes to the Tariff to suspend the secondary FTR market (and remove provisions pertaining to that market) until new systems implementing the FERC-approved LFTR rules are in place. The June 11 letter order was not challenged and this proceeding has been concluded. If you have any questions concerning this matter, please contact Emile Buzaid (860-275-0282; ebuzaid@daypitney.com).

- **FCA4 Qualification Informational Filing (ER10-1185)**

On July 15, the FERC accepted the ISO’s informational filing for qualification in FCA4 (the “FCA4 Informational Filing”).³⁵ As previously reported, the Informational Filing contained the ISO’s determinations that only two Capacity Zones, Maine and Rest of Pool, will be modeled for FCA4. The Informational Filing also reported that there will be 37,271 MW of existing capacity in FCA3 competing

³² Vermont Electric Power Company, Inc., 132 FERC ¶ 61,068 (2010).

³³ The Vermont Joint Owners include: CVPS, Green Mountain Power, VEC, Barton Village, Enosburg Falls, Hardwick, Jacksonville Electric Co., Hyde Park, Johnson, Ludlow, Lyndonville, Morrisville Water & Light Department, Town of Northfield, Village of Orleans, Swanton Village WEC, Vermont Marble, and Stowe Electric.

³⁴ Id. at P 14. The FERC has previously granted waivers where (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem must be remedied; and (4) the waiver does not have undesirable consequences, such as harming third parties. See, e.g., National Grid USA, 129 FERC ¶ 61,212 (2009); Connecticut Light & Power Co., 126 FERC ¶ 61,186 (2009); ISO New England Inc. – EnerNOC, Inc., 122 FERC ¶ 61,297 (2008); Acushnet Co., 122 FERC ¶ 61,045 (2008); Central Vermont Public Service Corp., 121 FERC ¶ 61,225 (2007); Univ. of New Hampshire, 121 FERC ¶ 61,185 (2007); Waterbury Generation LLC, 120 FERC ¶ 61,007 (2007). See also Cal. Indep. Sys. Operator, 124 FERC ¶ 61,031 (2008), *reh’g denied*, 124 FERC ¶ 61,293 (2008).

³⁵ ISO New England Inc., 132 FERC ¶ 61,044 (2010) (“FCA4 Qualification Order”).

with 3,140 MW of new capacity under a procurement limit of 32,127 MW (ICR minus HQICCs). In accepting the filing, the FERC found that the ISO had conducted the FCA4 qualification process in accordance with the FCM Rules and rejected Dominion's protest and refused to direct a review of the rules relating to the compensation of resources retained for reliability. Unless the FCA4 Qualification Order is challenged on or before August 16, this proceeding will be concluded. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dt_doot@daypitney.com), or Emile Buzaid (860-275-0272; ebuzaid@daypitney.com).

- **Market Monitoring Reference Updates (ER10-1183)**

On June 25, the FERC accepted changes jointly filed by the ISO and NEPOOL that updated remaining references to the market monitoring terms implemented in the region's Order 719 compliance filing previously accepted by the FERC. References to Internal Market Monitoring Unit and Independent Market Monitoring Unit were changed to Internal Market Monitor and External Market Monitor, respectively, and the former definitions deleted from the consolidated definitions section. The June 25 letter order was not challenged and the proceeding has been concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

As previously reported, 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. On May 14, the FERC issued a deficiency letter directing the Filing Parties to provide additional information to assist the FERC in its decision on this matter. The ISO responded to that letter on June 14, which, together with the materials filed on March 15, are now pending before the FERC. If you have any questions concerning this matter, please contact Emile Buzaid (860-275-0282; ebuzaid@daypitney.com).

- **FCM Re-Design: Revisions to MR1 §§ 12 and 13 (ER10-787; EL10-57; EL10-50) (consolidated)**

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, including with respect to the APR, extension of the price floor, and Capacity Zones, among other issues ("Re-Design Changes"). Complaints against the ISO and NEPOOL related to the Re-Design Changes were also filed by NRG/PSEG (EL10-787) and NEPGA (EL10-50).

On April 23, the FERC issued its order on the Re-Design Changes.³⁶ As described in the summary circulated to the Committee on April 26, the FERC accepted some of the Changes but found others raised concerns that had not been fully addressed, and set those Changes/issues for a paper hearing. The FERC-accepted Re-Design Changes include: (i) calculation of zonal requirements, i.e., the proposal to develop both local resource adequacy ("LRA") and transmission security analysis ("TSA") based requirements for import-constrained Capacity Zones and to set the local sourcing requirement ("LSR") at the higher of the two values; (ii) decoupling the FCA starting price from CONE; (iii) increased transparency in the review of offers below 0.75 times CONE; (iv) compensation where a resource's proration election is rejected for reliability reasons; (v) clarifications regarding ISO requests for energy.

³⁶ ISO New England Inc. and New England Power Pool, 131 FERC ¶ 61,065 (2010) ("FCM Re-Design Order"), *clarification or reh'g requested*.

The Re-Design Changes set for a paper hearing include the: (i) issues relating to the APR, e.g., triggering conditions, treatment of OOM, price adjustment; (ii) modeling of Capacity Zones, e.g., when zones should be modeled, consideration of de-list bids, pivotal supplier test, revisions to existing mitigation rules; and (iii) whether the value of CONE should be reset. Given the timing of the upcoming Fourth FCA, the FERC did accept the Rule changes set for a paper hearing for that auction, while noting its intent to issue a final order in time to be applied prospectively for the Fifth FCA and beyond.

In addition to the issues above, the FERC also found that the extension of the price floor had not been shown to be just and reasonable. However, given what it described as the flaws in the existing APR, the FERC approved the extension of the price floor as a transitional mechanism. The FERC did state its expectation that in its final order accepting an appropriate APR mechanism, which it anticipates issuing for the Fifth FCA and beyond, it will terminate the price floor coincident with the implementation of the new APR. The FERC did not, therefore, set the issue of the price floor for consideration in the paper hearing.

The FCM Re-Design Order also consolidated with these proceedings the NEPGA and PSEG/NRG Complaints, requiring all issues and alternative proposals in those Complaint proceedings to be addressed in the paper hearing. First Briefs, addressing questions raised by the FERC in its order, supporting prior proposals, or making new proposals, were filed by the July 1 deadline by the ISO, NEPOOL, Boston Gen, CMMEC, ConEd, HQ, Joint Complainants, Joint Filing Supporters, MA DPU, Massachusetts Consumer-Owned Systems, MPUC, NEPGA, NGrid, and Potomac Economics. A summary of those briefs was circulated to Participants Committee members and alternates on July 9. Second Briefs must be filed by September 1, 2010. The FERC stated its intention to issue an order in this proceeding in time for FCA5. In addition, the FERC strongly encouraged the parties to continue to negotiate so that these questions may be resolved by consensus to the greatest extent possible. Upon request, the FERC stated it would appoint a settlement judge to assist with a negotiated resolution.

Requests for Clarification and/or Rehearing. On May 5, the ISO filed a request for clarification and/or rehearing of the FCM Re-Design Order (sub-docket -003). Specifically, the ISO asked the FERC to clarify or modify its FCM Re-Design Order to permit the just-approved rules to stay in effect until new rules are approved and to extend the implementation date for the changes to be approved following the paper hearing until no earlier than FCA6 (scheduled for April 2012). Within 30 days of the FERC's order on the paper hearing issues, and following consultation with stakeholders, the ISO indicated it would file a proposed implementation schedule consistent with the paper hearing order. On May 17, Boston Gen filed an answer to the ISO's request for rehearing. Motions for clarification and/or rehearing were also filed by NEPOOL, NEPGA, NextEra on May 24, and jointly by the CT DPUC, NECPUC, NU, NGrid, TEC, and the CT OCC on May 28, 2010. The ISO answered the Boston Gen answer and the other requests for rehearing on June 2. Also on June 2, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC.

On May 28, NEPGA requested that the FERC order disclosure by the ISO and its Internal Market Monitor of information related to its out-of-market ("OOM") determinations. Answers objecting to the NEPGA motion were filed on June 14 by the ISO, NEPOOL, Eastern Massachusetts Consumer-Owned Systems ("EMCOS")³⁷ and the Joint Filing Supporters.³⁸ The FERC has not yet addressed the NEPGA request.

Tariff Sheet Reconciliation Filing. On May 4, the ISO filed a Substitute 1st Rev Sheet No. 15W to consolidate previously accepted changes to that sheet with the changes submitted in this proceeding and accepted in the FCM Re-Design Order (sub-docket -002). That filing was accepted by letter order dated June 30. Unless the letter order is challenged, this sub-docket will be terminated.

³⁷ "EMCOS" are EMCOS are Braintree, Concord, Hingham, Reading, Taunton, and Wellesley.

³⁸ "Joint Filing Supporters" are CTDPUC, CT OCC NECPUC, NSTAR, NU, and TEC.

If you have any questions concerning this matter, please contact , Dave Doot (860-275-0102; dttdoot@daypitney.com), Eric Runge (617-345-4735; ekrunge@daypitney.com), or Emile Buzaid (860-275-0272; ebuzaid@daypitney.com).

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

As previously reported, the FERC accepted on April 16, 2010, subject to conditions, the 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.³⁹ Finding certain of the provisions ambiguous, the FERC required that the Tariff be amended to provide more precisely how the cost allocation would be applied. Specifically, the FERC directed clarification and explanation regarding what historical periods would be used to determine the historical megawatt hour production for a particular asset, the methodology the ISO will apply for using this cost allocation to set default de-list bids, and the meaning of the term “monotonically decreasing” used in the Tariff.⁴⁰ Details are to be specified in the Manuals.⁴¹ The April 26 order was not challenged and is final.

Compliance Filing. On August 2, the FERC accepted the required compliance filing jointly submitted by the ISO and NEPOOL addressing the clarifications and explanations directed in the April 16 order. Unless the August 2 letter order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Emile Buzaid (860-275-0282; ebuzaid@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

May 28, 2010 Order. On May 28, 2010, the FERC issued an order conditionally accepting two compliance filings pending in this proceeding.⁴² The May 28 Order accepted the Order 719-A Compliance Amendments (filed October 27, 2009 and described further below), subject to a further 60-day compliance filing that removes conditions in the proposed language that the FERC found, agreeing with EnerNOC, went beyond what was required by, or conflicts with, Orders 719 and 719-A. Specifically, the filing must remove the provisions that provided certain exceptions for load-serving entities or their designees. The May 28 Order also required the ISO to demonstrate in the 60-day compliance filing that, following consultation with the External Market Monitor, the contracts the External Market Monitor has with New England Market Participants comply with the requirements of Order 719-A. Finally, the May 28 Order accepted the Order 719-A 180-Day Compliance Amendments.

