

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of February 28, 2010

The following activity, as more fully described in the attached litigation report, has occurred since the report dated February 3, 2010 was circulated. New matters/proceedings since the last report are preceded by an asterisk '*'. Page numbers precede the matter description.

I. Complaints

1	ICAP Import Contract Complaints - CT DPUC/OCC (EL09-48); CT AG (EL09-47) (consolidated)	Feb 3 Feb 12 Feb 18 Feb 23	Respondents move to strike passages from the direct testimony submitted by Connecticut Representatives' witness Respondents move to extend procedural deadlines by one week; Connecticut Representatives respond to Feb 3 motion Trial Judge Young denies Respondents' Feb 3 motion to strike Respondents submit testimony
2	Dartmouth Power Complaint (Requested Billing Adjustment Denial) (EL09-42)	Feb 22	FERC denies request for rehearing

II. Rate/ROE Filings

4	ICR-Related Values and HQICCs - 2011/2012 ARA2 (ER10-714)	Feb 23	Dynegy, Mirant, MPUC, and NU intervene
4	ICR-Related Values for 2010/2011 Final ARA and Jump Ball Market Rule Changes (ER10-438)	Feb 12	FERC accepts ISO-proposed ICR and ICR-Related Values for final 201/2011 reconfiguration auction, directs ISO to include NEPOOL-proposed, two-year sunset provision in Market Rule 1, and directs ISO to consider a process to enable analysis of alternative proposals in a future market rule amendment
4	FCA3 Results Filing (ER10-186)	Feb 26	FERC accepts filing
5	2010 Administrative Costs Budget (ER10-154)	Feb 24	FERC issues tolling order affording it additional time to consider Joint Advocates Jan 29 request for rehearing of 2010 Budget Order
8	RTO ROE Proceedings (ER04-157 <i>et al.</i>)	Feb 22	CMP files refund report; comment date Mar 15

III. Market Rule Changes, Interpretations And Waiver Requests

* 9	FCM Re-Design: Revisions to MR1 §§ 12 and 13 (ER10-787)	Feb 22	ISO and NEPOOL jointly file changes to Market Rule 1 (§§12 and 13) that re-design some aspects of the FCM Market Rules
* 9	De-List Bids for Stations with Common Costs (ER10-750)	Feb 16 Feb 25	ISO and NEPOOL jointly file revisions to the FCM Market Rules that address the submission of de-list bids by resources at stations with common costs; comment date Mar 9 NRG intervenes
* 9	Pittsfield and Pawtucket Request for Limited Waiver of FCM Rules (ER10-722)	Feb 4 Feb 25	Pittsfield and Pawtucket request waiver of FCM Rules to permit an increase in the Summer Qualified Capacity for Pittsfield's Altresco and for Pawtucket's Pawtucket Power generating facilities for FCA4 ISO intervenes and files comments; NEPOOL intervenes
10	Order 719 Compliance Filing (ER10-588, ER09-1051)	Feb 4 Feb 22	FERC holds technical conference; written comments Mar 4 CT Representatives request rehearing of Jan 21 order on portions of the Order 719 compliance filing

11	VEC Request for Limited Waiver of FCM Rules (ER10-503)	Feb 18	FERC grants the requested one business-day waiver of the FCM Rules
11	FCM Omnibus 5 Revisions Filing (ER10-419)	Feb 12	FERC accepts Omnibus 5 FCM revisions
12	FCA3 Qualification Informational Filing (ER09-1424)	Feb 18	FERC denies rehearing and grants clarification of Sep 18, 2009 order
13	Reports on Future of Load Response Programs (ER08-830)	Feb 12	ISO and NEPOOL file responses to CDRI Request for Policy Guidance; CDRI responds to ISO response
		Feb 16	Freedom Logistics files comments
14	Tie Benefits Calculation and Allocation (ER08-41)	Feb 8	NEPOOL files comments reflecting the results of NPC Feb 8 consideration and vote on the ISO's Jan 14 Proposal
		Feb 12	NESCOE moves to intervene out-of-time and files comments

