

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of June 1, 2010

The following activity, as more fully described in the attached litigation report, has occurred since the report dated May 5, 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)	May 20	ISO answers PSEG May 5 answer
1	ICAP Import Contract Complaints - CT DPUC/OCC (EL09-48); CT AG (EL09-47) (consolidated)	May 5-11 May 12-26	Parties file motions to strike testimony; answering motions, and other procedural motions Hearings conducted before trial ALJ Judge H. Peter Young

II. Rate/ROE Filings

* 3	2013/2014 Power Year ICRs, HQICCs and Related Values (ER10-1182)	May 25-26	CT DPUC, Exelon, LIPA, MPUC, NEPOOL, NRG, and NU intervene
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III. Market Rule Changes, Interpretations And Waiver Requests

* 7	eTariff Preparation Filing (ER10-1384)	Jun 1	ISO, NEPOOL, NU, MEPCO jointly file changes to ISO Tariff in preparation for Aug 13, 2010 baseline filing of entire ISO Tariff in electronic form pursuant to Order 714; comment date Jun 22
* 7	Omnibus 6 and ICR Rule Changes (ER10-1352)	May 27	ISO and NEPOOL jointly file changes; comment date Jun 17
* 7	VELCO request for waiver of Market Rule 1 § 1.8.3.7 (ER10-1347)	May 27	VELCO files waiver request; comment date Jun 17
* 8	Change to Designation of Sheet 7013 (ER10-1306)	May 25	ISO files correction to designation of Sheet No. 7013; comment date Jun 15
8	Suspension of Secondary FTR Market (ER10-1190)	May 25	NU files motion to intervene
8	FCA4 Qualification Informational Filing (ER10-1185)	May 11- May 25	Dynegy, Exelon, Mirant, NEPOOL, NRG, and NU intervene; Dominion files protest
9	FCM Definitions Revisions (ER10-1088)	May 10 May 14 May 25 May 28	Constellation, Dominion, Dynegy, Exelon, and NU intervene; ConEd files protest ISO answers ConEd protest NEPOOL answers ConEd protest FERC accepts revisions, effective Jun 1, 2010
9	FCM Conforming Changes to Market Rule 1 Appendix A (ER10-997)	May 26	FERC accepts changes, effective Jun 1, 2010
9	Updates to Centralized Tariff Definitions (ER10-996)	May 26	FERC accepts updates
9	Competitive Import Requirements (ER10-902)	May 20	FERC accepts filing

10	Application of Overlapping Interconnection Impacts Analysis to DR (ER10-882)	May 14	FERC issues deficiency letter; response due on or before Jun14
10	FCM Re-Design: Revisions to MR1 §§ 12 and 13 (ER10-787; EL10-57; EL10-50)	May 17 May 24 May 28	Boston Gen files answer to ISO's May 5 request for clarification NEPOOL, NEPGA, NextEra file motions for clarification and/or rehearing CT DPUC, NECPUC, NU, NGrid, TEC, and CT OCC jointly request rehearing of the Apr 23 order
11	De-List Bids for Stations with Common Costs (ER10-750)	Jun 1	ISO and NEPOOL jointly submit compliance filing
12	Order 719 And 719-A Compliance Filings (ER10-588; ER09-1051)	May 28	FERC conditionally accepts Oct 27, 2009 (90-day) and Jan 12, 2010 (180-day) Order 719-A compliance filings; subject to a further 60-day compliance filing

IV. OATT Amendments / TOAs / Coordination Agreements

14	Schedule 2 (VAR Support) Amendments - Transition Period Double Recovery Issue (ER07-397)	May 12 May 27 Jun 1	ISO and NEPOOL submit compliance filing; comment date Jun 2 VT PSB intervenes GDF Suez intervenes
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V. Financial Assurance/Billing Policy Amendments

14	Miscellaneous Revisions to the Financial Assurance Policy (ER10-1043)	May 26	FERC accepts revisions, effective Jun 1, 2010
15	Unsecured Credit Filing (ER10-942)	May 13 May 18	New England Credit Policy Coalition files answer to May 3 answers Integrays files answer to May 3 answers

VI. Schedule 20/21/22 Changes

* 15	Schedule 21-BHE eTariff Clean-up & Preparation (ER10-1371)	Jun 1	Bangor hydro files changes designed to clean-up and prepare Schedule 21-BHE for inclusion in ISO's Aug 13 filing; comment date Jun 22
15	Schedule 21-UI Localized Costs Sharing Agreement (GenConn Devon) (ER10-1059)	May 18	FERC accepts agreement
16	Schedule 21-CMP KLPD LNS Agreement (ER10-199)	May 17 May 20	KPLD files reply comments supporting settlement agreement Trial Judge Joseph R. Nacy certifies uncontested settlement agreement
16	Schedule 21-NU Localized Cost Responsibility Agreement (GenConn Devon) (ER10-993)	May 18	FERC accepts agreement
16	Schedule 21-BHE Change to Forward Looking Formula Rate (ER09-934)	May 17 May 24	Bangor Hydro files 12th settlement update Bangor Hydro files Settlement Agreement to resolve all contested issues; comments, Jun 14; reply comments, Jun 23

VII. RMR Agreements

No Activity to Report

VIII. Regional Reports

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| * 17 | ISO's 2010 Q1 Capital Projects Report
(ER10-1248) | May 14
May 18 | ISO files Report; comment date Jun 4
NEPOOL intervenes |
| * 17 | 2009 Annual Markets Report
(ZZ10-4) | May 18 | ISO files its 2009 Annual Markets Report |
| * 17 | Quarterly Markets Reports - 2010 Q1
(ZZ10-4) | May 25 | ISO files 2010 Q1 report |

IX. Membership Filings

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|------|--|--------|---|
| * 18 | June 2010 Membership Filing
(ER10-1364) | May 28 | NEPOOL requests the FERC accept 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; comment date Jun 18 |
| 19 | May 2010 Membership Filing
(ER10-1146) | May 25 | FERC accepts the memberships of Algonquin Energy Services; Arctos Capital; Noble Americas Gas & Power; and Reliable Power (effective May 1, 2010) |
| 19 | April 2010 Membership Filing
(ER10-799) | May 14 | FERC accepts (i) the membership of Bridgeport Fuel Cell Park; DFC ERG CT; Gallop Power Greenville; Granite Reliable Power; Public Power, LLC; Town of New Shoreham, RI (End User Sector); and (ii) the terminations of CinCap IV and Saracen Energy (Mar 1); Greenville Steam Co. and Public Power & Utility (Apr 1) |

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

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| 19 | Proposed Clarification to CIP Standards (RD10-11; RD10-12; RD10-13; RM06-22) | May 12
May 17
Mar 17 | ISO and other parties intervene
NERC submits compliance filing in response to Mar 18 order
FERC issues tolling order on requests for rehearing of Mar 18 order |
| 20 | Reliability Standard on Transmission Relay Loadability (RD10-10; RM08-13) | May 17 | FERC issues tolling order on requests for rehearing of Mar 18 order |
| 22 | NOPR – Revision to ERO Definition of Bulk Electric System (RM09-18) | May 7-14
May 25 | Parties file comments
NYISO files reply comments |
| 23 | Order 717-C – Standards of Conduct for Transmission Providers (RM07-1) | May 17 | TAPS files motion for clarification and rehearing of Order 717-C |
| 24 | Mandatory Bulk-Power System Reliability Standards (RM06-16) | May 13
May 17
Jun 1 | FERC issues tolling order on requests for rehearing of Mar 18 order regarding BAL-003-0, directs technical conference, suspends compliance deadline
FERC issues tolling order on requests for rehearing of Mar 18 order regarding TPL-002-0
NERC files Q1 2010 informational filing in compliance with Order No. 693 regarding timeframe to restore auxiliary power systems of nuclear plants |
| 25 | NERC Rules of Procedure -- Technical Feasibility Exception Amendments (RR10-1) | May 12 | ISO moves to intervene |

26	3-Year ERO Performance Assessment Report (RR09-7)	May 13 May 18-26	NERC requests FERC issue a preliminary assessment of the ERO Performance Assessment Report submitted by NERC on Jul 20 Parties support NERC's request for preliminary assessment
27	Modification of ERO Rules of Procedure (RR09-6)	May 17	FERC issues tolling order on requests for rehearing of Mar 18 order
27	Reliability Standard Violation Severity Levels (RR08-4)	May 5	NERC files information supplementing the March 5 VSL compliance filing