April 2009 Compliance Filing. 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.⁴³ The FERC did not make any findings with respect to the Responsiveness issues, which will be addressed in a later order and remain pending before the FERC. The FERC did accept all the changes filed 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

³⁹ ISO New England Inc. and New England Power Pool Participants Committee, 131 FERC ¶ 61,042 (2010).

⁴⁰ Id. at PP 4-5.

⁴¹ Id. at PP 4-5.

⁴² ISO New England Inc. and New England Power Pool, 131 FERC ¶ 61,194 (2010) (“May 28 Order”).

⁴³ ISO New England Inc., 130 FERC ¶ 61,054 (2010) (“January 21 Order”), *reh’g denied*, ISO New England Inc. and New England Power Pool, 132 FERC ¶ 61,098 (2010).

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. The Connecticut Representatives' request for rehearing was denied on August 2, 2010.⁴⁴ In denying rehearing, the FERC found that the Connecticut Representatives had failed to adequately support their claims that the market monitoring structure is flawed. The FERC directed the Connecticut Representatives to raise any remaining concerns in the stakeholder process.⁴⁵

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.

Revisions to Definitions of ARD and DARD (sub-docket -003). On July 23, the FERC accepted a further compliance filing jointly submitted by the ISO and NEPOOL on April 21 in response to the requirements of the January 21 Order which revised the definitions of Asset Related Demand ("ARD") and Dispatchable Asset Related Demand ("DARD"), reducing the ARD and DARD minimum size threshold from 5 MW to 1 MW and allowing aggregation of retail customers receiving electrical service from the same point of supply. The revisions will become effective on or after December 1, 2010, subject to two weeks' notice from the ISO.

Removal of Host Utility Exceptions (sub-docket -004). On July 27, the ISO and NEPOOL, in response to requirements of the May 28, 2010 Order, filed changes which removed the "Host Utility" exceptions for demand response aggregators registering to participate in the FCM. These changes were supported without opposition at the Summer Meeting. The July 27 filing also included a demonstration by the ISO that the contracts between the ISO's External Market Monitor (Potomac Economics) and affiliates of certain Market Participants meet Order 719-A's ethics standard requirements. Comments on the July 27 compliance filing are due on or before August 17, 2010.

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

⁴⁴ ISO New England Inc. and New England Power Pool, 132 FERC ¶ 61,098 (2010).

⁴⁵ Id. at P 18.

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.

If you have any questions concerning Order 719-related matters, please contact Michelle Gardner (617-345-4697; mcardner@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 July 14, 2009 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.⁴⁶ (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).

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

The ISO’s January 14, 2010 update remains pending. As previously reported, the ISO filed, on January 14, 2010, an update to the joint ISO/NEPOOL November 26, 2008 report⁴⁷ 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

- **OATT Attachment E (Local Networks) ER10-1445**

On June 15, the Participating Transmission Owners Administrative Committee filed changes to Attachment E to the OATT. The PTO AC indicated that the changes reflect corporate restructurings by

⁴⁶ ISO New England Inc. and New England Power Pool Participants Committee, 128 FERC ¶ 61,023 (2009) (“July 14, 2009 Order”), *reh’g requested*.

⁴⁷ 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).

NSTAR and FPL that transferred constituting Local Network assets to the entities reflected in the revised Attachment E. The changes were reviewed, without concerns raised, at the January 8, 2010 Transmission Committee meeting. An August 1, 2010 effective date was requested. No comments on this filing were submitted by the July 6 comment date and this matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Schedule 2 (VAR Support) Amendments - Transition Period Double Recovery Issue (ER07-397)**

As previously reported, the FERC denied on January 5, 2010, the ISO's request for clarification of the VAR Support Rehearing Order.⁴⁸ In that order, the FERC reiterated past statements that the ISO must file tariff provisions prior to the commencement of the first Capacity Commitment Period to prevent double recovery, finding the changes necessary to provide certainty that double recovery of capital costs for generating equipment will not occur. On May 12, 2010, the ISO and NEPOOL jointly filed a revisions to Section 13 of Market Rule 1 in response to that requirement. That change was supported by the Participants Committee at its May 7 meeting (Consent Agenda Item # 8). In response to the filing, interventions were filed by GDF Suez and VT PSB, and a joint protest was filed by MPUC, NHPUC, VPSB, and MA AG. The Joint Protest contends that the May 12 compliance filing did not comply with the FERC's orders because (1) the tariff revisions will not be effective until FCA6 and (2) the tariff revisions do not provide the required certainty that double recovery of capital costs for generating equipment will not occur. On June 17, the ISO and NEPOOL filed a joint answer to the June 2 protest. The compliance filing is pending before the FERC. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

V. Financial Assurance/Billing Policy Amendments

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

On July 15, the FERC largely accepted, but rejected in part, the March 26 joint filing by the ISO and NEPOOL that addressed unsecured credit and other financial assurance and billing arrangements.⁴⁹ As previously reported, the ISO and NEPOOL jointly filed on March 26, 2010, 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 filed included changes that: (i) provided for twice-weekly, rather than weekly, settlement for certain charges; (ii) reallocated the costs of defaults where unsecured credit is still used; (iii) segregated the billing and collateralization of transmission charges from other ISO charges; (iv) improved the quality of security that is provided pursuant to the Policies; and (v) controversially, eliminated the use of unsecured credit for Market Participants that do not serve retail load at government-established rates. In the July 15 order, the FERC accepted the changes that:

- (1) shorten the billing cycle to twice weekly (noting, however, that should the Credit Reforms NOPR proceeding conclude that a different settlement schedule is more appropriate, the Filing Parties will be expected to revise the Policies to make them consistent with the Final Rule in that proceeding);
- (2) create separate FA Requirements for ISO Charges and Transmission Charges (noting that the combined credit limits for ISO Charges and Transmission Charges must not exceed existing credit limits);

⁴⁸ ISO New England Inc., 130 FERC ¶ 61,005 (2010).

⁴⁹ ISO New England Inc. and New England Power Pool, 132 FERC ¶ 61,046 (2010).

- (3) eliminate the use of unsecured credit for FTRs for all Participants
- (4) reallocate payment defaults by municipal and non-municipal participants with unsecured credit first (in the amount of the defaulting Participant's credit limit, but only to those other municipal/non-municipal participants with unsecured credit and only then the remainder to all Participants); and
- (5) improved the quality of FA provided by: (a) revising the definition of Investment Grade; (b) imposing new requirements on LOC banks, including a limit on the amount of FA that may be provided by LOC from a single entity; (c) extending certain FA suspension provisions to Municipal Market Participants; and (d) eliminating corporate guarantees as acceptable FA.

The July 15 Order rejected the changes that would have:

- (a) eliminated the use of unsecured credit for Market Participants that do not serve retail load at government-established rates; and
- (b) discontinued the purchase of 3rd party credit protection

The FERC acted on the filing with the caveat that the ISO and NEPOOL might be required to make further revisions based on the results of the Credit Reforms Rule Making Proceeding (RM10-13). Unless the July 15 order is challenged, with any challenges due on or before August 16, the order will be final and unappealable.

The accepted changes will become effective, upon 60 days' notice to Participants by the ISO, on or after December 1, 2010. The ISO requested additional time (beyond the default 30-day period for compliance filings) to September 24, 2010, to submit the necessary changes, which will permit the Budget and Finance Subcommittee the opportunity to discuss, and the Participants Committee to consider at its September meeting, the changes necessary to respond to the July 15 order. Comments on that request are due on or before August 9, 2010.

If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

VI. Schedule 20/21/22 Changes

- **Schedule 21-BHE eTariff Clean-up & Preparation (ER10-1371)**

On July 29, the FERC accepted, effective August 1, 2010, clean-up changes to Schedule 21-BHE to prepare that Schedule for filing with the ISO's planned August 13, 2010 baseline tariff filing pursuant to Order 714. Because certain pages were incorrectly paginated under the FERC's Order 614 requirements, BHE was directed to make a 15-day compliance filing correcting those designations. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 20A-VEC and 21-VEC – 2010 Transmission Formula Update (ER10-1181)**

VEC filed on May 4, 2010 copies of its 2010 transmission formula rate update to its charges produced by the formula rates applicable to the VEC-specific Local Service Schedules (Schedule 20A-VEC and Schedule 21-VEC) of the OATT. No comments on this filing were submitted by the May 25, 2010 comment date and this matter is pending before the FERC. 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 June 30, the FERC approved the settlement agreement submitted by CMP and KLPD to resolve all issues in this proceeding.⁵⁰ Unless the June 30 order is challenged on or before July 30, the June 30 order will be final. Pending acceptance of the June 11 submission by CMP and KLPD of a revised service agreement to reflect a revised Order 614 designation, this proceeding will be concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-NSTAR Annual Informational Filing (ER09-1243; ER07-549)**

On June 1, 2010, NSTAR submitted an informational filing containing the true-up of billings under Schedule 21-NSTAR for the period January 1, 2009 through December 31, 2009. NSTAR stated that the filing complies with the requirements of Section 4 and Attachment D of Schedule 21-NSTAR, as well as the Settlement Agreement previously approved by the FERC.⁵¹ On June 29, NSTAR completed the Annual Informational Filing when it filed its “CWIP Settlement.” As of the date of this report, no comments were filed on the informational filing. 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)**

On July 2, the FERC accepted a settlement agreement between BHE and the MPUC that resolved the issues set for hearing in this case.⁵² 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.⁵³ The 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,⁵⁴ which have now been finally resolved.

On June 15, BHE filed, pursuant to Attachment P-BHE to Schedule 21-BHE, the updated rates that went into effect on June 1, 2010. Comments on that filing were submitted by the MPUC. Because the information filing was not noticed for public comment, no further FERC action is expected. If there are questions on these matters, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

VII. RMR Agreements

All remaining RMR Agreements terminated contractually with the June 1, 2010 commencement of the First Capacity Commitment Period.