IV. OATT Amendments / TOAs / Coordination Agreements

14	NEITC Operating Agreement (ER10-637)	Feb 9	PTO AC intervenes
		Feb 12	CMEEC, MMWEC, NHEC, NGrid intervene
		Feb 16	NSTAR moves to intervene out-of-time
		Feb 24	FERC accepts Agreement

V. Financial Assurance/Billing Policy Amendments

* 15	Pre-Payment and Suspension Clarifications (ER10-752)	Feb 16	ISO and NEPOOL jointly filed changes to the Financial Assurance and Billing Policies that clarify the prepayment and suspension provisions of those Policies; comment date Mar 9
* 15	Glacial Energy Non-Conforming LOC (ER10-725)	Feb 3	Glacial Energy submits notice of an amendment to its existing Letter of Credit that contained non-conforming language approved by the ISO after consultation with Budget & Finance Subcommittee; comment date Mar 2
15	Changes to FCM-Related Provisions of the Financial Assurance Policy (ER10-62)	Feb 19	FERC accepts Dec 10 compliance filing incorporating Methodology into FAP provisions

VI. Schedule 20/21 Changes

16	Schedule 21-UI Localized Cost Sharing Agreements (NextEra/Dynegy) (ER10-473)	Feb 4	FERC accepts LCSA with NextEra and termination of LCSA with Dynegy
16	Schedule 21-NU Localized Cost Sharing Agreements (ER10-315)	Feb 9	NU files refund report; comment date Mar 2
17	Schedule 21-BHE Local Service Agreements (ER10-111)	Feb 23	BHE files errata to Oct 26, 2009 filing; comment date Mar 16
17	Schedule 21-BHE Change to Forward Looking Formula Rate (ER09-934)	Feb 16	Bangor Hydro files 9th settlement update

VII. RMR Agreements

17	Berkshire RMR Agreement - MA Municipals Complaint To Terminate (EL09-3)	Feb 24	FERC approves uncontested settlement agreement
----	---	--------	--

VIII. Regional Reports

- | | | | |
|------|---|------------------|--|
| * 18 | ISO's 2009 Q4 Capital Projects Report
(ER10-741) | Feb 12
Feb 24 | ISO files Report; comment date Mar 5
NEPOOL intervenes and submits comments |
|------|---|------------------|--|

IX. Membership Filings

- | | | | |
|------|--|--------|--|
| * 18 | March 2010 Membership Filing
(ER10-799) | Feb 25 | New Member (effective Mar 1, 2010): Putnam Hydro (AR Sector, Small RG Group) |
| 19 | January 2010 Membership Filing
(ER10-517) | Feb 24 | FERC accepts the memberships, effective Jan 1, 2010, of Centaurus Energy Master Fund, First Point Power, Just Energy (U.S.) Corp., North American Power and Gas, Royal Bank of Canada; and the Dec 1, 2009 terminations of: Fulcrum Power Marketing, Sutton Energy and Invenergy Thermal Connecticut |

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

- | | | | |
|------|--|--------|--|
| 23 | Proposed Clarification to CIP Standards (RM06-22) | Feb 12 | Exelon submits comments |
| * 24 | Revised Reliability Standards Development Procedure (RR10-4) | Feb 5 | FERC approves NERC revisions to its Reliability Standards Development Procedure, modifying the way NERC will develop VRFs and VSLs under NERC Rules of Procedure |

XI. Misc. - of Regional Interest

- | | | | |
|------|---|------------------|--|
| 25 | PSNH Application to Terminate Mandatory Purchase Obligation from QFs > 5MW (QM10-4) | Feb 12
Feb 18 | Parties file comments and protests
PSNH responds to protests |
| * 25 | Transparency of Energy Market Enforcement Process (PL10-1; PL10-2) | Feb 16 | FERC issues tolling order affording it additional time to consider requests for clarification and/or rehearing regarding its order directing the Secretary to issue a Staff's Preliminary Notice of Violations for each enforcement action |
| * 26 | CMP/Record Hill Engineering & Procurement Agreement – First Amendment (ER10-764) | Feb 9 | CMP files first revised E&P Agreement (CMP-EP-2); comment date Mar 2 |
| 26 | Integrys Complaint - NBP Generation Market Power in NMISA (EL09-32) | Feb 10
Feb 16 | NBP requests extension of time until Mar 18 to submit additional information required by FERC
FERC grants NBP extension of time |