XI. Misc. - of Regional Interest

* 28	203 Application - Mirant/Reliant (EC10-70)	May 14	Mirant and Reliant request FERC authorization to merge, with Mirant becoming a direct, wholly-owned Reliant subsidiary; comment date Jun 17
* 28	203 Application – BHE/Maine & Maritimes (EC10-67)	May 11 Jun 1	BHE Holdings and MAM request to transfer of all outstanding MAM securities to BHE Holdings NMISA and Northern Maine Customer Group file protests
* 28	203 Application - BG Dighton, Lake Road, MASSPOWER/ECP (EC10-59)	May 13 May 20	FERC authorizes acquisition by EquiPower Resources of the ownership interests in Dighton, Lake Road, and MASSPOWER Transaction consummated
28	203 Application – FPL/New Hampshire Transmission (EC10-58)	May 13 Jun 1	FERC authorizes transfer by FPL, and acquisition by NHT, of FPL's ownership interest in Seabrook Transaction consummated
* 29	UI Declaratory Order – Sales to Elm Electric Coop (EL10-67)	May 12	UI seeks finding that sales to Elm for resale to Elm's members are transactions subject to FERC jurisdiction; comment date Jun 11
29	Central Transmission –v– PJM: Merchant Transmission Cost Recovery (EL10-52)	May 13	Central and H-P Energy Resources file answers to comments and protests
* 29	LGIA – PSNH/Merrimack (ER10-1266)	May 17	ISO and NU (for PSNH) file non-conforming LGIA; comment date Jun 7
* 29	Amendment to External Market Monitor Contract (ER10-1250)	May 14	ISO files EMM Contract Amendment; comment date Jun 4
30	Champlain Hudson HVDC Transmission Project (ER10-1175)	May 21-24 May 27	Parties file comments and protest CHPE files answer to comments and protest
30	SGIA - HGE (ER10-1083)	May 25	FERC accepts non-conforming SGIA (Schedule 23 SGIA- ISONE/HE-10-01)
30	LGIA - NU/Algonquin Windsor Locks (ER10-1053)	May 12	FERC accepts LGIA (IA-NU-15) effective Apr 14
31	LGIA - Green Mountain Power (ER10-919)	May 17	FERC accepts LGIA (LGIA-ISON/GMP-10-01), effective May 22
31	FERC Penalty Guidelines (PL10-4)	May 27	Party files comments
31	PSNH Application to Terminate Mandatory Purchase Obligation from QFs > 5MW (QM10-4)	May 14 May 19	PSNH requests clarification of Apr 15 order granting termination of mandatory power purchase obligations for Large QFs but denying termination of obligations for Small QFs Clean Power Development files answer to May 14 PSNH pleading

XII. Misc. - Administrative & Rulemaking Proceedings

* 33	Increasing Market and Planning Efficiency Through Improved Software (AD10-12)	May 7 May 20 May 24	FERC issues notice of technical conferences to be held Jun 2-3, Jun 9-10, and Jun 23-24 FERC establishes agenda and procedures for Jun 2-3 technical conf. FERC establishes agenda and procedures for Jun 9-10 technical conf.
* 34	Frequency Regulation Compensation in RTO/ISO Markets (AD10-11)	May 19 May 26	FERC issues supplemental notice of May 26 technical conference FERC holds technical conference; comments due Jun 16
35	Technical Conference Reviewing Submitted OFA Costs (AD10-1)	May 6 - May 24	Parties file questions and comments
37	NOPR – Demand Response Compensation in Organized Wholesale Energy Markets (RM10-17)	May 13	Over 130 parties, including NEPOOL, file comments
38	NOPR - Credit Reform (RM10-13)	May 11	FERC holds technical conference to discuss counterparty proposal in NOPR; Jun 8 comment date

XIII. State Proceedings & Federal Legislative Proceedings

40	MPUC Review of CMP Petition for MPRP CPCN (MPUC 2008-255)	May 7 May 10-12 May 12	Parties file stipulation to resolve proceeding Parties file comments on stipulation MPUC holds hearings on stipulation
39	Congressional Developments - CFTC/FERC Jurisdiction Issues	May 20	Dodd-Lincoln bill passes Senate, potential compromise to ongoing CFTC/FERC jurisdictional dispute over energy transactions; bill to go to conference for reconciliation with House version of financial regulation legislation passed in Dec 2009

XIV. Federal Court Appeals

* 44	ISO 2010 Revenue Requirement (10-1104)	May 21	CT AG and CT OCC file joint petition for review of FERC orders in ER10-154
* 44	FCA1 (10-1103)	May 20	PSEG files petition for review of FERC orders in ER08-633
43	ISO 2009 Revenue Requirement (09-1220)	May 7	Oral argument held
43	ROE Incentives - UI Bethel-Norwalk Upgrade (09-1039); NU M-N Project (09-1040)	May 25 May 26	Joint Petitioners withdraw Petitions for Review given Court's final resolution of Case No. 08-1199 Case dismissed
42	FCM Settlement and Transition Rules (06-1403)	May 26	DC Circuit orders oral argument be scheduled for first available date in the next term and further ordered that the motion to dismiss be deferred pending oral argument.

MEMORANDUM

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: June 3, 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 June 1, 2010 of key ongoing proceedings relating to NEPOOL matters before the Federal Energy Regulatory Commission (“FERC”), state regulatory commissions, and the Federal Courts and legislatures. If you have questions, please contact us.¹

I. Complaints

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

On April 2, 2010, PSEG Power Connecticut (“PSEG”) filed a complaint against the ISO challenging the Capacity Network Resource Capability (“CNRC”) ratings limitation applied by the ISO to Bridgeport Harbor Unit Nos. 3 and 4 (the “BH Units”). As set out more fully in the Complaint, PSEG asserts that the ISO had misinterpreted, and thereby violated, its Tariff by insisting that the Qualified Capacity ratings for the BH Units can not be increased beyond the CNRC ratings for the units without a new interconnection request. PSEG further asserts that the ISO’s interpretation has, and continues to, impose financial hardship and harm. Accordingly, PSEG requested that the FERC (i) find that the ISO’s limitations on the CNRC rating for the BH Units are unjust and unreasonable; (ii) direct the ISO to adopt CNRC ratings for the BH Units based on their documented historic capability; (iii) grant expedited treatment for the complaint, with an order issued by (x) May 4, 2010 (in time for the corrected ratings to be included in the ISO’s Informational Filing for FCA4), or, (y) in the alternative, by June 1, 2010 (instructing the ISO to permit PSEG to offer the Qualified Capacity for the BH units unlimited by the CNRC ratings). Interventions were filed by Bridgeport Energy, Constellation, Dominion, Exelon, Mirant, NEPOOL, NRG, and UI. On April 22, the ISO filed an answer to the Complaint, which PSEG answered on May 5, 2010. On May 20, the ISO answered PSEG’s May 5 answer. This matter is currently pending before the FERC. If you have any questions concerning this matter, please contact , Dave Doot (860-275-0102; dt_doot@daypitney.com) or Michelle Gardner (617-345-4697; mcgardner@daypitney.com).

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

Since the last report, the hearings contemplated by the August 24, 2009 Capacity Imports Hearings Order² 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 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 Unidentified Installed Capacity Resources Committed to Import over the Northern N.Y. AC Interface, 128 FERC ¶

NEPOOL counsel to Participants Committee members and alternates (May 24 and June 1). Motions related to witness testimony and procedural issues were filed before in the days leading up to the hearings. Initial Briefs are due on June 17, with Reply Briefs due July 7. An Initial Decision is now expected on or before August 25.

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

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

If you have any questions concerning these complaint proceedings, please contact Michelle Gardner (617-345-4697; mcgardner@daypitney.com) or Dave Doot (860-275-0102; dt_doot@daypitney.com).

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

Rehearing of the FERC’s September 25, 2008 order⁷ denying NECPUC’s complaint against the TOs remains pending. As previously reported, the FERC denied the June 12, 2008 complaint which sought, among other things, to limit application of the ROE adder for certain qualified project costs that substantially exceed the 2004 regional transmission expansion plan (“RTEP04”) estimates. NECPUC had also proposed in the complaint a higher ROE (i.e., in excess of 100 basis points) be allowed if a project

61,182 (2009) (“Capacity Imports Hearing Order”), *clarification and reh’g granted in part*, 129 FERC ¶ 61,057 (2009).

³ *Id.* at PP 53-55.

⁴ *Id.* at P 57.

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

⁶ *Id.* at P 22.

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

was completed below its estimated cost, with the ROE calibrated so that the total incentive return dollars would equal the incentive related income had the project been completed at its estimated cost. In denying the complaint, the FERC found that the cost increases identified by NECPUC did not change the circumstances underlying the FERC's decision to authorize the ROE incentive and did not render the cost of the incentive unjust and unreasonable. The FERC also found that NECPUC's attempt to restrict application of the ROE incentive to the originally estimated costs of incentive-eligible projects should have been raised in the Opinion No. 489 proceeding (ER04-157), and therefore denied the complaint and rejected the argument as a collateral attack on Opinion No. 489. In addition, the FERC explained the public purpose served by applying an approved incentive to prudently-incurred costs, and in this case, found that NECPUC had not made a showing sufficient to call into question whether costs associated with the identified projects were imprudently incurred. Rehearing of the NECPUC ROE Order was filed by NECPUC *et al.*⁸ and MA AG/CT OCC (sub-docket -001) on October 24, 2008. On November 21, 2008, the FERC issued a tolling order affording it additional time to consider the NECPUC and MA AG requests, which remain pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

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

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

II. Rate/ROE Filings

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

On May 4, 2010, the ISO filed ICRs, Hydro Quebec Interconnection Capability Credits ("HQICCs") and related values (Local Sourcing Requirements, Maximum Capacity Limit) for the

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

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

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

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

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

¹³ Id. at PP 47-54.