VIII. Regional Reports

- **ISO’s 2010 Q1 Capital Projects Report (ER10-1248)**

On June 11, 2010, FERC accepted the Capital Projects Report and Unamortized Cost Schedule filed by ISO on May 14 covering the first quarter (“Q1”) of calendar year 2010 (the “Report”). The ISO

⁵⁰ Central Maine Power Co., 131 FERC ¶61,294 (2010).

⁵¹ See NSTAR Electric Co., 123 FERC ¶ 61,270 at P 5 (2008).

⁵² Bangor Hydro-Electric Co., 132 FERC ¶ 61,012 (2010).

⁵³ Bangor Hydro-Electric Co., 127 FERC ¶ 61,186 (2009).

⁵⁴ Id.

is required to file the Report under Section 205 of the FPA pursuant to Section IV.B.6.2 of the ISO Tariff. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **2009 Annual Markets Reports (ZZ10-4)**

On May 18, the ISO filed its 2009 Annual Markets Report, which covers the period from January 1, 2009 to December 31, 2009. The report addresses the development, operation, and performance of the New England Markets and presents an assessment of each market based on market data, performance criteria, and independent studies. These filings are not noticed for public comment by the FERC.

- **Quarterly Markets Reports - 2010 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 May 25, 2010, the ISO filed with FERC the report for the first quarter of 2010. 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.⁵⁵ The ISO filed its seventh report on June 18, 2010. In the report, the ISO indicated that "[s]ubject to the progress of the three eligible participants not yet on line and what those results might show, the ISO is hoping to have a proposal ready for presentation [through the NEPOOL stakeholder process] sometime in Q4 2010, perhaps sooner." The seventh report, like the sixth and fifth reports before it, was not noticed for public comment. In response to the seventh report, Beacon Power filed comments on July 27.

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

The ISO filed the seventh of its Quarterly Status Reports regarding LFTR implementation on July 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.

- **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.⁵⁶ The ISO filed the 15th such compliance report on June 30, 2010 (not separately sub-docketed), covering the October 2009 through March 2010 period. These status reports are no longer noticed for public comment and, as of the date of this report, no comments were filed.

⁵⁵ 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").

⁵⁶ See ISO New England Inc. and New England Power Pool, 102 FERC ¶ 61,202 (2003).

IX. Membership Filings

- **August 2010 Membership Filing (ER10-2084)**

On July 29, NEPOOL requested that FERC accept the membership of the following Entities, each effective August 1, 2010: Choice Energy (Supplier Sector); Galt Power Inc. (Provisional Member, AR Sector); Hannaford Bros., Co. (Governance Only End User); Hannaford Energy, LLC (Market Participant End User); Laidlaw Berlin Biopower, LLC (Provisional Member, AR Sector); and South Jersey Energy Solutions, LLC (Supplier Sector). Comments on this filing must be submitted by August 24.

- **July 2010 Membership Filing (ER10-1650)**

On June 30, NEPOOL requested the FERC's acceptance of (i) the membership, each effective July 1, 2010, of Centre Lane Trading Limited (Supplier Sector) and Covanta Projects of Wallingford, LP (Related Person to Covanta Maine, AR Sector); and (ii) the June 1, 2010 termination of v2g NE (Provisional AR Sector Member). This matter is pending before the FERC.

- **June 2010 Membership Filing (ER10-1364)**

On June 24, the FERC accepted the membership of the following Entities each effective June 1, 2010: Ameresco DR, LLC (Related Person to Ameresco CT LLC [AR Sector]); BlueStar Energy Services, Inc. (Supplier Sector); Dynegy Marketing and Trade LLC (Related Person to Dynegy Power Marketing [Supplier Sector]); Mercuria Energy America, Inc. (Supplier Sector); New Hampshire Transmission, LLC (Related Person to NextEra Energy Resources [Generation Sector]); Verso Maine Energy, LLC (Generation Sector); Acushnet Company (AR Sector, Small DG Group Member); Cambridge Energy Alliance, Inc. (AR Sector, Small DG Group Member); Commonwealth of Massachusetts, Division of Capital Asset Management (AR Sector, Small DG Group Member); Energy Curtailment Specialists, Inc. (AR Sector, Load Response Sub-Sector); North American Power Partners LLC (AR Sector, Small Load Response Group Member); University of Massachusetts at Amherst (AR Sector, Distributed Generation Sub-Sector); University of Rhode Island (AR Sector, Small Load Response Group Member); and University System of New Hampshire (AR Sector, Small DG Group Member).

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).

- **Proposed Clarification to CIP Standards (RD10-11; RD10-12; RD10-13; 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 706.⁵⁷ The FERC also directed NERC to revise certain VSL assignments and submit those revisions to FERC in a compliance filing, which NERC submitted to FERC on May 17, 2010 as directed. As previously reported, the FERC approved the revised Reliability Standards (CIP-002-1 through CIP-009-1) on January 27, 2009,⁵⁸ and accepted the VRFs submitted to accompany the revised Reliability Standards on August 20, 2009 (in sub-docket -009). On April 20, 2010, NERC requested FERC approve an interpretation of a certain requirement for CIP-006-2, and on April 21, 20201, NERC

⁵⁷ 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).

⁵⁸ Reliability Standards for Critical Infrastructure Protection, 126 FERC ¶ 61,065 (2009).

requested FERC approve certain requirements for CIP-001-1 and CIP-005-2. These NERC petitions were docketed separately as RD10-13, RD10-11, and RD10-12, respectively. On May 12, three parties, including the ISO, submitted motions to intervene in this proceeding. No comments were filed by the May 12, 2010 deadline regarding any of the three interpretations. On July 15, 2010, FERC issued an order approving NERC's requirements for CIP-006-2.⁵⁹

On May 17, 2010, the FERC issued a tolling order affording it additional time to consider the rehearing request jointly filed by APPA, EEI, and the National Rural Electric Cooperative Association, which remains pending before the FERC.

Implementation Plan. On March 18, 2010,⁶⁰ FERC accepted the compliance filing NERC submitted on January 19, 2010 that provided the additional information FERC requested in its December 17, 2009 order⁶¹ 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.

- **Reliability Standard on Transmission Relay Loadability (RD10-10; RM08-13)**

On March 18, 2010 the FERC issued Order 733⁶² 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

⁵⁹ North American Electric Reliability Corporation, 132 FERC ¶ 61,051 (2010).

⁶⁰ Mandatory Reliability Standards for Critical Infrastructure Protection, 130 FERC ¶ 61,185 (2010).

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

⁶² Transmission Relay Loadability Reliability Standard, 130 FERC ¶ 61,221 (2010) ("Order 733").

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.

On April 19, 2010, in compliance with certain directives in FERC's March 18 order, NERC submitted to FERC revisions to one VRF and three VSLs with respect to PRC-023-1. No comments on this filing were submitted by May 19, 2010. Also on April 19, 2010, over 10 parties, including NERC, filed motions and comments requesting rehearing of FERC's March 18 order. On May 17, 2010, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC. On July 16, 2010, NERC filed with FERC an action plan and timetable for implementing the revisions to PRC-023-1 that were required in FERC's March 18 order. In its July 16 filing, NERC also requests an extension of the one-year timeframe mandated in FERC's March 18 order, due to the complexity of the process. This filing remains pending before the FERC.

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

On December 22, 2009, NERC requested FERC approval of two interpretations⁶³ 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 – 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”)⁶⁴ 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 VAR-002-1a (RD09-5)**

On March 5, 2009, 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, ITC Holdings, and Modesto Irrigation District. This matter is pending before the FERC.

⁶³ 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.

⁶⁴ 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.

- **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 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)**

On June 17, 2010, the FERC issued a NOPR⁶⁵ proposing to approve the request submitted by NERC on September 30, 2009, for the adoption 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. In the NOPR, FERC also proposes to direct NERC to develop modifications to proposed Reliability Standard PER-005-1 so that PER-005-1 will satisfy all the directives set forth in Order No. 693. The proposed Reliability Standards require reliability coordinators, balancing authorities, and transmission operators to establish a training program for their system operators, verify each of their system operators’ capability to perform tasks, and provide emergency operations training to every system operator. Comments on this NOPR are due on or before August 23, 2010.⁶⁶

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

On March 18, 2010, the FERC issued a NOPR⁶⁷ 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. Over 80 parties, including NERC and the ISO, submitted comments on the NOPR.⁶⁸

⁶⁵ System Personnel Training Reliability Standards, 131 FERC ¶ 61,254 (2010).

⁶⁶ The NOPR was published in the Federal Register on Jun. 23, 2010 (Vol. 75, No. 120) pp. 35,689 - 35,700).

⁶⁷ Revision to Electric Reliability Organization Definition of Bulk Electric System, 130 FERC ¶ 61, 204 (2010).

⁶⁸ The NOPR was published in the Federal Register on Mar. 24, 2010 (Vol. 75, No. 56) pp. 14,097 - 14,103).

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

On March 18, 2010, FERC issued a NOPR⁶⁹ 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.⁷⁰ 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 (iii) consider developing compliance evaluation measure that assess the reliability risk associated with each action, and tie any penalty to each action. Five parties, including NERC, submitted comments on the NOPR by the April 28, 2010 comment date.⁷¹

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

On May 5, 2010, the FERC issued Order 729-A,⁷² its order clarifying aspects of Order 729.⁷³ As previously reported, Order 729 approved modifications to six Modeling, Data and Analysis (“MOD”) Reliability Standards. In Order 729-A, the FERC indicated that the MOD reliability standards would become effective January 1, 2011 and clarified aspects of Order 729 related to audit scope, benchmarking, treatment of network resource designations, dispatch model updates, and managing the use of capacity benefit margins. The clarifications adopted in Order 729-A will become effective 30 days from their publication in the Federal Register. On June 4, 2010, eight parties filed requests for clarification and/or rehearing of Order 729-A and on July 6, FERC issued a tolling order affording it additional time to consider those requests. On July 15, 2010, FERC issued Order 729-B⁷⁴ granting several of the June 4 requests for rehearing of Order 729-A which pertained to the timeline for compliance. In Order 729-B, the FERC extended the effective date for the MOD reliability standards to April 1, 2011. The clarifications adopted in Order 729-B will become effective 30 days from their publication in the Federal Register.

⁶⁹ Time Error Correction Reliability Standard, 130 FERC ¶ 61,201 (2010).

⁷⁰ 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.

⁷¹ The NOPR was published in the Federal Register on March 29, 2010, 2010 (Vol. 75, No. 59) pp. 15,371-15,376.