XII. Misc. - Administrative & Rulemaking Proceedings

- | | | | |
|----|--|------------------------|--|
| 27 | RTO/ISO Performance Metrics (AD10-5) | Feb 22 | APPA, ELCON, NCLC, PJMICC, PCA, and Public Citizen file Joint letter on RTO Metrics |
| 28 | Technical Conference on MBR Filings and EQR Reports (AD10-4) | Feb 22 | FERC issues supplemental notice and proposed agenda for Mar 3 technical conference on mechanics of MBR applications and required filings |
| 28 | Small Hydropower Development Technical Conference (AD09-9) | Feb 4-19 | Parties file comments |
| 29 | Variable Energy Resources NOI (RM10-11) | Feb 4-26
Feb 23, 26 | Parties file comments; comment date Mar 29
EEI and BPA request extension of comment period until Apr 12 |

30	Order 676-E – WEQ Version 002.1 Business Practices (RM05-5)	Feb 18	FERC denies Southern Company’s request for rehearing, but grants request for clarification of Order 676-E
31	e-Tariff Filing Procedures (RM01-5)	Feb 19 Feb 26	FERC schedules technical conference for Feb 26 FERC holds technical conference

XIII. State Proceedings & Federal Legislative Proceedings

32	MPUC Review of CMP Petition for MPRP CPCN (MPUC 2008-255)	Feb	MPUC holds hearings
----	---	-----	---------------------

XIV. Federal Court Appeals

33	RTO ROE Proceeding (08-1199)	Jan 29	DC Circuit denied Public Parties’ petition for review (2010 U.S. App. LEXIS 1977)
34	ISO 2009 Revenue Requirement (09-1220)	Feb 12 Feb 25	Respondent’s file Brief NEPOOL and the ISO (intervenor) file letters adopting the arguments in Respondent’s Brief, stating they would not be filing separate briefs; Petitioners’ reply brief is due Mar 11
34	ICAP Import Contract Complaints (09-1320)	Feb 12 Feb 25	Brookfield files initial brief FERC files motions to dismiss (arguing appeal was premature) and suspend the deadline for its filing pending a decision on the motion to dismiss

MEMORANDUM

TO: NEPOOL Participants Committee Member and Alternates
FROM: Patrick M. Gerity, NEPOOL Counsel
DATE: February 28, 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 February 28, 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

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

On August 24, 2009, the FERC established hearing procedures for, and consolidated the proceedings in, Docket Nos. EL09-48 and EL09-47.² As previously reported, the Connecticut Attorney General (“CT AG”) (EL09-47) and the Connecticut Department of Public Utility Control (“CT DPUC”) and the Connecticut Office of Consumer Counsel (“OCC”) (EL09-48) filed complaints against the ISO and certain unidentified Installed Capacity Resources committed to import over the Northern New York AC interface (“NNY Capacity Resources”). The FERC was asked to investigate and conduct a hearing on allegedly unlawful conduct of the NNY Capacity Resources during the December 2006 through January 2009 period. The complaints further sought orders (i) requiring the NNY Capacity Resources to disgorge any unlawful profits and be subject to such other civil penalties as the FERC determines appropriate; (ii) directing the ISO to identify the NNY Capacity Resources and the amount of capacity payments each received over the two-year period; and (iii) directing “substantial reforms to [the ISO’s] market monitoring structure to protect New England ratepayers” that exceed the changes to the market monitoring arrangements accepted in New England’s Order 719 compliance filing.