2013/2014 Capability Year. The values will be used in FCA5 to be held in August 2010. At its April 9, 2010 meeting, the Participants Committee supported the HQICC values, but not the ICR and related values submitted in the filing. Interventions were filed by CT DPUC, Exelon, LIPA, MPUC, NEPOOL, NRG, and NU. 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).

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

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

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

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

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

¹⁵ Id. at P 80.

¹⁶ 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*.

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.

If you have any questions concerning this matter, please contact either Eric Runge (617-345-4735; erunge@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 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

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*.

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.

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 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).

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").

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.

- **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

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

On June 1, 2010, the ISO, NEPOOL, NU and MEPCO jointly filed ministerial changes to the ISO Tariff 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. Comments on the eTariff Amendments will be due on or before June 22, 2010. 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 May 27, 2010, the ISO and NEPOOL jointly filed various FCM Rule changes ("Omnibus 6 Changes") and an ICR Rule Change to the Tariff. The Omnibus 6 Changes (i) modify the qualification requirements for Existing Import Capacity Resources and the Resource Modeling Assumptions to be used in the ICR and LSR calculations; (ii) revise the formula for prorationing of Capacity offered by certain Import Capacity Resources; (iii) adds a definition of Handy-Whitman Index; (iv) clarifies the definition of Lead Market Participant; and (v) revises the calculation of LSEs' Capacity Requirement. The ICR Rule Change revises § 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." The changes were unanimously supported by the Participants Committee at its May 7, 2010 meeting. Comments on this filing are due June 17, 2010. 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 May 27, 2010, Vermont Electric Power Company ("VELCO") filed a request for a one-time waiver of Section 8.3.7.1 (as in effect during May 2010) to permit it 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 is impossible for it, or for any other capacity import supplier, to tender an import commitment into the ICAP market for May 2010. VELCO explained an ISO view that, under the Transition Rules, the new summer Capacity Commitment Period begins in May 2010, but that period is effectively truncated to one month given the June 2010 implementation of the new FCM Rules. Consequently, any commitment for that new period would be for one month only, fail the commitment requirement "for an initial minimum duration of two consecutive months for each new Commitment

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).

Period”, and not be eligible for ICAP payments during for May 2010. Comments on this request are due on or before June 17, 2010. If you have any questions concerning this matter, please contact Emile Buzaid (860-275-0282; ebuzaid@daypitney.com) or Michelle Gardner (617-345-4697; mcgardner@daypitney.com).

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

On May 25, 2010, the ISO filed a revised Sheet 7013 to correct that sheet’s designation under the FERC’s Order 614 rules so that it accurately reflects changes previously accepted by the FERC. If there are any comments on this filing, they will be due on or before June 15, 2010. 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 May 5, 2010, the ISO and NEPOOL jointly filed changes 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. These changes were supported by the Participants Committee at the February 5, 2010 meeting. A motion to intervene was filed by NU, but no comments on this filing were submitted by the May 26, 2010 comment date. These changes are pending before the FERC. If you have any questions concerning this matter, please contact Emile Buzaid (860-275-0282; ebuzaid@daypitney.com) or Michelle Gardner (617-345-4697; mcgardner@daypitney.com).

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

On May 4, the ISO submitted its informational filing (the “FCA4 Informational Filing”) for qualification in FCA4. The ISO is required under Market Rule Section 13.8.1 to submit an informational filing with the FERC containing the determinations made by the ISO for the upcoming Forward Capacity Auction (“FCA”) at least 90 days prior to each auction. FCA3 is scheduled to begin August 2, 2010. 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 reported that there will be 37,271 MW of existing capacity in FCA3 competing with 3,140 MW of new capacity under a procurement limit of 32,127 MW (ICR minus HQICCs). Interventions were filed by Dynegey, Exelon, Mirant, NEPOOL, NRG, and NU. Dominion filed a protest requesting that the ISO be directed to include unamortized capital costs included in FCA3 De-List Bids in its determination of FCA4 reliability compensation for Salem Harbor Units 3 and 4. In accordance with Section III.13.8.1(b) of the Market Rules, if the FERC does not issue an order within 75 days after the date of this filing (July 16) directing otherwise, the determinations described in this Filing and any elections pursuant to Section III.13.1.2.3.2.1.1 shall be used in conducting FCA4. 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).

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

On May 4, 2010, the ISO and NEPOOL jointly filed changes to revise those Tariff sheets that had not yet been updated to reflect the market monitoring terms implemented in the region’s Order 719 compliance filing 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. No comments on this filing were submitted by the May 25, 2010 comment date and this filing is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FCM Definitions Revisions (ER10-1088)**

On May 28, 2010, the FERC accepted effective June 1, 2010 FCM-conforming revisions to the consolidated definitions section of the ISO Tariff (§ I.2.2), jointly filed by the ISO and NEPOOL, in preparation for the commencement of the first FCM Capacity Commitment Period (the “FCM Definitions Revisions”).³⁰ As previously reported, these changes were supported by the Participants Committee at its April 8 meeting. Motions to intervene were filed by Constellation, Dominion, Dynegy, Exelon, and NU. ConEd protested the filing (i) asserting that the Market Rule language regarding compensation for resources, without a CSO, that provide energy for reliability purposes in Real-Time was not sufficiently specific; and (ii) requesting that Section 13.6.4 be clarified (x) to permit such a resource to be paid based on a separate, distinct, and unmitigated RTHOL Offer, (y) to make the offer eligible for NCPC, and (z) to make the offer eligible to set the ECP. On May 14, the ISO answered the ConEd comments, urging the FERC to reject the ConEd request. On May 25, NEPOOL submitted an answer urging the FERC to approve the Tariff Changes as filed, without modification or condition, and to reject without prejudice the relief Con Ed requested and to direct ConEd to raise its concerns in the stakeholder process. In accepting the filing, the FERC rejected ConEd’s protest, agreeing that the issues raised by ConEd were beyond the scope of the proceeding and would re-open issues on which it had already made a determination.³¹ Unless the May 28 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 Michelle Gardner (617-345-4697; mcgardner@daypitney.com).

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

On May 26, the FERC accepted, effective June 1, 2010, revisions to Appendix A to Market Rule 1 to conform that Appendix to the FCM Market Rules. Specifically, the changes conform to the FCM Market Rules Sections A.4 (Physical Withholding), A.5.2.1.1 (Resources with Partial Capacity Supply Obligations), A.5.6.1 (Methods for Determining Reference Levels), and A.5.9 (Determination of Offer Competitiveness During Shortage Event). Unless the May 26 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 Michelle Gardner (617-345-4697; mcgardner@daypitney.com).

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

Also on May 26, the FERC accepted revisions to the centralized definitions section of the Tariff to reflect a number of FERC-accepted definitional additions and changes from recent proceedings. As previously reported, the ISO stated that the changes made were merely ministerial and accurately reflect the language accepted by the FERC in the prior proceedings. Unless the May 26 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On May 20, the FERC accepted revisions to the FCM Market Rules, jointly filed by the ISO and NEPOOL, to require capacity importers to submit energy offers at competitive prices and to subject capacity importers to penalties for failing to comply with certain FCM participation requirements (collectively, the “FCM Competitive Import Requirements”).³² The filing was accepted June 1, 2010, as requested. In accepting the filing, the FERC declined to direct the Internal Market Monitor to “to investigate and report on the [FCM Competitive Import Requirements] and to file those analyses semi-annually in this docket” as requested by the CT DPUC. The FERC found that “the existing requirements

³⁰ ISO New England Inc. and New England Power Pool, 131 FERC ¶ 61,200 (2010).

³¹ Id. at P 20.

³² ISO New England Inc. and New England Power Pool, 131 FERC ¶ 61,147 (2010).

for thorough periodic reviews and reports by [the ISO] and the Internal Market Monitor, as well as a robust stakeholder process, should ensure that stakeholders are provided sufficiently detailed information upon which to further address any issue relating to the threshold price and the penalty provisions.”³³ Unless the May 20 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 Michelle Gardner (617-345-4697; mcgardner@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 response to the deficiency letter will be considered an amendment to the filing and will be separately noticed for comments. The response must be submitted on or before June 14, 2010. If you have any questions concerning this matter, please contact Emile Buzaid (860-275-0282; ebuzaid@daypitney.com) or Michelle Gardner (617-345-4697; mcgardner@daypitney.com).

- **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.³⁴ 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.

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,

³³ *Id.*, at P 20.