⁷² 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, 131 FERC ¶ 61,109 (2010) (“Order 729-A”), clarification *requested*, 132 FERC ¶ 61,027 (2010).

⁷³ 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”), clarification *requested*, 131 FERC ¶ 61,109 (2010).

⁷⁴ 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, 132 FERC ¶ 61,027 (2010) (“Order 729-B”).

- **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 722⁷⁵ 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, 2009.⁷⁶ 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.

- **Order 717-C – Standards of Conduct for Transmission Providers (RM07-1)**

On April 16, 2010, FERC issued Order 717-C77 to address additional requests for rehearing and clarification regarding certain aspects of the Standards of Conduct for transmission providers set forth in Order 717-A.⁷⁸ FERC issued Order 717-A on October 15, 2009 to address requests for rehearing and clarification of Order No. 717,⁷⁹ largely affirming the reforms adopted in Order 717. On November 16, 2009, FERC issued Order 717-B to provide clarification for certain provisions Order 717-A.

In Order 717-C, FERC clarified the following: (i) sales of power by generation and transmission cooperatives to their member generation and transmission cooperatives or to their member distribution cooperatives do not constitute marketing functions under the Standards of Conduct; (ii) a system impact study performed pursuant to a request for energy resource interconnection service or network resource interconnection service is similar to long-range planning and therefore not a transmission function; and (iii) employees remain subject to the No Conduit Rule, and are prohibited from providing transmission function information to marketing function employees. FERC denied the remaining requests for clarification, finding that they had already been addressed in Order 717-A or inappropriately raised new issues for the first time.

On May 17, 2010, the Transmission Access Policy Study Group filed a motion requesting clarification and rehearing of Order 717-C to clarify that employees who perform certain system impact and other studies are transmission-function employees. On June 15, 2010, the FERC issued a tolling order affording it additional time to consider the rehearing request, which remains pending before the FERC.

- **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

⁷⁵ Version Two Facilities Design, Connections and Maintenance Reliability Standards, 126 FERC ¶ 61,255 (2009) (“Order 722”), *reh'g requested*.

⁷⁶ Order 722 was published in the Federal Register on Mar. 30, 2009 (Vol. 74, No. 59) pp. 14,008-14,040.

⁷⁷ Standards of Conduct for Transmission Providers, Order 171-C, 131 FERC ¶ 61,045 (2010).

⁷⁸ Standards of Conduct for Transmission Providers, Order 171-A, 129 FERC ¶ 61,043 (2009).

⁷⁹ Standards of Conduct for Transmission Providers, Order 171, 125 FERC ¶ 61,064 (2008).

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 report⁸⁰ 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. 693⁸¹ 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.

BAL-003. In its March 18 order regarding TPL-002-0,⁸² 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-003-0,⁸³ FERC directed NERC to submit certain modifications responsive to FERC’s directive in Order 693 within six months from March 18, 2010. On April 19, 2010, over 18 parties, including NERC filed motions and comments requesting rehearing of FERC’s March 18, 2010 orders setting deadlines for compliance with TPL-002 and directing NERC to submit certain modifications regarding BAL-003-0. On May 13, 2010, the FERC issued a tolling order affording it additional time to consider the rehearing requests regarding BAL-003-0, which remains pending before the FERC.⁸⁴ In addition, the FERC directed staff to convene a technical conference to provide “an opportunity for a public discussion regarding technical issues pertaining to the development of a frequency response requirement.”⁸⁵ Within 30 days of that technical conference, the FERC directed NERC to submit “a proposed schedule that includes firm deadlines for completing studies, analyses needed to develop a frequency response requirement, and for submission of a modified Reliability Standard that is responsive to the [FERC] directives in Order No. 693 pertaining to Reliability Standard BAL-003.”⁸⁶ The 6-month

⁸⁰ The TIER Report is available on-line at http://elibrary.ferc.gov/idmws/File_list.asp?document_id=13753678.

⁸¹ 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).

⁸² Mandatory Reliability Standards for the Bulk Power System, 130 FERC ¶ 61,200 (2010).

⁸³ Mandatory Reliability Standards for the Bulk Power System, 130 FERC ¶ 61,218 (2010), *reh’g requested*.

⁸⁴ Mandatory Reliability Standards for the Bulk Power System, 131 FERC ¶ 61,136 (2010).

⁸⁵ *Id.* at P2.

⁸⁶ *Id.* at P2; P15; Ordering Paragraph (C).

compliance deadline set forth in the March 18 Order was deferred pending further order by the FERC.⁸⁷ On June 11, 2010, the FERC issued an order denying the rehearing requests regarding TPL-002-0,⁸⁸ finding that those requests are beyond the scope of the March 18 Order. FERC also denied NERC's request for an open-ended stay of the compliance deadline directed in the March 18 Order, finding that NERC did not demonstrate that a stay is warranted. However, FERC did grant NERC a limited extension of time until March 31, 2011 to assure that NERC develops a modification to TPL-002-0 that is responsive to FERC's directive in Order No. 693.

Compliance Filings. On June 1, 2010, NERC submitted an informational filing for the first quarter of 2010 in compliance with Order No. 693 regarding the timeframe to restore the auxiliary power systems of the U.S. nuclear power plants following a blackout. The ISO/RTO Council submitted a comment on that filing on July 21, 2010.

- **Revised Reliability Standard Processes Manual (RR10-12)**

On June 10, 2010, NERC requested FERC approval to replace in its entirety the Reliability Standards Development Procedure ("RSDP") with the Standard Processes Manual which incorporates process amendments, edits, and a clarifying document name change. The Standard Processes Manual was approved by the NERC Board of Trustees. NERC noted that the proposed modifications are not responsive to the March 18 order issued by FERC directing NERC to propose modification to its Rules of Procedure pertaining to the development of Reliability Standards. Six parties submitted comments by the July 12, 2010 comment date.

- **Revised Regional Entity Delegation Agreements (RR10-11)**

On June 9, 2010, NERC requested FERC approval of revised delegation agreements with each of the eight Regional Entities. The revised delegation agreements were developed in large part in response to issues identified in NERC's Three-Year ERO Assessment Report (RR09-7). The revised agreements address a variety of compliance-related matters, delegation activities, regional entity budget development and audits, and provides for a comprehensive compliance registry. NERC submitted a supplemental filing on June 17, 2010. Five parties, including the ISO, submitted comments on the filings by the July 9, 2010 comment date, and NERC answered those comments on July 26.

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

On June 10, 2010, FERC approved NERC's March 15, 2010 request for 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 on NERC's filing were submitted by the April 6, 2010 comment date.

⁸⁷ *Id.* at Ordering Paragraph (D).

⁸⁸ Mandatory Reliability Standards for the Bulk Power System, 131 FERC ¶ 61,231 (2010).

- **NERC Rules of Procedure -- Technical Feasibility Exception Amendments (RR10-1)**

On January 21, 2010, FERC approved the two amendments to NERC's Rules of Procedure that NERC filed on January 21, 2010: (i) new section 412 "Requests for Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Reliability Standards;" and (ii) new Appendix 4D, "Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards." FERC directed NERC to submit within 90 days a compliance filing addressing FERC's concerns with certain provisions, and NERC submitted the compliance filing on April 20, 2010. That compliance filing remains pending before the FERC.

- **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, 2009.⁸⁹ 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 four 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, which NERC submitted to FERC on May 3, 2010 and which FERC accepted on June 10, 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.⁹⁰ 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

⁸⁹ N. Am. Elec. Reliability Corp., 129 FERC ¶ 61,040 (2009) ("October 15 Order").

⁹⁰ 18 CFR § 39.3(c) (2009).

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 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.

On May 13, 2010, NERC requested the FERC issue for public comment a preliminary assessment of the ERO Performance Assessment Report submitted by NERC on July 20, 2009. NERC requested this preliminary assessment to provide interested parties an opportunity to comment on FERC's preliminary conclusions and recommendations, and to avoid the prospect of protracted rehearing proceedings and possible litigation over issues that might better be resolved with an opportunity for evaluation and discussion prior to the final decision. On May 18, 2010, eight parties submitted joint comments supporting NERC's request for preliminary assessment, and on May 26, 2010, six parties submitted joint comments supporting NERC's request for preliminary assessment.

- **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.⁹¹ 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. FERC directed NERC 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. On June 15, 2010, FERC issued an order⁹² extending the initial 90 day compliance period to a 180 day compliance period following the date of the March 18 order. FERC granted this extension due to the significance of the issues NERC must consider in developing proposed revisions to its Rules of Procedure, and because FERC intends to convene a technical conference to discuss this matter and other reliability issues.

On April 19, 2010, 20 parties, including NERC, filed motions and comments requesting rehearing of FERC's March 18 order. On May 17, 2010, the FERC issued a tolling order affording it additional time to consider the requests for rehearing, which remain pending before the FERC.

⁹¹ N. Am. Elec. Reliability Corp., 130 FERC ¶ 61,203 (2010).

⁹² N. Am. Elec. Reliability Corp., 131 FERC ¶ 61,237 (2010).

- **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,⁹³ 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 order⁹⁴ 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, and requested a further extension of time to submit an additional compliance filing required by the VSL Order. No comments on this compliance filing were submitted by the March 26, 2010 comment date. On May 5 NERC submitted supplemental information regarding the March 5 VSL compliance filing. No comments on this supplemental filing were submitted by the May 20, 2010 comment date. On July 6, 2010, FERC granted NERC’s March 5 request for a further extension of time to allow further input and justification of VSL assignments not included in its March 5 compliance filing. Those VSL assignments must be submitted to FERC on or before December 1, 2010.

XI. Misc. - of Regional Interest

- **203 Application - Milford Power Company (EC10-74)**

On July 12, FERC authorized the June 4 request of Milford Power Company (“Milford Power”) for an indirect change in ownership of Milford Power resulting from the acquisition of equity interests in Milford Holdings (“MH”) (which holds 100% of the equity interests in Milford Power) by Merrill Lynch Credit Products (“MLCP”), resulting in MLCP owning up to 20% of the equity interests in MH (the “Transfers”).⁹⁵ FERC granted Milford Power’s request for the Transfers for a period not to exceed three years from the date FERC authorized the Transfers.

⁹³ N. Am. Elec. Reliability Corp., 123 FERC ¶ 61,284 (2008) (“VSL Order”), *order on reh’g* 125 FERC ¶ 61,212 (2008).

⁹⁴ N. Am. Elec. Reliability Corp., 125 FERC ¶ 61,212 (2008) (“VSL Rehearing Order”).