In the Capacity Imports Hearing Order, the FERC, noting the unique history of the allegations regarding the capacity importers’ bidding strategy raised in the complaints, including the inconsistency in the ISO’s position regarding those allegations, set the bidding strategy allegations for a trial-type evidentiary hearing before an administrative law judge pursuant to its authorities under FPA sections 306 and 307.³ The FERC declined, however, to set for hearing under FPA Section 206 the claims that the

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, Attorney General 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 New York 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 New York AC Interface, 128 FERC ¶ 61,182 (2009) (“Capacity Imports Hearing Order”), *clarification and reh’g granted in part*, 129 FERC ¶ 61,057 (2009).

³ Id. at PP 53-55.

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

Hearings are now scheduled to begin May 12, with an order to be issued by August 4, 2010. Discovery in the proceeding is on-going. The "Connecticut Representatives" (CT AG, CT DPUC, CT OCC) submitted their direct testimony on December 28, 2009. A summary of that testimony was separately included with the January 5 litigation report that was circulated with the additional materials for the January 8 meeting. On February 3, Respondents (Brookfield, Constellation, and Shell) moved to strike passages from the direct testimony submitted by the Connecticut Representatives, which the Connecticut representatives opposed on February 12. On February 18, Trial Judge Young denied the motion to strike, without prejudice on all grounds asserted by Respondents, noting that Respondents could renew any part(s) of their motion to strike, including those grounded in relevance or materiality, after cross-examination at hearing.⁷ On February 23, Respondents Brookfield, Constellation, and Shell submitted their testimony. A summary of Respondent's testimony will be separately provided in advance of the March 5 Participants Committee meeting. FERC staff's answering testimony and exhibits are due March 26, 2010. 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).

- **Dartmouth Power Complaint (Requested Billing Adjustment Denial) (EL09-42)**

On February 22, 2010, the FERC denied Dartmouth's request for rehearing⁸ of the June 18, 2009 order⁹ denying its complaint against the ISO. As previously reported, the Complaint, an appeal under the dispute resolution provisions of the ISO Billing Policy, challenged the ISO's denial of Dartmouth's February 20, 2009 Requested Billing Adjustment ("RBA"). The ISO's decision concluded that Dartmouth was not entitled to a June 2008 \$231,952.50 Installed Capacity ("ICAP") payment because of Dartmouth's failure to timely notify the ISO of an unscheduled outage of Dartmouth's generating facility on June 14, 2008. In denying the complaint, the FERC agreed, noting Dartmouth's failure to comply with several of Market Rule 1 Section 8.3.1 and Manual 20 requirements pertaining to outages.¹⁰ In denying rehearing, the FERC indicated that it was not persuaded to reconsider its initial finding based on Dartmouth's factual assertions or its observance of maintenance procedures, and reiterated that it had sufficient information to make its decision on the pleadings. Any further challenges will need to be taken on appeal to the federal courts and, if challenged, will be reported in Section XIV below. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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 Richard Blumenthal et al, 130 FERC ¶ 63,008 (2010).

⁸ Dartmouth Power Associates LP v. ISO New England Inc., 130 FERC ¶ 61,130.

⁹ Dartmouth Power Associates LP v. ISO New England Inc., 127 FERC ¶ 61,249 (2009), *reh'g denied*, 130 FERC ¶ 61,130.

¹⁰ Id. at PP 24-29.