³⁴ *ISO New England Inc. and New England Power Pool*, 131 FERC ¶ 61,065 (2010) (“FCM Re-Design Order”), *clarification or reh’g requested*.

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 are required to be filed by July 1, 2010 addressing questions raised by the FERC in its order, supporting prior proposals, or making new proposals. Second Briefs are required to be filed by September 1, 2010. The FERC stated its intention to issue an order in this proceeding in time for the Fifth FCA. In addition, the FERC stated that they 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. The ISO's request is pending before FERC, with FERC action required on or before June 4, 2010, or the request will be deemed denied. 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.

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. This filing is purely ministerial in nature. No comments were filed by the May 25, 2010 comment date.

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

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

As previously reported, the 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.³⁵ 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

³⁵ ISO New England Inc. and New England Power Pool Participants Committee, 131 FERC ¶ 61,042 (2010).

bids, and the meaning of the term “monotonically decreasing” used in the Tariff.³⁶ Details are to be specified in the Manuals.³⁷ The April 26 order was not challenged and is final.

Compliance Filing. On June 1, the ISO and NEPOOL jointly submitted the required compliance filing addressing the clarifications and explanations directed in the April 16 order. Pursuant to the authority delegated to it at the May 7 Participants Committee meeting, the Markets Committee considered and voted to support the compliance filing. Comments on the compliance filing, if any, will be due June 22. If you have any questions concerning this matter, please contact Emile Buzaid (860-275-0282; ebuzaid@daypitney.com) or Michelle Gardner (617-345-4697; mcgardner@daypitney.com).

- **Order 719 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.³⁸ 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 requires 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.³⁹ 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 demand response participation in the region’s Ancillary Services Markets, particularly with respect to compensation in the Forward Reserve Market. The FERC ordered that the current stakeholder process for evaluating the treatment of Price-Responsive Demand (“PRD”) should consider how demand response resources are compensated in the reserve and regulation markets. Further, the FERC stated that if the region committed to retaining the Dispatchable Asset Related Demand (“DARD”) structure, it would require an examination of the current rules that require a minimum 5 MW peak load size requirement and do not provide DARDs the ability to aggregate. On February 22, 2010, Connecticut Representatives requested (i) rehearing of the portions of the January 21 order that addressed the Market Monitoring (PP 116 – 137) and (ii) that the related issues raised by the CT DPUC’s comments for be set for full evidentiary hearing procedures. On March 9, 2010, both the ISO and NEPOOL responded to the arguments raised in the request for rehearing. On March 23, 2010, the FERC issued a tolling order affording it additional time to consider the Connecticut Representatives’ request, which remains pending before the FERC.

Order 719-A 90-Day Compliance Filing. On October 27, 2009, in response to Order 719-A, the ISO and NEPOOL jointly filed new §§ III.13.1.4..9, III.13.1.4.9.1 and III.E.1.6 to Market Rule 1 to address the treatment of aggregators of retail customers that participate in the wholesale capacity and

³⁶ *Id.* at PP 4-5.

³⁷ *Id.* at PP 4-5.

³⁸ *ISO New England Inc. and New England Power Pool*, 131 FERC ¶ 61,194 (2010) (“May 28 Order”).

³⁹ *ISO New England Inc.*, 130 FERC ¶ 61,054 (2010) (“January 21 Order”), *reh’g requested*.

electricity markets (the “Order 719-A Compliance Amendments”). The Order 719-A Compliance Amendments were supported by the Participants Committee at its October 9, 2009 meeting. On November 10, 2009, EnerNOC filed a protest, asserting that the new sections were not in compliance with the directives of FERC’s Order Nos. 719 and 719-A, contain language that creates or condones the ability of utilities who are host to the retail customers aggregated by an ARC, to restrict customers to participate only through the host utility or its designated agent, erecting unnecessary and undesirable barriers to competition, and are unduly discriminatory. On November 25, NEPOOL, the ISO and CMEEC, MMWEC, and NHEC (here, the “Public Systems”) filed answers to the November 10 EnerNOC protest. The Order 719-A Compliance Amendments, the EnerNOC protest, and the answers thereto are pending before the FERC.

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

Revisions to Definitions of ARD and DARD. On April 21, the ISO and NEPOOL submitted a further compliance filing in response to the requirements of the January 21 Order (sub-docket -003). In this sub-docket, the ISO and NEPOOL revise 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 ISO noted that the effective date for the DARD Revisions will depend on the outcome of coordination activities among the ISO and the parties responsible for supporting DARD registration and metering, such as the Host Participant Meter Readers. Comments on the April 21 compliance filing must be submitted on or before May 12, 2010.

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

- **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.⁴⁰ (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).

⁴⁰ ISO New England Inc. and New England Power Pool Participants Committee, 128 FERC ¶ 61,023 (2009) (“July 14, 2009 Order”), *reh’g requested*.

- **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 report⁴¹ 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

- **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.⁴² 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. 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

- **Miscellaneous Revisions to the Financial Assurance Policy (ER10-1043)**

On May 26, the FERC accepted effective June 1, 2010 a set of miscellaneous revisions to the Financial Assurance Policy ("FAP") that had been filed jointly by NEPOOL and the ISO on April 13. The revisions (1) clarified that the entity responsible for FCM-related financial assurance is the Lead Market Participant for a resource; (2) modified the calculation of financial assurance requirements for FCM capacity charges; (3) updated and conformed the suspension provisions for Non-Municipal Market Participants with respect to certain bilateral transactions; (4) conformed the financial assurance provisions related to termination of a Capacity Supply Obligation in the FCM to the provisions of Market Rule 1; (5)

⁴¹ 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).

⁴² ISO New England Inc., 130 FERC ¶ 61,005 (2010).

established consequences for a bank's failure to honor one or more letters of credit issued or confirmed in favor of the ISO; and (6) made additional FCM-related clean-up changes. Unless the May 26 order is challenged, this proceeding will be concluded. If there are any questions on this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

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

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 are intended to increase the efficiency of the markets by further limiting the Pool's financial exposure. Specifically, the package includes changes that: (i) provide for twice-weekly, rather than weekly, settlement for certain charges; (ii) eliminate the use of unsecured credit for Market Participants that do not serve retail load at government-established rates; (iii) reallocate the costs of defaults where unsecured credit is still used; (iv) segregate the billing and collateralization of transmission charges from other ISO charges; and (v) improve the quality of security that is provided pursuant to the Policies. An effective date, on or after December 1, 2010, with 60 days' notice to be provided by the ISO to Participants and to the FERCC, was requested. The majority of the changes were supported by the Participants Committee at its May 1, 2009 meeting, with the remaining pieces supported at its June 5 meeting. Motions to intervene were filed by Constellation, Energy America, Exelon, Hess, Integrys, NRG, NU, PSEG, and Shell. Comments in support of the filing were submitted by the Supporting T&D Companies.⁴³ Protests were filed by BP, ConEd, and the New England Credit Policy Coalition ("Coalition").⁴⁴ On May 3, NEPOOL, the ISO, and the Supporting T&D Companies each responded to the protests filed. The Coalition and Integrys responded to the May 3 answers on May 13 and 18, respectively. The Unsecured Credit Filing, and all related pleadings and motions are pending before the FERC. 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)**

BHE filed on June 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. An August 1, 2010 effective date was requested. Comments on the filing, if any, will be due June 22, 2010. 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-UI Localized Costs Sharing Agreement (GenConn Devon) (ER10-1059)**

On May 18, the FERC accepted a Localized Costs Sharing Agreement ("LCSA") filed by UI under Schedule 21-NU (LCSA-11), effective June 1, 2010. The LCSA is to recover certain Localized

⁴³ The "Supporting T&D Companies" are NGrid, NSTAR, NU, and UI.

⁴⁴ The "New England Credit Policy Coalition" is comprised of Constellation, BP, ConEd, Energy America, Exelon, Hess, PSEG, and Shell.

Costs associated with regional transmission facilities from GenConn Devon, which will be taking RNS for station service purposes. Unless the May 18 letter order is challenged, this proceeding will be concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

Also on May 18, the FERC accepted the Localized Costs Responsibility Agreement (“LCRA”) submitted by NU under Schedule 21-NU (LCRA NU-10-01), effective June 1, 2010. The LCRA is to recover certain Localized Costs associated with regional transmission facilities from GenConn Devon, which will be taking RNS for station service purposes. Unless the May 18 letter order is challenged, this proceeding will be concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

As previously reported, CMP and KLPD submitted on April 16, 2010, a settlement agreement to resolve all issues in the proceeding, more fully identified in the December 30 order accepting, but suspending and setting for hearing, the unexecuted service agreement for Local Network Transmission Service between CMP and Kennebunk Light & Power District (“KLPD”) (designated as Service Agreement No. LNSA-CMP-4 under Schedule 21-CMP).⁴⁵ Initial comments were filed by FERC staff on May 6, and KLPD reply comments on May 13, each supporting the settlement. On May 20, Trial Judge Joseph R. Nacy certified the uncontested settlement agreement to the FERC, and the settlement agreement is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On May 24, BHE submitted a settlement agreement between it and the MPUC that would resolve the issues set for hearing in this case. 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.⁴⁶ 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.⁴⁷ Pursuant to their settlement discussions, BHE reports that it and the MPUC have resolved, for the time being, the allocation issues, as well as the schedule and amount for recovery of amounts that BHE discovered during settlement discussions that it had undercharged its local customers. Comments on the Offer of Settlement must be filed on or before June 14, 2010; Reply Comments, June 23, 2010. If there are questions on these matters, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

VII. RMR Agreements

No Activity to Report

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

⁴⁵ Central Maine Power Co., 129 FERC ¶ 61,302 (2009).