⁹⁵ Milford Power Company, LLC, 132 FERC ¶ 62,029 (2010).

- **203 Application - Mirant/Reliant (EC10-70)**

On August 2, 2010, the FERC authorized the proposed merger between Mirant and RRI Energy, Inc. (“Reliant”) by which Mirant will become a direct, wholly-owned subsidiary of Reliant (the “Transaction”).⁹⁶ If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **203 Application - BHE / Maine & Maritimes (EC10-67)**

On May 11, BHE Holdings Inc. (“BHE”), which owns Bangor Hydro, and Maine & Maritimes Corporation (“MAM”), which owns Maine Public Service (“MPS”), requested FERC authorization for the transfer of all of the outstanding MAM securities to BHE Holdings. BHE Holdings and MAM indicated a desire to close the transaction on or before September 30, 2010, and requested FERC approval by August 31, 2010. If consummated, Bangor Hydro and MPS would become Related Persons. Protests were filed by the Northern Maine ISA and the Northern Maine Customer Group,⁹⁷ followed by answers and responses filed by BHE and MAM and the Northern Maine ISA and the Northern Maine Customer Group. This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **UI Declaratory Order – Sales to Elm Electric Coop (EL10-67)**

On May 12, the United Illuminating Company (“UI”) filed a petition for a declaratory order “Petition”) that its sales to Elm Electric Cooperative (“Elm”), for resale to Elm’s members, is a transaction at wholesale subject to FERC jurisdiction. As indicated by UI in the Petition, Elm is a Connecticut electric cooperative formed to sell and distribute electricity to its members, who will be tenants of a large, mixed-use residential and commercial building now under construction in New Haven, Connecticut. Elm will serve its members in part by using a 400 kW fuel cell located at the site, and to the extent the fuel cell production is insufficient to meet the building’s load, Elm will purchase electricity from UI that will be re-sold and distributed to its members. Elm also expects to sell the excess power generated by the fuel cell in the New England Market, netting the excess against its UI bill. Elm will install four meters that will handle the building’s load and engage a third party to supply sub-meters to each of Elm’s members. UI reports that Elm has asserted in CT proceedings that the FERC either does not have jurisdiction or that it would likely disclaim jurisdiction over the matter.⁹⁸ Comments on the Petition were filed by CT DPUC, CT OCC, Elm Electric Coop, and NU, and a response to the comments was filed by UI. The Petition is currently pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Central Transmission v. PJM: Merchant Transmission Cost Recovery (EL10-52)**

In a proceeding that may have lessons for New England, on June 17, the Commission issued an order clarifying that PJM has the existing right to designate Central Transmission, LLC (“Central”) to construct and own a transmission project under the PJM OATT and Operating Agreement.⁹⁹ As previously reported, on March 25, Central Transmission, LLC (“Central”) had filed a complaint against

⁹⁶ Mirant Corporation and its Public Utility Subsidiaries and RRI Energy, Inc. and its Public Utility Subsidiaries, 132 FERC ¶ 61,096 (2010).

⁹⁷ The “Northern Maine Customer Group” is comprised of Houlton Water Company, Van Buren Light and Power District, Eastern Maine Electric Cooperative, Inc., and the Office of the Maine Public Advocate (“MOPA”).

⁹⁸ See PacifiCorp, 92 FERC ¶ 61,032 (2000); Alabama Power Co., 95 FERC ¶ 61,002 (2001); El Paso Elec. Co., 114 FERC ¶ 61,175 (2006).

⁹⁹ Central Transmission, LLC v. PJM Interconnection, L.L.C., 131 FERC ¶ 61,243 (2010), *reh’g requested*.

PJM alleging that the PJM Operating Agreement and Tariff are unjust and unduly discriminatory insofar as those provisions prevent PJM from designating Central Transmission to construct and own a transmission project under the same cost recovery provisions in Schedule 12 of the PJM Tariff that are available to those entities that own transmission facilities that comprise the PJM transmission system (the “Incumbent TOs”). As Central requested, FERC clarified that PJM has the existing right to designate Central to construct and own a transmission project, and to revise Schedule 6 of the PJM OA and Schedule 12 of the PJM Tariff to confirm that Central’s construction and ownership will be on the same regulated, rate-based terms as Incumbent TOs. FERC found that Central is eligible to be designated by PJM to build the facilities in question under the OATT and Operating Agreement since PJM is permitted to designate non-incumbent transmission developers to build economic expansion projects under the PJM Regional Transmission Enhancement Plan (“RTEP”) if approved through the RTEP process. The Commission also found that once approved, these non-incumbent independent transmission developers would be eligible to seek cost-of-service rate treatment under Schedule 12. Based on this determination, the Commission found that no revisions to PJM’s Tariff are necessary. On July 19, the PSEG Companies filed a request for rehearing of the June 17 order. That request is currently pending before the FERC. If there are questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **ISO Request for Limited Waivers of NAESB WEQ Standards (ER10-1749)**

In a new matter since the last report, the ISO on July 9, as correct on July 20, requested a limited waiver of specific WEQ Version 002.1 standards (including those governing *pro forma* transmission services not provided by the ISO and inapplicable TLR standards), incorporated by reference into the FERC’s regulations, and which public utilities are required to incorporate by reference into their OATTs. The FERC has previously granted ISO requests for waiver of certain Version 000 and 001 WEQ standards. Comments on this filing are due August 10, 2010. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **SGIA – CL&P/Covanta (ER10-1654)**

On August 2, the FERC accepted a non-conforming SGIA filed on June 30 by NU on behalf of CL&P to govern the continued interconnection of Covanta’s 11 MW steam turbine generator located in Wallingford, Connecticut. The need for the new SGIA was triggered by the expiration of an Electrical Energy Purchase Agreement between Covanta and CL&P on June 30, 2010. NU reported that a new agreement was not warranted under Schedule 23, and the ISO was not required to be a party to the replacement IA. NU instead designated the agreement under Schedule 21-NU (IA-NU-16). Because Schedule 21-NU does not have a *pro forma* agreement, NU was required to file the “non-conforming” agreement, which also included changes to remove references to the standard SGIA, SGIP and the ISO, and well as set a 20-year term. No comments on this filing were submitted by the July 21 comment date. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **LGIA – PSNH/Merrimack (ER10-1266)**

On July 1, the FERC accepted, effective May 31, 2010, the non-conforming LGIA filed on May 1 by the ISO and NU on behalf of PSNH to govern the interconnection of PSNH’s Merrimack Generating Facility, located in Bow, New Hampshire. The need for the new LGIA was triggered by PSNH’s request to further increase the capacity of Unit No. 2 by 17 MW. The Merrimack LGIA 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” and makes conforming changes. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Amendment to External Market Monitor Contract (ER10-1250)**

On July 13, the FERC accepted Amendment No. 1 to the ISO's contract with Potomac Economics, Ltd., its External Market Monitor (the "EMM Contract Amendment"), effective May 15, 2010 as requested. The EMM Contract Amendment conformed the scope of work to Section 9.4 of the Participants Agreement as modified by the April 28, 2009 Order 719 filing which, in relevant part, has since been accepted by the FERC.¹⁰⁰ (Section III.A.1.2 of the Tariff and Section 9.4.5 of the Participants Agreement require that any changes to the Scope of Work of the contract with the External Market Monitor be filed with the FERC.) Unless the July 13 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).

- **Champlain Hudson HVDC Transmission Project (ER10-1175)**

On July 1, 2010, FERC authorized Champlain Hudson Power Express, Inc. ("CHPE") to charge negotiated rates for the sale of transmission rights on a proposed \$3.8 billion, approximately 400-mile, 320 kV High-Voltage Direct Current ("HVDC") transmission project.¹⁰¹ The project will originate at the Canada-United States border and will consist of two submarine or underground cable systems that will terminate in New York City and Bridgeport, Connecticut, respectively, each with a 1,000 MW capacity. Upon completion of the transmission line, CHPE will turn over operational control of the project to the NYISO and ISO to operate under their respective OATTs. The July 1, 2010 order was not challenged as is final and unappealable.

- **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.¹⁰² On April 15, following three workshops FERC conducted on the Penalty Guidelines, FERC issued an order announcing it has determined that the public interest will be served by affording interested entities a broader opportunity to comment on the Penalty Guidelines before issuing a final order and putting them into effect.¹⁰³ FERC therefore suspended the Policy Statement and the application of the Penalty Guidelines, and notes that its March 18, 2010 action will be considered as interim in this proceeding. The Policy Statement expands FERC's civil penalty authority under EPAct 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, under the Penalty Guidelines, 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 held three workshops which provided 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

¹⁰⁰ See January 21 Order; Order 719 Compliance Filings (ER10-588; ER09-1051) above.

¹⁰¹ Champlain Hudson Power Express, Inc., 132 FERC ¶ 61,006 (2010).

¹⁰² Policy Statement on Penalty Guidelines, 130 FERC ¶ 61,220 (2010).

¹⁰³ Enforcement of Statutes, Orders, Rules, and Regulations, 130 FERC ¶ 61,040 (2010).

<http://capitolconnection.gmu.edu/ferc/ferc.htm>. The subsequent two workshops were held on April 14 in Houston, TX, and on April 15 in San Francisco, CA. Following the workshops, FERC invited interested entities to submit comments by June 14, 2010. Among the nearly 40 parties filing comments by the June 14 deadline were: the ISO, National Grid, NERC, and NPCC.

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

As previously reported, the FERC issued an order granting in part and denying in part the application submitted by Northeast Utilities Service Co. 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 for QFs with a net generating capacity of 5 MW or greater.¹⁰⁴ FERC granted PSNH’s request to terminate its mandatory purchase obligation for QFs with a net generating capacity greater than 20 MW (“Large QFs”), but denied PSNH’s request to terminate mandatory power purchase obligations for QFs with a net capacity between 5MW and 20 MW (“Small QFs”). For Large QFs, FERC found that PSNH properly relied on the rebuttable presumption that Large QFs in Day 2 markets have nondiscriminatory access to those markets. For Small QFs, however, FERC found that PSNH did not overcome the rebuttable presumption that Small QFs do not have nondiscriminatory access to markets. FERC noted that in order to overcome the rebuttable presumption that Small QFs do not have nondiscriminatory access to markets, Order No. 688 stipulates that an electric utility must “demonstrate, *with regard to each small QF* that it, in fact, has nondiscriminatory access to the market.” FERC found that rather than make a facility-specific showing as to individual Small QFs, PSNH attempted to show generally that all Small QFs have nondiscriminatory access to markets, and FERC expressly declined to make such a generic finding in Order No. 688.