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

Rehearing of the FERC's September 25, 2008 order¹¹ denying NECPUC's complaint against the TOs remains pending. As previously reported, the FERC denied the June 12, 2008 complaint which sought, among other things, to limit application of the ROE adder for certain qualified project costs that substantially exceed the 2004 regional transmission expansion plan ("RTEP04") estimates. NECPUC had also proposed in the complaint a higher ROE (i.e., in excess of 100 basis points) be allowed if a project was completed below its estimated cost, with the ROE calibrated so that the total incentive return dollars would equal the incentive related income had the project been completed at its estimated cost. In denying the complaint, the FERC found that the cost increases identified by NECPUC did not change the circumstances underlying the FERC's decision to authorize the ROE incentive and did not render the cost of the incentive unjust and unreasonable. The FERC also found that NECPUC's attempt to restrict application of the ROE incentive to the originally estimated costs of incentive-eligible projects should have been raised in the Opinion No. 489 proceeding (ER04-157), and therefore denied the complaint and rejected the argument as a collateral attack on Opinion No. 489. In addition, the FERC explained the public purpose served by applying an approved incentive to prudently-incurred costs, and in this case, found that NECPUC had not made a showing sufficient to call into question whether costs associated with the identified projects were imprudently incurred. Rehearing of the NECPUC ROE Order was filed by NECPUC *et al.*¹² 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 Order¹³ that were filed on August 18, 2008 by MPS, and NSTAR and NGrid.¹⁴ The MPS¹⁵ 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,¹⁶ 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.¹⁷ 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.

¹¹ NECPUC v. Bangor Hydro-Electric Co., et al., 124 FERC ¶ 61,291(2008) ("NECPUC ROE Order"), *reh'g requested*.

¹² NECPUC was joined in its request for rehearing by the VT DPS, VT PSB, MA DPU, RI AG, RI DPU, and the MA AG.

¹³ 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).

¹⁴ Braintree Municipal Light Dep't et al. v. ISO New England Inc., 128 FERC ¶ 61,008 (2009) ("MPS LSCPR Rehearing Order").

¹⁵ "MPS" are, collectively, Braintree, Hingham, Hull, Mansfield, Middleborough, and Taunton.

¹⁶ Braintree Municipal Light Dep't et al. v. ISO New England Inc., 129 FERC ¶ 61,077 (2009) ("LSCPR Compliance Order").

¹⁷ Id. at PP 47-54.

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

II. Rate/ROE Filings

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

On February 2, 2010, the ISO and NEPOOL jointly filed materials that identify the Installed Capacity Requirement (“ICR”), Local Sourcing Requirements (“LSR”), Maximum Capacity Limits (“MCL”) (collectively, the “ICR-Related Values”) and Hydro Quebec Interconnection Capability Credits (“HQICCs”) for the second annual reconfiguration auction for the 2011/2012 Capability Year to be held in May 2010. The ICR-Related Values, HQICCs, and Market Rule changes were all supported by the Participants Committee through the approval of the January 8 Consent Agenda. An April 5, 2010 effective date was requested. Interventions were filed by Dynegy, Mirant, the MPUC, and NU. This matter is currently pending before the FERC. If you have any questions concerning this proceeding, please contact either Eric Runge (617-345-4735; ekrunge@daypitney.com) or Dave Doot (860-275-0102; dt_doot@daypitney.com).

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

In a February 12, 2010 order,¹⁸ having evaluated alternative ISO and NEPOOL proposals pursuant to the “jump ball” provisions of Participants Agreement, 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). The FERC also directed that the ISO include language 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.¹⁹ As previously reported, the package jointly filed by the ISO and NEPOOL included alternative ICR values and alternative changes to Market Rule 1 Section 12.9 proposed by the ISO and NEPOOL. In accepting the ISO-proposed values, the FERC found that the change in the calculation methodology for ICR was, in fact, subject to the jump ball provisions of the Participants Agreement, and, after evaluating both proposed amendments under Section 205 of the FPA, found that the ISO’s proposal was just and reasonable and preferable (notably, the FERC suggested that, if presented with equally defensible tie benefits values, it might choose the higher number, which would minimize the purchase of unnecessary capacity, as “more” just and reasonable). As noted above, the ISO was directed to file revisions to Section 12.9 of Market Rule 1 that establish a two-year sunset provision consistent with NEPOOL’s alternative proposal. The text of those changes will be considered at the March 5 Participants Committee meeting. Further, the ISO was also directed “to consider a process to enable analysis of alternative proposals in a future market rule amendment.”²⁰ Any challenges to the 2010 ARA3 ICR and Jump Ball Order will be due on or before March 15, 2010. If you have any questions concerning these matters, please contact either Eric Runge (617-345-4735; ekrunge@daypitney.com) or Dave Doot (860-275-0102; dt_doot@daypitney.com).