⁴⁶ Bangor Hydro-Electric Co., 127 FERC ¶ 61,186 (2009).

⁴⁷ Id.

VIII. Regional Reports

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

In a new matter since the last report, the ISO filed on May 14 its Capital Projects Report and Unamortized Cost Schedule covering the first quarter ("Q1") of calendar year 2010 (the "Report"). The ISO is required to file the Report under Section 205 of the FPA pursuant to Section IV.B.6.2 of the ISO Tariff. Comments on this filing are due June 4, 2010. On May 18, NEPOOL filed a doc-less motion to intervene. 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.

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

On December 18, 2009, the ISO and NEPOOL filed a further update ("December 2009 Report") summarizing stakeholder deliberations since the July 2009 Report, including the actions taken on the PRD DBD at the December 11, 2009 Participants Committee meeting. On January 28, 2010, the Consumer Demand Response Initiative ("CDRI") submitted a request for FERC policy guidance in response to the December 2009 Report. On February 12, both NEPOOL and the ISO filed responses to the CDRI submission. The NEPOOL response requested that the FERC defer action on the CDRI request, or deny the CDRI request without prejudice to allowing CDRI to re-raise any of its remaining substantive concerns on the issues, at the conclusion of the stakeholder process in response to the filing of any resulting Market Rule changes. The ISO urged the FERC to decline to issue the requested guidance, noting the request was procedurally defective, would not necessarily assist in resolution of the interrelated issues being considered in the Participant Processes, and that it intended to submit in April PRD Market Rules that will provide a vehicle for FERC to exercise its authority regarding the future structure of PRD in New England. CDRI filed a response to the ISO's pleading also on February 12. Comments were filed by Freedom Logistics on February 16, 2010. If you have any questions concerning this matter, please contact Michelle Gardner (617-345-4697; mcgardner@daypitney.com).

- **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.⁴⁸ The ISO filed its sixth report on March 19, 2010. On April 5, 2010, Beacon Power submitted

⁴⁸ 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").

comments in which it committed to working towards the design of new rules by Q4 2010, or sooner, that will allow Energy Storage Resources to participate in the New England Regulation Market on comparable terms with generators. Without new rules, Beacon Power asserted, it and other alternative technologies cannot provide Regulation service in the territory, and investment in alternative technologies will continue to shift to other areas of the country. The sixth report, like the fifth report, was not noticed for public comment.

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

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

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

As directed by the original ASM II Order,⁴⁹ as modified,⁵⁰ the ISO submitted its eighth semi-annual reserve market compliance report on April 1, 2010 (sub-docket -009). In the eighth report, the ISO explained, as in its prior compliance reports, that due to its efforts on other priority projects (e.g. FCM implementation and conforming changes, Order 719 compliance, PRD), work on the forward TMSR market issues is on hold. The ISO reported that it did not expect to have the available resources needed to revisit this issue until at least 2011. No comments on the eighth report were filed. If there are questions on this matter, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com)

IX. Membership Filings

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

On May 28, NEPOOL requested that the FERC accept 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). Comments on this filing must be submitted by June 18, 2010.

⁴⁹ See NEPOOL and ISO New England Inc., 115 FERC ¶ 61,175 (2006) (“ASM II Order”) (directing the ISO to provide updates on the implementation of a forward TMSR market), *reh’g denied* 117 FERC ¶ 61,106 (2006).

⁵⁰ See NEPOOL and ISO New England Inc., 123 FERC ¶ 61,298 (2008) (continuing the semi-annual reporting requirement with respect to the consideration and implementation of a forward market for Ten-Minute Spinning Reserve (“TMSR”)).

- **May 2010 Membership Filing (ER10-1146)**

On May 25, the FERC accepted the memberships of the following Entities each effective May 1, 2010: Algonquin Energy Services Inc. (Supplier Sector); Arctos Capital LLC (Supplier Sector); Noble Americas Gas & Power Corp. (Supplier Sector); and Reliable Power, LLC (Supplier Sector).

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

On May 14, the FERC accepted (i) the membership of the following Entities each effective April 1, 2010: Bridgeport Fuel Cell Park (Provisional Member, Related Person to DFC-ERG Milford, LLC; AR Sector, RG Sub-Sector); DFC ERG CT (Provisional Member, Related Person to DFC-ERG Milford, LLC; AR Sector, RG Sub-Sector); Gallop Power Greenville (Generation Sector, Generation Group Seat); Granite Reliable Power (Related Person to J. P. Morgan Ventures Energy Corp. and Noble Environmental Power; Supplier Sector); Public Power, LLC (Supplier Sector); Town of New Shoreham, Rhode Island (End User Sector); and (ii) the terminations of CinCap IV (March 1, 2010); Saracen Energy (March 1, 2010); Greenville Steam Company (April 1, 2010); and Public Power & Utility, Inc. (April 1, 2010).

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 706.⁵¹ 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, 2009,⁵² 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 requested FERC approve certain requirements for CIP-001-1 and CIP-005-2. These NERC petitions were docketed separated 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 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, 2010,⁵³ FERC accepted the compliance filing NERC submitted on January 19, 2010 that provided the additional information FERC requested in its December 17, 2009 order⁵⁴ addressing NERC's plan to implement eight Version 1 Reliability Standards (CIP-002-1

⁵¹ 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).

⁵² Reliability Standards for Critical Infrastructure Protection, 126 FERC ¶ 61,065 (2009).

⁵³ Mandatory Reliability Standards for Critical Infrastructure Protection, 130 FERC ¶ 61,185 (2010).

⁵⁴ Mandatory Reliability Standards for Critical Infrastructure Protection, 129 FERC ¶ 61,224 (2009).

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

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

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.

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

On December 22, 2009, NERC requested FERC approval⁵⁶ of two interpretations⁵⁶ of Critical Infrastructure Protection ("CIP") Reliability Standard CIP-006-2.1 The interpretations address

⁵⁵ Transmission Relay Loadability Reliability Standard, 130 FERC ¶ 61,221 (2010) ("Order 733").

⁵⁶ 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

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”)⁵⁷ 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.

- **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)**

As previously reported, NERC requested, on September 30, 2009, approval of reliability standards PER-004-2 (Reliability Coordination - Staffing) and PER-005-1 (System Personnel Training), and the simultaneous retirements of standards PER-002-0 (Operating Personnel - Training) and PER-004-1. According to NERC, the proposed revisions significantly improve the currently existing Reliability

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.

⁵⁷ 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.

Standards by strengthening the quality of operator training programs. This matter is currently pending before the FERC.

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

On March 18, 2010, the FERC issued a NOPR⁵⁸ 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.⁵⁹

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

On March 18, 2010, FERC issued a NOPR⁶⁰ 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.⁶¹ 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.⁶²

⁵⁸ Revision to Electric Reliability Organization Definition of Bulk Electric System, 130 FERC ¶ 61, 204 (2010).

⁵⁹ The NOPR was published in the Federal Register on Mar. 24, 2010 (Vol. 75, No. 56) pp. 14,097 - 14,103).

⁶⁰ Time Error Correction Reliability Standard, 130 FERC ¶ 61,201 (2010).

⁶¹ 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.

⁶² The NOPR was published in the Federal Register on March 29, 2010, 2010 (Vol. 75, No. 59) pp. 15,371-15,376.

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

On May 5, 2010, the FERC issued Order 729-A,⁶³ its order clarifying aspects of Order 729.⁶⁴ 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.

- **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 722⁶⁵ 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, 2009.⁶⁶ 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-C⁶⁷ 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.⁶⁸ FERC issued Order 717-A on October 15, 2009 to address requests for rehearing and clarification of Order No. 717,⁶⁹ 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

⁶³ 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”).

⁶⁴ 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).

⁶⁵ Version Two Facilities Design, Connections and Maintenance Reliability Standards, 126 FERC ¶ 61,255 (2009) (“Order 722”), *reh’g requested*.

⁶⁶ Order 722 was published in the Federal Register on Mar. 30, 2009 (Vol. 74, No. 59) pp. 14,008-14,040.

⁶⁷ Standards of Conduct for Transmission Providers, Order 171-C, 131 FERC ¶ 61,045 (2010).

⁶⁸ Standards of Conduct for Transmission Providers, Order 171-A, 129 FERC ¶ 61,043 (2009).