On May 14, 2010, PSNH filed a motion for clarification and/or rehearing of FERC’s April 15 order. On May 19, 2010, Clean Power Development, LLC (“CPD”) filed an answer to PSNH’s motion urging FERC to conclude that its April 15 order was not in error by grandfathering CPD and excluding it from the termination order. On June 11, 2010, the FERC issued a tolling order affording it additional time to consider PSNH’s request, which remains 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).¹⁰⁵ 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

¹⁰⁴ Public Service Company of New Hampshire, 131 FERC ¶ 61,027 (2010), *reh’g requested*.

¹⁰⁵ Integrys Energy Services, Inc. v. New Brunswick Power Generation Corporation et al., 127 FERC ¶ 61,232 (2009), *reh’g requested*.

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. On April 21, 2010, Integrys filed a protest regarding the additional information submitted on March 31, 2010. In addition, On July 30, Integrys filed a further motion requesting the FERC "expeditiously revoke[e] NBP Generation's market-based rate authority." The compliance filing submitted by NBP, the protest and answer thereto, the additional compliance information submitted by NBP, and the protest thereto, 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 July 15, 2010, NYISO issued an order conditionally accepting the NYISO *Report on Broader Regional Markets; Long-Term Solutions to Lake Erie Loop Flow* ("Report"), subject to the NYISO and certain other interested parties answering the questions included in the order to provide FERC with additional evidence regarding the proposals and recommendations in the Report.¹⁰⁶ As previously reported, NYISO filed the Report with FERC on January 12, 2010 in accordance with various FERC directives in this proceeding.¹⁰⁷ 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 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.

In its July 15 order, FERC commended the NYISO and the neighboring ISOs and RTOs with whom NYISO has collaborated in developing the recommendations and proposals outlined in the Report. FERC found that these planned regional initiatives, taken as a whole, appear to represent a constructive, workable framework for minimizing the occurrence of Lake Erie loop flow. However, FERC also found

¹⁰⁶ New York Independent System Operator, Inc., 132 FERC ¶ 61, 031 (2010).

¹⁰⁷ See New York Independent System Operator, Inc., 128 FERC ¶ 61,049 (2009); New York Independent System Operator, Inc., 128 FERC ¶ 61,239 (2009).

that intervenors in this proceeding raised issues and concerns related to the proposed initiatives which are not fully addressed by the Report. FERC therefore directed NYISO and the Midwest ISO, PJM, ITC, and the IESO to answer the questions and provide the additional information requested in an appendix to the July 15 order. Responses must be filed with the FERC within 30 days of the order, and intervenors will be permitted to submit comments addressing those filings 30 days thereafter. FERC noted that this proceeding should progress expeditiously, and encouraged all parties to continue their collaborative efforts.

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

XII. Misc. - Administrative & Rulemaking Proceedings

- **Technical Conference – Mandatory Reliability Standards for the Bulk-Power System (AD10-14)**

On June 15, 2010, FERC issued a notice scheduling a Commissioner-led technical conference for July 6, 2010 to address industry perspectives on certain issues pertaining to the development and enforcement of mandatory reliability standards for the bulk-power system. The conference will focus on: the ERO's standards development process; communication and interactions between FERC, the ERO and regional entities; and ERO and regional entities monitoring and enforcement. On June 18, 2010, the Commission issued a supplemental notice including an agenda for the technical conference. The conference will be divided into two panels: Panel 1 will include presentations and discussion on the current state of mandatory reliability standards development, with presentations by panelists and a discussion with Commissioners; and in Panel 2, panelists will address more specifically their views regarding the reliability standards development process, with Commissioners and staff asking some questions during the presentations. On June 30, 2010 FERC issued further notice concerning the technical conference, noting that in addition to the rulemaking proceedings where FERC acted on March 18, 2010, the discussions at the technical conference may also address matters related to Dockets No. RR09-6, RR09-7, and RR10-12 (all three are included in this Report). On July 7 following the technical conference, the speaker materials and final conference agenda were posted on-line. Following the technical conference, 19 parties filed comments by the July 26 comment date regarding the issues discussed at the conference.

- **Increasing Market and Planning Efficiency Through Improved Software (AD10-12)**

On May 7, the FERC issued a notice that the following three technical conferences would be held in June 2010 to discuss increasing market and planning efficiency through improved software and hardware:

- ▶ ***June 2-3, 2010: Enhanced day-ahead ISO and RTO unit-commitment market models.*** This conference will focus on improving the performance of the day-ahead market and the integration of variable resources, demand resources (DR, DG, and storage) and other technologies by developing unit-commitment models that can accommodate more complex physical and market constraints. Topics for discussion include: improvements in formulations and solution techniques for unit-commitment, improved modeling for new and existing assets, technology-specific modeling issues and bidding parameters for wind, solar, demand resources (DR, DG, and storage), electric vehicles, dispatchable transmission, and combined cycle generating station resources, co-optimization (with respect to energy, reserves, ramp rates, and network topology), flexible dispatch, settlement calculations, transmission switching, and development of a unit-commitment test bed to benchmark the speed and efficiency of solution techniques.

- ▶ **June 9-10, 2010: Enhanced wide-area planning models.** This conference will focus on enabling a more efficient planning and cost allocation process through the employment of better large-scale transmission expansion and economic planning models. Topics for discussion include: issues surrounding the integration and modeling of variable energy resources and demand resources (DR, DG, and storage) in planning software, planning under uncertainty, optimal selection of transmission investments among alternatives, modeling generation expansions in transmission planning models, market-based investment models, and development of a planning model test bed to benchmark models and techniques, and algorithmic approaches in economic planning.
- ▶ **June 23-24, 2010: Enhanced real-time optimal power flow market models.** This conference will focus on improving dispatch of generation assets, integration of variable energy resources and demand resources (DR, DG, and storage) and utilization of flexible transmission assets through the development of a large-scale AC optimal power flow (AC OPF) model with sufficient usability and speed to facilitate better unit commitment and real-time dispatch, including the optimal dispatch and pricing of reactive power from generators, transmission assets and load. Development of an AC power system test bed to benchmark the speed of solution techniques will be discussed.

Although all interested persons are invited to attend, the FERC expects that participants with technical understanding of operations research, power system engineering, mathematical modeling, and/or computer science will likely benefit most from the presentations and discussions at these particular conferences. The conferences will be webcast, and additional information concerning each of the conferences was posted on the FERC's eLibrary.

On June 10, the FERC issued an additional notice establishing the agenda and procedures for the June 23-24 technical conference, and the final agenda was issued on June 23. Following the technical conference, the speaker materials were posted on-line on the FERC website. Also following the technical conference, the FERC invited any parties to submit written comments regarding the matters discussed at the technical conference on or before September 10, 2010.

- **Frequency Regulation Compensation in RTO/ISO Markets (AD10-11)**

On May 26, the FERC held a technical conference to consider issues related to frequency regulation compensation in organized electric markets. Panelists included Bill Capp of Beacon Power and the ISO's John Lowell. Transcripts of the technical conference will be available on the FERC's eLibrary. Following the technical conference, 11 parties, including ISO-NE, submitted comments by the June 16, 2010 comment date.

- **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.¹⁰⁸ Over 60 parties filed comments on the metrics by the March 5, 2010 comment date, including the ISO's Internal Market

¹⁰⁸ See "Electricity Restructuring: FERC Could Take Additional Steps to Analyze Regional Transmission Organizations' Benefits and Performance," GAO-08-987 (Sep. 2008).

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, and the APPA submitted supplemental comments supporting its initial reply comments on June 15, 2010.

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

On March 19, 2010, the FERC issued Order 732,¹⁰⁹ 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.¹¹⁰ 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.

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.¹¹¹

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 became effective June 1, 2010.¹¹² 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 Reviewing Submitted OFA Costs (AD10-1)**

On April 14, 2010, held a technical conference to review Other Federal Agencies ("OFAs") costs submitted pursuant to FERC's guideline, set forth in an October 8, 2004 order,¹¹³ to review the costs related to Part I of the FPA that were submitted by the OFAs. The October 8 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

¹⁰⁹ 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*.

¹¹⁰ 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.

¹¹¹ 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.

¹¹² The Final Rule was published in the Federal Register on Mar. 30, 2010 (Vol. 75, No. 60) pp. 15,950-19,986.

¹¹³ Order on Rehearing Consolidating Administrative Annual Charge Bill Appeals and Modifying Annual Charges Billing Procedures, 109 FERC ¶ 61,040 (2004) ("October 8 Order").

documentation. On October 22, 2009, the Office of the Executive Director issued a letter requesting the OFAs to submit their costs by January 21, 2010 for review pursuant to the October 8 Order.

On April 22, 2010 following the April 14 technical conference, FERC issued a notice requesting interested parties file questions and comments on the FY 2009 OFA cost submissions which the FERC will then forward to the OFAs for response. One party submitted questions by the May 7, 2010 question and comment date, and a second party filed comments on May 24, 2010. On June 8 and June 21, the Department of the Interior filed responses to some post-technical conference questions.

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

On June 17, 2010, the FERC released the final National Action Plan on Demand Response. 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 Staff issued a draft of the National Action Plan on Demand Response on March 11, 2010,¹¹⁴ and the FERC had also 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 draft and the technical conference was to elicit further input from interested stakeholders on the possible elements of the National Action Plan. During the technical conference, 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.¹¹⁵ 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 35 parties, including the ISO, have filed comments in the final round.

- **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.

On April 15, 2010, following the discussions at FERC's December 2009 technical conference, FERC announced a series of web-based tools that will be available on the FERC website in August 2010 to help developers understand the FERC licensing process, help improve coordination with other agencies, and help license applicants complete the process more quickly and efficiently. These new

¹¹⁴ 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>.

¹¹⁵ 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).

resources will provide a roadmap that walks applicants through the process of (i) selecting a project site, (ii) determining if a project is jurisdictional, (iii) selecting a FERC licensing process, (iv) consulting with stakeholders, and (v) preparing a license or exemption application. These resources will include new tools intended to facilitate the process for potential applicants to apply for a license or exemption, such as fill-in-the-blank license and exemption application templates and tips on how to expedite the application process. The FERC also intends to update existing MOUs with other agencies to improve coordination, and plans to employ a new outreach program to educate potential small hydro developers.