- **FCA3 Results Filing (ER10-186)**

On February 26, the FERC accepted the ISO’s filing of the results of the third FCA (“FCA3”) held October 5-6, subject to the outcome of the rehearing requests pending in Docket No. ER09-1424. As summarized previously, the ISO reported that FCA3 resulted in two Capacity Zones for the New England

¹⁸ ISO New England Inc. and New England Power Pool, 130 FERC ¶ 61,105 (2010) (“2010 ARA3 ICR and Jump Ball Order”).

¹⁹ Id. at P 80.

²⁰ Id. at P 88.

region -- Maine and Rest-of-Pool -- with 36,995 MW (5,030 MW of excess capacity over the ICR of 31,965 MW) remaining in the auction at the floor price of \$2.951/kW-month. Accordingly, the ISO indicated, proration of either the price of capacity or the MWs provided will take place (because 641 MW of the excess supply above the Maximum Capacity Limit of 3,257 MW was in Maine, a separate proration will be applicable in Maine). The ISO further reported that two de-list bids (those of Salem Harbor 3 and 4, representing approximately 581 MW) were rejected for reliability reasons and the resources would be paid a combined rate of \$5.330/kW-month for the 2012/2013 Capacity Commitment Period. CONE for FCA4 will remain at \$4.918/kW-month, and that Permanent and Export De-list bids that are greater than, and Static De-list bids at or above, 0.8 times CONE (\$3.934/kW-month) must be submitted for review by the ISO's Internal Market Monitoring Unit on or before December 1, 2009. The ISO asked the FERC to accept, as just and reasonable, the rates for capacity generated by FCA3 and to accept the FCA3 results, effective February 27, 2010, as requested.

Interventions were filed by Dominion, Dynegy, MA DPU, MPUC, and NRG; comments and protests, by Exelon, PSEG, MMWEC, and Boston Gen and Mirant. Objections related to the ISO's rejection of two Static De-List Bids from Salem Harbor, the underlying FCM design, and the possibility that some resources retained for reliability in the third Capacity Commitment Period may not receive the full clearing price for all of their MWs. NEPOOL and the ISO responded to those comments, urging the FERC to refer any concerns with the FCM design to the on-going stakeholder process.

On February 26, the FERC accepted the filing. In accepting the filing, the FERC concluded that the ISO had offered sufficient explanation to support the rejection of the Salem Harbor Static De-list Bids, and encouraged Participants to provide comments on the FCM design (which it found were not at issue in this proceeding) in Docket No. ER10-787 (FCM Re-Design: Revisions to MR1 §§ 12 and 13). Unless the February 26 order is challenged, with any challenges due on or before March 29, 2010, this proceeding will be concluded.

If you have any questions concerning these matters, please contact Emile Buzaid (860-275-0272; ebuzaid@daypitney.com) or Dave Doot (860-275-0102; dt_doot@daypitney.com).

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

As previously reported, the FERC accepted the ISO's filings for the recovery of its 2010 administrative costs (the "2010 Revenue Requirement").²¹ The 2010 Revenue Requirement is \$137.2 million (reduced by 2009 over collections to \$133 million); the ISO's administrative costs (i.e., the 2009 Core Operating Budget), \$106.2 million. In accepting the filing, the FERC directed the ISO to file a report, for informational purposes only, that (i) summarizes the updated survey results ISO indicated it would receive from the national compensation consultants it was using/tracking and (ii) explains any revisions to compensation levels that the ISO decides are appropriate. This report was filed by the ISO on January 27, 2010. In the report, the ISO noted that it had received updates from four of the five national compensation consulting firm surveys on merit increase budgets. Based on that information, the ISO reported that the Board Compensation and Human Resources Committee decided to retain the previously-determined 2.5% merit increase budget for 2010. As noted in the 2010 Budget Order, the report was not noticed, and no further FERC action will be taken. On January 29, the CTAG and CT OCC (together, the "Joint Advocates") requested rehearing of the 2010 Budget Order, urging the FERC to hold a full hearing to rehear the portion of the 2010 Budget Order that addressed the ISO's requested executive compensation and salary structure. On February 24, 2010, the FERC issued a tolling order affording it additional time to consider the Joint Advocates' request, which remains pending before FERC. If there are any questions on this matter, please contact Paul Belval (860-275-0381; pbelval@daypitney.com).