⁶⁹ Standards of Conduct for Transmission Providers, Order 171, 125 FERC ¶ 61,064 (2008).

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. That request is 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 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 report⁷⁰ 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. 693⁷¹ 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-002-0,⁷² 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-003-0,⁷³ 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,

⁷⁰ The TIER Report is available on-line at http://elibrary.ferc.gov/idmws/File_list.asp?document_id=13753678.

⁷¹ 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).

⁷² Mandatory Reliability Standards for the Bulk Power System, 130 FERC ¶ 61,200 (2010).

⁷³ Mandatory Reliability Standards for the Bulk Power System, 130 FERC ¶ 61,218 (2010), *reh’g requested*.

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.⁷⁴ 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."⁷⁵ 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."⁷⁶ The 6-month compliance deadline set forth in the March 18 Order was deferred pending further order by the FERC.⁷⁷ On May 17, 2010, the FERC issued a tolling order affording it additional time to consider the rehearing requests regarding TPL-002-0, which remains pending before the FERC.

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.

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

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

- **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, 2009.⁷⁸ 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

⁷⁴ Mandatory Reliability Standards for the Bulk Power System, 131 FERC ¶ 61,136 (2010).

⁷⁵ Id. at P2.

⁷⁶ Id. at P2; P15; Ordering Paragraph (C).

⁷⁷ Id. at Ordering Paragraph (D).

⁷⁸ N. Am. Elec. Reliability Corp., 129 FERC ¶ 61,040 (2009) ("October 15 Order").

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. NERC's November 20 and May 3 compliance filings remain pending before the FERC. No comments on the May 3 evaluation were submitted by the May 24, 2010 comment date.

- **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.⁷⁹ In the 681-page Report, NERC asserts that it is meeting its statutory requirements, and that it is successfully carrying out its statutory and regulatory responsibilities as the ERO to develop and enforce mandatory reliability standards and to promote and maintain the reliable operation of the North American bulk power system. The Report provides NERC's evaluation of the effectiveness of the Regional Entities, and discusses comments and recommendations received from interested entities concerning the performance of NERC and the Regional Entities. The report also identifies actions that NERC and the Regional Entities plan to take to improve NERC's and the Regional Entities' operations and to continue to enhance the reliable operation of the bulk power system. Comments on the Report were filed by APPA, EEI, EPSA, Exelon, and NRECA. On September 18, NERC filed an answer to the comments filed. In its answer, NERC urged the FERC to find that NERC continues to meet the statutory and regulatory criteria for certification as the ERO. NERC also committed to submit to the FERC 3 comprehensive status reports (to be filed 6, 12, and 24 months following the date of an order concluding this proceeding) on progress that it is making in implementing the specific actions identified in the Report. The Report remains pending before the FERC.

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

⁷⁹ 18 CFR § 39.3(c) (2009).

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.⁸⁰ FERC took this action out of a growing concern that the current voting process at NERC employs a procedure that can be used to prevent compliance with FERC directives to address particular reliability matters. FERC determined NERC's current rules do not provide a reasonable assurance that NERC is capable of complying with FERC reliability directives. Specifically, FERC noted that "balloting down" effectively allows NERC stakeholders to veto a FERC directive by refusing to approve a new or modified reliability standard intended to comply with that directive. NERC directed FERC to submit a filing containing specific proposed modifications to the standards development process within 90 days. When FERC approves NERC's proposal, NERC will then have an additional 90 days to file a document outlining its compliance with the rule requiring transmission and generation owners to determine the ratings of their bulk power system facilities. 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.

- **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,⁸¹ 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 order⁸² 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

⁸⁰ N. Am. Elec. Reliability Corp., 130 FERC ¶ 61,203 (2010).

⁸¹ N. Am. Elec. Reliability Corp., 123 FERC ¶ 61,284 (2008) ("VSL Order"), *order on reh'g* 125 FERC ¶ 61,212 (2008).

⁸² N. Am. Elec. Reliability Corp., 125 FERC ¶ 61,212 (2008) ("VSL Rehearing Order").

and sub-requirements) (sub-docket -004). FERC found NERC's compliance filings complied with the VSL Order, and rejected, as previously addressed, the concerns raised by the ISO/RTO Council.

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

XI. Misc. - of Regional Interest

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

On May 14, Mirant and RRI Energy, Inc. ("Reliant") requested FERC authorization for a merger between Mirant and Reliant that will ultimately result in Mirant becoming a direct, wholly-owned subsidiary of Reliant (the "Transaction"). The parties requested that the FERC approve the Transaction on or before August 6. Comments on the application are due on or before June 17, 2010. 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.⁸³ This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **203 Application - BG Dighton, Lake Road, MASSPOWER / ECP (EC10-59)**

On May 13, the FERC authorized the acquisition by EquiPower Resources ("ECP") of 100% of the direct and indirect ownership interests in BG Dighton Power ("Dighton"), Lake Road Generating Company ("Lake Road"), and MASSPOWER, from BG North America, LLC ("BGNA"). As a result of the transaction, Dighton, Lake Road, and MASSPOWER have become wholly-owned direct or indirect subsidiaries of EquiPower Resources and are no longer affiliated with BGNA or its affiliate BG Energy Merchants. The transaction was consummated on May 20, 2010. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **203 Application – FPL / New Hampshire Transmission (EC10-58)**

On May 13, the FERC authorized the transfer by FPL, and the acquisition by NHT, of FPL's 88.29% undivided ownership interest in the Seabrook Substation (the "Transaction").⁸⁴ As noted above, NHT will become a NEPOOL Participant on June 1, 2010. The transaction was consummated on June 1, 2010. Subject to the filing of related post-Transaction notices, this proceeding will be concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

⁸³ 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").

⁸⁴ Florida Power & Light Co. and New Hampshire Transmission, LLC, 131 FERC ¶ 62,117 (2010).

- **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.⁸⁵ Comments on the Petition are due on or before June 11, 2010. 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 March 25, Central Transmission, LLC (“Central”) filed a complaint against 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”). Central asked the FERC to clarify 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. Answers, interventions and comments to Central’s complaint were due April 28, 2010. Over 40 pleadings and/or motions to intervene were filed, representing an even greater number of parties with a diversity of regional and national perspectives and opinions. On May 13, Central and H-P Energy Resources filed answers to comments and protests filed. This matter is currently pending before the FERC. If there are questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

On May 1, the ISO and NU on behalf of PSNH filed a non-conforming LGIA 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. A May 31, 2010 effective date was requested. Comments on this filing are due on or before June 7, 2010. 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)**

In a new matter since the last report, the ISO filed, on May 14, Amendment No. 1 to its contract with Potomac Economics, Ltd., its External Market Monitor (the “EMM Contract Amendment”). The EMM Contract Amendment conforms the scope of work to Section 9.4 of the Participants Agreement as

⁸⁵ See PacificCorp, 92 FERC ¶ 61,032 (2000); Alabama Power Co., 95 FERC ¶ 61,002 (2001); El Paso Elec. Co., 114 FERC ¶ 61,175 (2006).

modified by the April 28, 2009 Order 719 filing which, in relevant part, has since been accepted by the FERC.⁸⁶ (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.) A May 15, 2010 effective date was requested. Comments on this filing are due on or before June 4, 2010. 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 May 3, 2010, Champlain Hudson Power Express, Inc. (“CHPE”) requested 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. 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. Five parties submitted comments by the May 24, 2010 comment date. On May 27, CHPE filed an answer in response to the comments of the City of Yonkers, Westchester County, and the protest filed by the Independent Power Producers of New York. This matter is currently pending before the FERC.

- **SGIA - HGE (ER10-1083)**

On May 25, 2010, the FERC accepted a non-conforming SGIA between the ISO and The City of Holyoke Gas and Electric Department (“HGE”) that governs the interconnection of HGE’s proposed Small Generating Facility, located in Holyoke, MA. As previously reported, the SGIA (SGIA-ISO-NE/HGE-10-01 under Schedule 23 of the ISO Tariff), in recognition of HGE’s status as both Interconnection Customer and Interconnecting Transmission Owner, deviates from the *pro forma* SGIA 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.” The SGIA was accepted effective June 23, 2010, as requested. Unless the May 25 letter 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).

- **LGIA - NU/Algonquin Windsor Locks (ER10-1053)**

On May 12, 2010, the FERC accepted NU’s non-conforming, two-party Interconnection Agreement with Algonquin Windsor Locks under Schedule 22 of the ISO Tariff (IA-NU-15), effective April 14, 2010. NU reported just three deviations from the *pro forma* LGIA: (i) whereas clauses revised to reflect that the ISO is not a party; (ii) references to the standard LGIA, LGIP and the ISO were removed; and (iii) a term of 20 years. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On May 18, 2010, FERC accepted CMP’s second revised E&P Agreement with Record Hill Wind, which CMP filed with the FERC on March 26, 2010. As previously reported, the FERC accepted CMP’s original E&P Agreement with Record Hill Wind LLC (designated as service agreement CMP-EP-2 under Schedule 22 of the ISO Tariff), on August 5, 2009. A first amendment, filed in February (see Docket No. ER10-764 below), was accepted by FERC on April 12, 2010. The second amendment addresses additional engineering and procurement activities that Record Hill has asked CMP to perform.