- **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 28.¹¹⁶ 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.

- **NOPR – Transmission Planning and Cost Allocation (RM10-23)**

On June 17, 2010, the FERC issued a NOPR proposing to amend the transmission planning and cost allocation requirements established in Order No. 890 to ensure that FERC-jurisdictional services are provided on a basis that is just, reasonable, and not unduly discriminatory or preferential.¹¹⁷ With respect to transmission planning, the proposed rule would: (1) provide that local and regional transmission planning processes account for transmission needs driven by public policy requirements established by state or federal laws or regulations; (2) improve coordination between neighboring transmission planning regions with respect to interregional facilities; and (3) remove from FERC-approved tariffs or agreements a right of first refusal created by those documents that provides an incumbent transmission provider with an undue advantage over a non-incumbent transmission developer. The NOPR is designed to ensure that neither incumbent nor non-incumbent transmission facility developers receive different treatment in a regional transmission planning process as a result of a FERC-approved tariff or agreement. With respect to cost allocation, the NOPR would establish a closer link between transmission planning processes and cost allocation and would require cost allocation methods for intraregional and interregional transmission facilities to satisfy newly established cost allocation principles. Comments on the NOPR are due August 30, 2010.¹¹⁸

- **NOPR – Promoting a Competitive Market for Capacity Reassignments (RM10-22)**

On April 29, 2010, the FERC issued a NOPR proposing to lift the price cap for all transmission customers reassigning firm transmission capacity rights beyond October 1, 2010.¹¹⁹ FERC intends for the reforms proposed in this NOPR to make electricity markets more efficient by facilitating the development of a market for capacity reassignment as a competitive alternative to primary capacity. The NOPR is based on the FERC’s experience and on a staff report issued April 15, 2010 that evaluated a 30-month study period for temporary removal of the price caps on reassigned transmission capacity. The NOPR seeks comment on FERC’s proposal to permanently remove the price cap beyond October 1, 2010 on all capacity reassignments the reassignments and to revise section 23 of the pro forma OATT

¹¹⁶ The NOI was published in the Federal Register on Apr. 28, 2008 (Vol. 73, No. 82) pp. 22867-22871.

¹¹⁷ Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, 131 FERC ¶ 61,253 (2010).

¹¹⁸ The NOI was published in the Federal Register on June 30, 2010 (Vol. 75, No. 125) pp. 37884-37916.

¹¹⁹ Promoting a Competitive Market for Capacity Reassignments, 131 FERC ¶ 61,081 (2010).

accordingly. The FERC proposes to direct transmission providers to submit corresponding revisions to their OATT's within 30 days of publication of the Final Rule in the Federal Register. In the NOPR, FERC also seeks comments as to whether there are any other reforms that it should undertake to create a more efficient and vibrant secondary market for transmission capacity. Thirteen parties filed comments on the NOPR by the July 16, 2010 comment date.¹²⁰

- **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.¹²¹ 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. Over 130 parties, including NEPOOL and the ISO, filed comments on the NOPR by the May 13, 2010 comment date,¹²² and five parties subsequently submitted reply comments.

On August 2, the FERC issued a supplemental NOPR and Notice of Technical Conference to provide additional opportunity for comment on issues related to the March 18 NOPR regarding the appropriate compensation to be paid to demand response resources in organized wholesale electric markets administered by RTOs/ISOs. Specifically, the supplemental NOPR seeks comment on whether the FERC should adopt requirements related to two issues addressed in comments: (1) if the FERC were to adopt a net benefits test for determining when to compensate DR providers, what, if any, requirements should apply to the methods for determining net benefits; and (2) what, if any, requirements should apply to how the costs of DR are allocated. The date of the technical conference will be provided by the FERC in a subsequent Federal Register notice. Comments on the NOPR will be due 30 days following the completion of that technical conference. The Commission will also announce a supplemental comment close date in a subsequent publication in the Federal Register.

- **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

¹²⁰ The NOPR was published in the Federal Register on May 6, 2010, (Vol. 75, No. 87) pp. 24828-24835.

¹²¹ N. Am. Elec. Reliability Corp., 130 FERC ¶ 61,213 (2010).

¹²² The NOPR was published in the Federal Register on March 29, 2010 (Vol. 75, No. 59) pp. 15,362-15,371.

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.¹²³ 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.

On May 11, 2010, FERC convened a technical conference to discuss the proposal in the NOPR regarding whether ISOs and RTOs should adopt certain tariff revisions to clarify their status as a party to each transaction so as to eliminate ambiguity regarding their ability to “set-off” market obligations and whether this proposal will have additional ramifications. The technical conference had two panels: Panel I was comprised of representatives from market administrators, including PJM, MISO, CAISO, and the CFTC; Panel II was comprised of panelists to provide market and legal perspectives. On May 12 following the technical conference, FERC invited parties to submit further written comments regarding the counterparty proposal discussed at the technical conference on or before June 8, 2010. Fifteen parties, including NEPOOL, filed further written comments on the counterparty proposal.

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

As previously reported, 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, 2010,¹²⁴ but 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 to April 12, 2010. Over 125 parties submitted comments by the comment date. Draft NEPOOL comments were considered at the April 9 NPC meeting and were finalized and filed with the FERC on April 12.

- **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.¹²⁵ 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

¹²³ The NOI was published in the Federal Register on Jan. 27, 2010 (Vol. 75, No. 17) pp. 4310-4316.

¹²⁴ The NOI was published in the Federal Register on Jan. 27, 2010 (Vol. 75, No. 17) pp. 4316-4323.

¹²⁵ 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).

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 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.¹²⁶

XIII. State Proceedings & Federal Legislative Proceedings

- **Congressional Developments - CFTC/FERC Jurisdiction Issues Raised by Financial Reforms Legislation;**

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). The Senate approved the conference report for the Dodd-Frank Act on July 15; the House, on June 30. Section 722 (f), entitled “Public Interest Waiver,” authorizes the CFTC to exempt from its oversight an agreement, contract, or transaction that is entered into under the FERC’s authority to approve tariffs (presumably to preserve the FERC’s authority to oversee Financial Transmission Rights (FTRs) in the organized markets). Although Chairman Wellinghof has stated his view that this provision adequately addresses the FERC’s concerns about losing jurisdiction over an important aspect of the organized electric energy markets, it still requires the CFTC to take affirmative action to grant the exemption, and it remains unclear if, how or when the CFTC would take such an action. If there are questions on this matter, please contact Flossie Davis (860-275-0360; fkdavis@daypitney.com) or Dave Doot (860-275-0102; dtdoot@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)**

On June 10, 2010, the MPUC issued a Certificate of Public Convenience and Necessity (“CPCN”) authorizing CMP to build substantially all of the 345 kV backbone of the Maine Power Reliability Project (“MPRP”), consisting of transmission lines and related infrastructure, at an estimated costs of \$1.5 billion, most of which will be designated as PTF. The CPCN was issued in an order approving the settlement stipulation that was filed on May 7, 2010, by a number of parties, including CMP, MOPA, GridSolar, IECG, CLF, Bangor Hydro, Competitive Energy Services, etc., following a hearing on the stipulation that was held on May 12, 2010. The approved settlement stipulation resolves a number of the contested issues raised by CMP’s petition for a CPCN. The CPCN authorizes CMP to construct all elements of the MPRP with the exception of: (1) the Mid-Coast Spur; (2) the Lewiston Loop; (3) the Raven Farm Auto-Transformer; and (4) the elements removed from the project by ISO-NE at the hearings in this matter. The MPUC found that the stipulation would maintain and enhance the reliability of Maine’s electric grid, enhance the development of renewable resources, and provide

¹²⁶ The NOPR was published in the Federal Register on Jan. 28, 2010 (Vol. 75, No. 18) pp. 4498-4509.

economic benefits to ratepayers, in Maine. The MPUC also found that other benefits to Maine ratepayers will flow from the establishment of 2 smart grid pilot projects, improvements to Maine's efficiency programs, pursuit of changes to the RSP process, dispute resolution mechanism for abutting landowners, and the funding of 10-year grants for low income weatherization and other energy efficiency programs.

With regard to the Lewiston Loop, the MPUC identified the potential for non-transmission alternatives to substitute for transmission, such as demand resources and smart grid, and requires CMP to create an "ombudsman" and related processes to help ensure that issues and concerns of proximate landowners are fairly considered in the siting and construction process. On June 11, 2010, in compliance with the MPUC's June 10 order, CMP filed with the MPUC a Supplemental Case Management Memorandum containing a proposed schedule and process for addressing the local reliability issues involving the Lewiston Loop.

On June 15, 2010, the MPUC scheduled a case conference for June 30 to discuss the elements of the MPRP that it deferred for additional consideration in its June 10 order. Procedural and technical conferences regarding these Phase II elements are now underway. On July 20, the hearing examiner issued an order setting forth the procedural schedule, leading up to hearings in mid-November.

If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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. Supplemental briefs by parties were filed with the DC Circuit Court on Mar 30, 2010. On April 12, Petitioners’ filed a response to the Motion to Dismiss Petition for Lack of Jurisdiction filed by Intervenors in support of FERC. On April 19, Intervenors filed a reply to Petitioners’ response to Motion to Dismiss. On May 26, DC Circuit Court orders matter scheduled for oral argument on the first available date in the next term, now scheduled for September 20, 2010.
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)	On July 16, the DC Circuit denied the CT AG/CT OCC petition for review. Unless appealed to the Supreme Court, this matter will be concluded.

Case No.	Filed	Appellant(s)	FERC Proceeding	FERC Decision(s) Appealed	Status/Comments
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).
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)	On June 21, the Court granted FERC’s motion to dismiss this case for lack of jurisdiction.
10-1103	5/20/10	PSEG ER&T and PSEG Power CT	ER08-633-000; -001 (FCA1)	123 FERC ¶ 61,290 (June 20, 2008) 130 FERC ¶ 61,235 (Mar 24, 2010)	On June 28, FERC filed an amended unopposed motion for a schedule setting a sixty-day briefing period for FERC. On July 15, the Court ordered that intervenors show cause by August 20 why they should not be limited to one joint brief, on the side of the party they support, and, where appropriate, one joint reply brief.
10-1104	5/21/10	CT AG, CT OCC	ER10-154-000, -001 (ISO 2010 Revenue Requirement)	129 FERC ¶ 61,299 (Dec30, 2009) 130 FERC ¶ 61,236 (Mar 25, 2010)	On June 23, the DC Circuit granted FERC’s motion requesting the case be held in abeyance pending the Court’s disposition of 09-1220 (which occurred on July 16) and directed parties to file motions to govern future proceedings in the case within 30 days of that disposition.