²¹ ISO New England Inc., 129 FERC ¶ 61,299 (2009) ("2010 ISO Budget Order"), *reh'g requested*.

- **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 Tariff²² that implement certain incentive rate treatment for MPRP authorized by the FERC²³ (See "ROE Incentives for MPRP (CMP) (EL08-74)" below), effective June 1, 2009. In accepting the revisions, the FERC directed the ISO to remove the requirement that *all* changes to the Attachment F Implementation Rule filed pursuant to section 3.04(a) of the TOA must be approved by the PTO AC, in light of the FERC's finding that the TOs preserved their right under TOA section 3.04(a) to unilaterally file revisions to their own revenue requirements, and thus, to the Attachment F Implementation Rule, and to file a revised tariff sheet reflecting this change on or before October 6, 2009 (see October 6 Compliance Filing immediately below).

On September 8, the PTO AC, NEPOOL, NHEC and MMWEC, and the New England Consumer-Owned Systems ("NECOS")²⁴ 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; ekrunge@daypitney.com) or Dave Doot (860-275-0102; dtdoot@daypitney.com).

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

Rehearing of the FERC's MPC Rehearing Order,²⁵ requested December 18, 2009 by CMP and Maine Public Service Company ("MPS"), remains pending. As previously reported, in the MPC

²² Central Maine Power Co., 128 FERC ¶ 61,143 (2009) ("CMP Revenue Requirement Order"), *reh'g requested*.

²³ Central Maine Power Co., 125 FERC ¶ 61,079 (2008) ("MPRP ROE Order"), *reh'g requested*.

²⁴ "NECOS" are Belmont, Braintree, Concord, Groton, Hingham, Littleton (MA), Middleborough, Pascoag, Reading, Taunton, Templeton, and Wellesley.

²⁵ Central Maine Power Co. and Maine Public Service Co., 129 FERC ¶ 61,153 (2009) ("MPC Rehearing Order").

Rehearing Order, the FERC dismissed requests for rehearing of the MPC ROE Order,²⁶ finding that they had been overtaken by subsequent events (the FERC noted that the MPC Project, as described in the petition for declaratory order,²⁷ had ceased to exist). The FERC stated that any transmission rate incentive pursuant to Order No. 679 sought in connection with a redesigned MPC Project would require a new filing that demonstrates a nexus between their redesigned project. Addressing abandonment costs, the FERC found that CMP and MPS may not recover costs pursuant to the conditionally granted abandonment *incentive*, but could submit a section 205 filing seeking to recover prudently incurred, abandonment-related costs associated with the Project. On December 18, CMP and MPS requested clarification and/or rehearing of the statements in the MPC Rehearing Order that the recovery of the abandonment incentive was conditional and subject to the conditions that (1) the ISO include the MPC Project in the RSP as a Market Efficiency Transmission Upgrade; and (2) CMP and MPS submit a subsequent filing explaining how the Project's designation as a Market Efficiency Transmission Upgrade satisfies Section 219's eligibility requirement. Also on December 18, Horizon Wind filed a statement indicating that the Aroostook Wind Energy Project has not been cancelled. Answers to the CMP/MPS request were filed by the CT DPUC and Houlton Water Company on January 4 and 5, respectively. CMP and MPS jointly filed a reply to the CT DPUC and Houlton answers on January 20, 2010. On January 19, 2010, the FERC issued a tolling order affording it additional time to consider the CMP/MPS request, which remains pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

Rehearing of the MPRP ROE Order remains pending before the FERC. As previously reported, the FERC conditionally granted,²⁸ 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").²⁹ 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 Parties³⁰ 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,³¹ with one modification, the joint request by NU³² and NGrid for specific rate

²⁶ 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*.