⁸⁶ See January 21 Order; Order 719 Compliance Filings (ER10-588; ER09-1051) above.

A March 5, 2010 effective date was requested. No comments on this filing were submitted by the April 16, 2010 comment date.

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

On May 17, the FERC accepted the non-conforming LGIA filed by the ISO and Green Mountain Power (“GMP”) to govern the interconnection of GMP’s Colchester, Vermont Large Generating Facility to GMP’s transmission system at the Gorge Substation. In recognition of GMP’s status as both transmission customer and transmission owners, the LGIA (LGIA-ISONE/GMP-10-01 under Schedule 22 of the ISO Tariff) deviates from the *pro forma* LGIA in two respects: (i) it creates a two (instead of three) party Interconnection Agreement, and (ii) it replaces the “Point of Change of Ownership” with “Point of Change of Function.” The LGIA was accepted effective as of May 22, 2010, as requested. Unless the May 17 letter 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).

- **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.⁸⁷ 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.⁸⁸ 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 EPCA 2005, and that statute expanded FERC’s civil penalty authority pursuant to the FPA. The Penalty Guidelines will promote consistency by basing the penalty calculations on a set of uniform facts that are weighted similarly for similar types of violations and similar types of violators. The Penalty Guidelines also provide specific credit to companies for self-reporting violations and for implementing robust compliance programs, thus further encouraging industry compliance. However, 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 <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. So far, one party has filed comments.

- **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

⁸⁷ Policy Statement on Penalty Guidelines, 130 FERC ¶ 61,220 (2010).

⁸⁸ Enforcement of Statutes, Orders, Rules, and Regulations, 130 FERC ¶ 61,040 (2010).

mandatory power purchase obligations for QFs with a net generating capacity of 5 MW or greater.⁸⁹ 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 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. PSNH's request is pending before FERC, with FERC action required on or before June 14, 2010, or the request will be deemed denied.

- **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).⁹⁰ As previously reported, the Integrys Complaint asserted that New Brunswick Power Generation Corporation ("NBP Generation") should be deemed to have generation market power in the Northern Maine Independent System Administrator, Inc. balancing authority area ("NMISA") and not authorized to engage in market-based sales in the NMISA unless and until it submits information to the FERC establishing that it does not have market power in the NMISA and is explicitly authorized by the FERC to do so. In the order, the FERC directed New Brunswick Power to file a horizontal market power analysis, including the pivotal supplier and wholesale market share screens, for the New Brunswick System Operator balancing authority area, on or before August 10, 2009. On July 10, 2009, the NBP Generation requested rehearing and clarification of the FERC's June 10 Order, urging the FERC to find on rehearing (i) that any wholesale sales into the NMISA region should be treated as non-jurisdictional sales, and (ii) that NBP Generation disclosed sufficient facts in its initial market-based rate application to indicate that it is located in the NBSO balancing authority area. On August 10, 2009, the FERC issued a tolling order affording it additional time to consider NBP Generation's request, which remains pending before the FERC.

Also on August 10, 2009, NBP submitted a filing containing a horizontal market power study in compliance with the FERC's June 10 order. NBP requested that the FERC accept its compliance filing and immediately terminate proceedings under this Docket. On September 9, Integrys filed a protest to the compliance filing and on September 24 NBP filed an answer to the Integrys protest. On October 16, 2009, the FERC requested NBP submit additional information within 30 days regarding the horizontal market power study, which NBP submitted on November 9, 2009. On November 30, Integrys filed a protest regarding the additional information submitted on November 9, 2009. On January 15, 2010, the FERC requested NBP submit additional information and analyses regarding the horizontal market power

⁸⁹ Public Service Company of New Hampshire, 131 FERC ¶ 61,027 (2010), *reh'g requested*.

⁹⁰ Integrys Energy Services, Inc. v. New Brunswick Power Generation Corporation et al., 127 FERC ¶ 61,232 (2009), *reh'g requested*.

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. 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 January 12, 2010, NYISO submitted its *Report on Broader Regional Markets; Long-Term Solutions to Lake Erie Loop Flow* (“Report”) in accordance with various FERC directives in this proceeding.⁹¹ 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. If you have any questions concerning these matters, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com).

XII. Misc. - Administrative & Rulemaking Proceedings

- **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,

⁹¹ See *New York Independent System Operator, Inc.*, 128 FERC ¶ 61,049 (2009); *New York Independent System Operator, Inc.*, 128 FERC ¶ 61,239 (2009).

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 May 20 FERC issued an additional notice establishing the agenda and procedures for the June 2-3 technical conference, and on May 24, FERC issued a notice establishing the agenda and procedures for the June 9-10 technical conference.

- **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, FERC invited interested entities to submit comments by June 16, 2010.

- **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.⁹² Over 60 parties filed comments on the metrics by the March 5, 2010 comment date, including the ISO's Internal Market Monitor and

⁹² See "Electricity Restructuring: FERC Could Take Additional Steps to Analyze Regional Transmission Organizations' Benefits and Performance," GAO-08-987 (Sep. 2008).

NEPOOL. NEPOOL's comments were unanimously approved at the March 5 NPC meeting and filed later that day. Thirteen parties filed reply comments by the March 19, 2010 comment date.

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

On March 19, 2010, the FERC issued Order 732,⁹³ 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.⁹⁴ 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.⁹⁵

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, 2010.⁹⁶ 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,⁹⁷ 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 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.

⁹³ 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*.

⁹⁴ 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.

⁹⁵ 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.

⁹⁶ The Final Rule was published in the Federal Register on Mar. 30, 2010 (Vol. 75, No. 60) pp. 15,950-19,986.

⁹⁷ Order on Rehearing Consolidating Administrative Annual Charge Bill Appeals and Modifying Annual Charges Billing Procedures, 109 FERC ¶ 61,040 (2004) ("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.

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

On March 11, 2010, the FERC Staff released a draft for comment of the National Action Plan on Demand Response.⁹⁸ The National Action Plan is designed to meet three objectives: (1) technical assistance to states to allow them to maximize the amount of demand response resources developed and deployed; (2) design requirements for implementation of a national communications program; and (3) the identification or development of tools and materials for use by customers, states and demand response providers.

As previously reported, the FERC held a technical conference on November 19-20, 2009 to support the development of the National Action Plan on Demand Response. The purpose of the technical conference was to elicit further input from interested stakeholders on the possible elements of the National Action Plan. Panel sessions in the afternoon of November 19 discussed the overall approach to and scope of the National Action Plan, followed by three breakout sessions in the morning of November 20 focused on the three statutory objectives set forth in the National Energy Conservation Policy Act.⁹⁹ 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 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

⁹⁸ 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>.

⁹⁹ 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).

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 28.¹⁰⁰ 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 – 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, 2010.¹⁰¹ 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 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. Comments on the NOPR are due July 16, 2010.¹⁰²

- **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.¹⁰³ 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.¹⁰⁴

¹⁰⁰ The NOI was published in the Federal Register on Apr. 28, 2008 (Vol. 73, No. 82) pp. 22867-22871.

¹⁰¹ Promoting a Competitive Market for Capacity Reassignments, 131 FERC ¶ 61,081 (2010).

¹⁰² The NOPR was published in the Federal Register on May 6, 2010, (Vol. 75, No. 87) pp. 24828-24835.

¹⁰³ N. Am. Elec. Reliability Corp., 130 FERC ¶ 61,213 (2010).

¹⁰⁴ The NOPR was published in the Federal Register on March 29, 2010 (Vol. 75, No. 59) pp. 15,362-15,371.

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

On January 21, 2010, the FERC issued a notice of proposed rulemaking (“NOPR”) seeking comments on a series of proposed credit reforms designed to balance the need for market liquidity with appropriate risk management while ensuring just and reasonable rates for electric customers. FERC’s proposals include the following: (1) shorten the settlement cycle to no more than seven calendar days with no more than an additional seven calendar days for final payment; (2) limit unsecured credit to no more than \$50 million per market participant in energy markets and eliminate unsecured credit in Financial Transmission Rights (“FTR”) markets; (3) clarify the ability of market administrators to offset amounts owed to market participants against amounts owed by market participants and to manage defaults; (4) establish minimum participation criteria for market participants; (5) specify circumstances in which a market administrator may invoke “material adverse change” to require a market participant to post additional collateral; and (6) limit time period allowed for posting additional collateral when additional collateral is requested. These proposals are designed to reduce both the risk of default and the cost of default shared among market participants. A detailed summary of the Credit Reform NOPR was circulated to the Committee on January 29 with the materials for the February 5 meeting. Over 70 parties, including NEPOOL, submitted comments on the Credit Reform NOPR by the March 29, 2010 comment date.¹⁰⁵ 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.