INDEX
Status Report of Current Regulatory and Legal Proceedings
as of August 4, 2010

I. Complaints

ICAP Import Contract Complaints	(EL09-48; EL09-47)	1
Integritys Complaint - NBP Generation Market Power in NMISA	(EL09-32)	33
MPS LSCPR Complaint	(EL08-48)	3
NECPUC ROE Complaint.....	(EL08-69)	2
NEPGA FCM Re-Design Complaint.....	(EL10-50)	10
NRG/PSEG FCM Re-Design Complaint.....	(EL10-57)	10
PSEG Complaint (Bridgeport Harbor Units' Qualified Capacity Ratings)	(EL10-58)	1

II. Rate/ROE Filings

2010/2011 Power Year Transmission Rate Filing	(ER09-1532)	4
CMP Inclusion of MPRP CWIP in RNS Rate	(ER09-938)	4
ICR-Related Values for 2010/2011 Final ARA and Jump Ball Market Rule Changes	(ER10-438)	4
ICRs, HQICCs and Related Values - 2013/2014 Power Year	(ER10-1182)	4
ROE Incentives for MPC Project (CMP and MPS).....	(EL08-77)	5
ROE Incentives for MPRP (CMP)	(EL08-74)	6
ROE Incentives for NEEWS (NU and NGrid)	(ER08-1548)	6
RTO ROE Proceedings.....	(ER04-157 et al.)	7

III. Market Rule 1 Changes, Interpretations and Waiver Requests

Application of Overlapping Interconnection Impacts Analysis to DR	(ER10-882)	10
Change to Designation of Sheet 7013.....	(ER10-1306)	9
De-List Bids for Stations with Common Costs.....	(ER10-750)	12
eTariff Preparation Filing	(ER10-1384)	8
FCA4 Qualification Informational Filing	(ER10-1185)	9
FCM Phase II Market Rule Changes: Rights and Obligations, Payments and Charges and Performance	(ER09-1144)	14
FCM Re-Design: Revisions to MR1 §§ 12 and 13	(ER10-787; EL10-57; EL10-50).....	10
FRM Credit Calculation	(ER10-1690)	7
Load Reconstitution.....	(ER10-1653)	7
Market Monitoring Reference Updates	(ER10-1183)	10
NECPUC ROE Complaint.....	(EL08-69)	2
Omnibus 6 and ICR Rule Changes	(ER10-1352)	8
Order 719 Compliance Filings.....	(ER10-588,ER09-1051).....	12
PSEG Complaint (Bridgeport Harbor Units' Qualified Capacity Ratings)	(EL10-58)	1
Suspension of Secondary FTR Market	(ER10-1190)	9
Tie Benefits Calculation and Allocation.....	(ER08-41)	14
VELCO Request for Waiver of Market Rule 1 § 1.8.3.7.....	(ER10-1347)	9

IV. OATT Amendments/Coordination Agreements

eTariff Preparation Filing	(ER10-1384)	8
OATT Attachment E (Local Networks)	ER10-1445	14
Order 719 Compliance Filings.....	(ER10-588, ER09-1051).....	12
Schedule 2 (VAR Support) Amendments - Transition Period Double Recovery Issue.....	(ER07-397)	15

V. Financial Assurance/Billing Policy Amendments

Unsecured Credit Filing.....	(ER10-942)	15
------------------------------	------------------	----

VI. Schedule 20/21 Updates

Schedule 20A-VEC and 21-VEC – 2010 Transmission Formula Update (ER10-1181) 16
 Schedule 21-BHE Change to Forward Looking Formula Rate (ER09-934) 17
 Schedule 21-BHE eTariff Clean-up & Preparation (ER10-1371) 16
 Schedule 21-CMP Conforming Changes to Reflect MPRP CWIP Inclusion in RNS Rate.. (ER09-938) 4
 Schedule 21-CMP KLPD LNS Agreement (ER10-199) 17
 Schedule 21-NSTAR Annual Informational Filing (ER09-1243; ER07-549)..... 17

VII. RMR Agreements

All RMR Agreements Terminated June 1, 2010 17

VIII. Regional Reports

2009 Annual Markets Reports (ZZ10-4) 18
 ISO's 2010 Q1 Capital Projects Report..... (ER10-1248) 17
 Load Response Status Reports..... (ER03-345) 18
 Quarterly Markets Reports - 2010 Q1 (ZZ10-4) 18
 Quarterly Reports Regarding Non-Generating Resource Regulation Market Participation . (ER08-54) 18
 Quarterly Status Reports on LFTR Implementation (ER07-476; RM06-08)..... 18

IX. Membership Filings

August 2010 Membership Filing (ER10-2084) 19
 July 2010 Membership Filing (ER10-1650) 19
 June 2010 Membership Filing (ER10-972) 19

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

2010 NERC/NPCC Business Plans and Budgets..... (RR09-9)..... 27
 3-Year ERO Performance Assessment Report (RR09-7) 27
 Formal Interpretation – Reliability Standard CIP-006-2b (RD10-8)..... 21
 Formal Interpretation – Reliability Standard VAR-002-1a (RD09-5)..... 21
 Modification of ERO Rules of Procedure..... (RR09-6)..... 28
 Order 717-C – Standards of Conduct for Transmission Providers (RM07-1)..... 24
 Order 722 – Revised Reliability Standards for Facilities Design, Connections
 and Maintenance (FAC-010-002, FAC-011-002, and FAC-014-002)..... (RM08-11) 24
 Order 729 - Revised MOD Reliability Standards (RM09-5; RM06-16) (RM09-5; RM08-19;
 RM06-16) 23
 Proposed Clarification to CIP Standards (RD10-11; RD10-12;
 RD10-13; RM06-22) 19
 Mandatory Bulk-Power System Reliability Standards (RM06-16) 24
 NERC Compliance and Certification Committee – Revised Rules of Procedure..... (RR10-8)..... 26
 NERC Rules of Procedure -- Technical Feasibility Exception Amendments..... (RR10-1)..... 27
 NOPR – Revision to ERO Definition of Bulk Electric System..... (RM09-18)..... 22
 Reliability Standard - Transmission Relay Loadability (RD10-10; RM08-13) 23
 Reliability Standard Violation Severity Levels (RR08-4)..... 28
 Revised Regional Entity Delegation Agreements..... (RR10-11)..... 26
 Revised Reliability Standard - BAL-004-1 (RM09-13)..... 23
 Revised Reliability Standards – EOP-001-1, EOP-005-2 and EOP006-2 (RM10-16)..... 22
 Revised Reliability Standards - PER-004-2 and PER-005-1 (RM09-25) 22
 Revised Reliability Standard Processes Manual..... (RR10-12)..... 26
 Violation Security Levels – CIP-002-2 through CIP-009-2 (RD10-6)..... 21

XI. Misc. Regional Interest

203 Application - BHE/Maine & Maritimes Corp.(EC10-67) 30
 203 Application - Milford Power Company(EC10-74) 29
 203 Application - Mirant/Reliant.....(EC10-70) 29
 Amendment to External Market Monitor Contract.....(ER10-1250) 32
 Central Transmission v. PJM: Merchant Transmission Cost Recovery.....(EL10-52) 30
 Champlain Hudson HVDC Transmission Project(ER10-1175) 32
 FERC Penalty Guidelines(PL10-4)..... 32
 Integrys Complaint - NBP Generation Market Power in NMISA(EL09-32) 33
 ISO Request for Limited Waivers of NAESB WEQ Standards(ER10-1749) 31
 LGIA - PSNH/Merrimack(ER10-1266) 31
 NYISO Report on Regional Markets; Long-Term Solutions to Lake Erie Loop Flow(ER08-1281) 34
 PSNH Application to Terminate Mandatory Purchase Obligation from QFs > 5MW(QM10-4)..... 33
 SGIA – CL&P/Covanta(ER10-1654) 31
 UI Declaratory Order – Sales to Elm Electric Coop.....(EL10-67) 30

XII. Misc: Administrative & Rulemaking Proceedings

Frequency Regulation Compensation in RTO/ISO Markets(AD10-11) 36
 Increasing Market and Planning Efficiency Through Improved Software(AD10-12) 35
 National Action Plan on Demand Response.....(AD09-1) 38
 NOI Regarding Annual Charges Assessments for Public Utilities(AD08-7) 39
 NOI: Variable Energy Resources(RM10-11) 41
 NOPR – Credit Reform(RM10-13) 40
 NOPR – Demand Response Compensation in Organized Wholesale Energy Markets(RM10-17) 40
 NOPR – Exempting Non-Controlling Investments in Utilities from MBR Requirements... (RM09-16) 41
 NOPR – Promoting a Competitive Market for Capacity Reassignments(RM10-22) 39
 NOPR – Transmission Planning and Cost Allocation(RM10-23) 39
 Order 732 - Revisions to Form, Criteria, and Procedures for QF Status(RM09-23) 37
 RTO/ISO Performance Metrics(AD10-5) 36
 Technical Conference – Mandatory Reliability Standards for the Bulk-Power System(AD10-14) 35
 Technical Conference on RTO/ISO Responsiveness.....(ER09-1051 *et al.*) 12
 Technical Conference on Small Hydropower Development(AD09-9) 38
 Technical Conference Reviewing Submitted OFA Costs.....(AD10-1) 37

XIII. State Proceedings & Federal Legislative Proceedings

Congressional Developments - CFTC/FERC Jurisdiction Issues 42
 MPUC – Investigation of Maine Utilities Continued Participation in ISO-NE(MPUC 2008-156) 42
 MPUC Review of CMP Petition for CPCN for MPRP(MPUC 2008-255) 42

XIV. Federal Court Appeals

2009 ISO Administrative Costs Recovery (ER09-197)..... 09-1220 44
 2010 ISO Revenue Requirement (ER10-154) 10-1104 45
 FCA1 (ER08-633) 10-1103 45
 ICAP Import Contract Complaints (EL09-48-001) 09-1320 45
 MPS LSCPR Complaint (ER08-48) 09-1231 45
 Remand-FCM Settlement/Transition Rules (ER06-1465, ER03-563) 06-1403, 06-1427,
 07-1193 44