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

Also on January 21, 2010, the FERC issued a NOI seeking comments on whether the FERC’s Electric Quarterly Report (“EQR”) filing requirements should be extended to apply to market participants that are excluded from FERC jurisdiction under Section 205 of the FPA. Those participants include publicly owned utilities, municipal utilities, public utility districts, rural cooperatives, and federal entities. FERC noted that the contemplated extension of filing requirements would increase consumer protection in transparent wholesale electric markets by broadening FERC’s oversight of transactions in those markets. FERC has already evaluated transparency issues in other proceedings, but because those proceedings did not specifically address price transparency in electric markets, FERC is now evaluating whether the quarterly report requirements should be expanded. The FERC also seeks comments on whether it should consider other refinements to existing EQR filing requirements. A detailed summary of the EQR NOI was circulated to the Committee on January 29 with the materials for the February 5 meeting. The Markets Committee considered the EQR NOI at its February 10 meeting and, based on that discussion, NEPOOL did not submit comments. Over 40 parties submitted comments on the NOI by the March 30, 2010 comment date.¹⁰⁶

¹⁰⁵ The NOI was published in the Federal Register on Jan. 27, 2010 (Vol. 75, No. 17) pp. 4310-4316.

¹⁰⁶ The NOI was published in the Federal Register on Jan. 29, 2010 (Vol. 75, No. 19) pp. 4805-4809.

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

Also on January 21, 2010, the FERC issued a NOI seeking comments on whether to reform any of its rules or procedures to integrate the rapidly increasing number of variable energy resources into the nation's power grid in the most efficient and non-discriminatory manner while maintaining power system reliability. The FERC directed that comments focus on the broad issues concerning the integration of variable generation resources and address any effects of variable energy resources on the following seven subject areas: (1) data and reporting requirements, including accurate forecasting tools; (2) scheduling flexibility and incentives for accurate scheduling of variable energy resources; (3) forward market structure and reliability commitments; (4) balancing authority area size and coordination; (5) suitability of reserve products; (6) capacity market reforms; and (7) redispatch and curtailment practices. A detailed summary of the EQR NOI was circulated to the Committee on January 29 with the materials for the February 5 meeting. As indicated in that memo, a single purpose ad hoc committee will be convened for the purpose of determining whether members would like NEPOOL to comment and, if so, what those comments should be. Comments on the NOI were initially due March 29, 2010,¹⁰⁷ 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.¹⁰⁸ The NOPR would grant blanket authorization for a holding company to acquire 10 percent or more, but less than 20 percent, of a public utility, provided that the holding company files an Affirmation in Support of Exemption from Affiliation Requirements (the "Affirmation"), a new FERC form. The Affirmation would be designed to ensure a holding company 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.¹⁰⁹

XIII. State Proceedings & Federal Legislative Proceedings

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

As previously reported, the Participants Committee unanimously adopted and supported a *Statement of New England Power Pool in Support of FERC Jurisdiction* at its December 22 special teleconference meeting. In response to the US House of Representatives Committee on Agriculture request for information concerning FTRs, the ISO submitted its response on December 14, 2009. A copy of the ISO's response is posted at <http://www.iso-ne.com/pubs/pubcomm/corr/2009/index.html>. A broad coalition of electric and gas industry associations,¹¹⁰ asserting they represent all the major segments of

¹⁰⁷ The NOI was published in the Federal Register on Jan. 27, 2010 (Vol. 75, No. 17) pp. 4316-4323.

¹⁰⁸ 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).

¹⁰⁹ The NOPR was published in the Federal Register on Jan. 28, 2010 (Vol. 75, No. 18) pp. 4498-4509.

¹¹⁰ The Associations were: America's Natural Gas Alliance, American Exploration and Production Council, American Gas Association ("AGA"), American Public Power Association ("APPA"), American Public Gas

the electric power and natural gas industries serving every consumer in the United States, issued a letter on January 21 addressed to US Senators outlining their recommendations to address oversight and transparency of over-the-counter (“OTC”) derivatives markets.

In developments since the last report, on May 20, 2010, the US Senate voted 59-39 to pass legislation sponsored by Senators Chris Dodd and Blanche Lincoln comprehensively regulating derivatives. The Senate bill preserves FERC authority to find rates just and reasonable under the Federal Power Act and Natural Gas Act, but also preserves the CFTC’s “exclusive” authority with respect to the trading, execution, or clearing of any regulated agreement or transaction. The bill allows the CFTC to exempt FERC-regulated transactions from its jurisdiction, if it finds that would be in the public interest. The bill will go to a House-Senate conference where it will be reconciled with the House’s version of financial regulation legislation passed in December. 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)**

As previously reported, the Examiner’s Report was issued on April 23, 2010, and proposes to issue to CMP a CPCN 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. For most other portions of the MPRP, CMP’s request was either denied or deferred. The Report noted that, in approving this portion of the MPRP, it does not agree with or accept the ISO’s reliability analysis, but rather finds a need for the portions of the MPRP for which it granted the CPCN. The Examiner’s Report also identifies the potential for non-transmission alternatives to substitute for transmission, such as demand resources and smart grid. CMP would be required 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.

In developments since the last report, a settlement stipulation was filed on May 7, 2010, by a number of parties, including CMP, MOPA, GridSolar, IECG, CLF, Bangor Hydro, Competitive Energy Services, etc., that would resolve a number of the contested issues raised by CMP’s petition for a CPCN. The parties filing the stipulation assert that the stipulation would maintain and enhance the reliability of Maine’s electric grid, enhance the development of renewable resources, and provide economic benefits to ratepayers, in Maine. Other benefits to Maine ratepayers, the parties assert, would 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

Association, American Wind Energy Association (“AWEA”), Edison Electric Institute (“EEI”), Electric Power Supply Association (“EPSA”), Independent Petroleum Association of America, Interstate Natural Gas Association of America, Large Public Power Council, Natural Gas Supply Association, National Rural Electric Cooperative Association, and US Oil & Gas Association.

10-year grants for low income weatherization and other energy efficiency programs. A hearing on the stipulation was held on May 12, 2010. The stipulation is pending before the MPUC.

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.

Case No.	Filed	Appellant(s)	FERC Proceeding	FERC Decision(s) Appealed	Status/Comments
09-1039	1/28/09	CT DPUC, CT AG	ER07-653-000; -001 (ROE Incentives for UI Bethel-Norwalk Upgrade Costs)	119 FERC ¶ 61,182 (May 22, 2007) 126 FERC ¶ 61,043 (Jan 16, 2009)	Case dismissed May 26, 2010
09-1040	1/28/09	CT DPUC, CT AG, CT OCC	ER08-966-000; -001 (ROE Incentives for NU M-N Project)	124 FERC ¶ 61,044 (Jul 17, 2008) 126 FERC ¶ 61,052 (Jan 16, 2009)	
09-1220	8/12/09	CT AG, CT OCC	ER09-197-000; -001 (ISO 2009 Revenue Requirement)	125 FERC ¶ 61,392 (Dec 31, 2008) 127 FERC ¶ 61,254 (Jun 18, 2009)	A briefing schedule has been set. Petitioners' Brief was filed on Dec 11, 2009. Respondent's Brief was filed on Feb 12, 2010. On Feb 25, both NEPOOL and the ISO (intervenor) filed letters adopting the arguments in Respondent's Brief and stated they would not be filing separate briefs. Petitioners' reply brief was filed on Mar 11 and final briefs were filed on Apr 1. Oral argument held May 7, 2010.
09-1231	8/31/09	MPS	EL08-48-000; -001; -002 (SEMA – Cost Allocation)	128 FERC ¶ 61,008 (Jul 2, 2009)	As previously reported, this case is being held in abeyance pending completion of related FERC proceedings (<u>see</u> 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)	Brookfield filed its initial brief on Feb 12, 2010. On Feb 25, the FERC filed a motion to dismiss, arguing the petition was seeking review of non-final FERC orders and therefore not ripe for appellate review. Also on Feb 25, 2010, the FERC filed a motion to suspend the deadline for its filing, pending a decision on its motion to dismiss. On Mar 8, 2010, the CT DPUC filed a response in support of FERC's motion to dismiss; On Mar 11, Brookfield filed a response to FERC's motion to dismiss. On Mar 12, the Court granted FERC's motion to suspend the deadline for its filing, pending a decision on its motion to dismiss. On Mar 18, FERC filed a reply to Brookfield's Mar 11 filing.

Case No.	Filed	Appellant(s)	FERC Proceeding	FERC Decision(s) Appealed	Status/Comments
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 May 20, 2010 PSEG Energy Resources & Trade LLC and PSEG Power Connecticut, LLC filed a petition for review of FERC orders in Docket Nos. ER08-633-000; -001.
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 May 21, 2010 the CT AG and CT OCC filed a joint petition for review of FERC orders in Docket Nos. ER10-154-000; -001.

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