²⁷ 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.

²⁸ Central Maine Power Co., 125 FERC ¶ 61,079 (2008) ("MPRP ROE Order"), *reh'g requested*.

²⁹ 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.

³⁰ "Public Parties" are: CT DPUC, CT OCC, MA AG, MA DPU, MMWEC, MPUC, Maine Public Advocate, and NECPUC.

³¹ Northeast Utilities Service Co. and National Grid USA, 125 FERC ¶ 61,183 (2008) ("NEEWS ROE Order"), *reh'g requested*.

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 Municipals³³ and jointly by a number of Public Parties³⁴ and the Massachusetts Municipals. On January 16, 2009, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC. On April 17, 2009, National Grid submitted FERC Form 730 (Report of Transmission Investment Activity), which identified actual and projected annual capital spending and certain project detail. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

Requests for rehearing of the FCA1 Results Order remain pending. As previously reported, the FERC accepted on June 20, 2008 the results of the first FCA (held February 4-6, 2008) (“FCA1”) filed by the ISO.³⁵ PSEG, CT DPUC, and the CT AG requested rehearing of the June 20 order on July 21, 2008. Answers to the CT DPUC request were filed by NEPOOL and the ISO, and the CT DPUC filed an answer to the PSEG request, on August 5. In turn, the CT DPUC filed a response to the NEPOOL and ISO answers on August 20, 2008. The FERC issued a tolling order on August 20, 2008 affording it additional time to consider the rehearing requests, which remain pending before the FERC.

FCA1 Proration Results Filing. On November 18, 2008, the ISO submitted an informational filing reporting the prorations from FCA1. Pursuant to Market Rule 1 § 13.2.7.3, Resources could elect to prorate their final offered megawatts that cleared in FCA1 by choosing to restore the payment rate to \$4.50/kW-month and reducing their Capacity Supply Obligation, subject to a reliability review, by an equivalent percentage. The ISO reported that during the proration window (September 10 - 16, 2008), resources representing 28,449 MW elected to prorate by 1,555 MW their cleared megawatts. Following the ISO’s reliability review, resources representing 22,590 MW of capacity were allowed to prorate by 1,235 MW. No resources in Connecticut were allowed to prorate (in order to avoid a shortfall in that sub-region’s transmission security requirement). After proration, the final amount of capacity purchased in FCA1 was 32,842 MW. Protests and comments, each related to the fact that no Connecticut resources were allowed to prorate, were filed by PSEG and CT DPUC. On December 23, 2008, the ISO filed an answer to the PSEG and CT DPUC protests and comments. This matter remains pending before the FERC.

If you have any questions concerning these matters, please contact either Pat Gerity (860-275-0533; pmgerity@daypitney.com) or Dave Doot (860-275-0102; dt_doot@daypitney.com).

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

On February 19, 2010, CMP submitted a refund report illustrating the resettlement of charges for services provided under Schedule 21-CMP, as required by FERC’s March 24, 2008 order³⁶ in this proceeding. Comments on this filing are due March 15, 2010. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

³² 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”).

³³ “Massachusetts Municipals” are MMWEC, Chicopee, and South Hadley.

³⁴ In this proceeding, “Public Parties” are NECPUC, CT DPUC, CT OCC, MA DPU, MA AG, MPUC, NHPUC, RI AG, and RI DPUC.

³⁵ ISO New England Inc., 123 FERC ¶ 61,290 (2008) (“FCA1 Results Order”), *reh’g requested*.

³⁶ 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).

III. Market Rule Changes, Interpretations and Waiver Requests**• FCM Re-Design: Revisions to MR1 §§ 12 and 13 (ER10-787)**

In a new matter since the last report, the ISO and NEPOOL jointly filed on February 22, 2010, changes to Market Rule 1 (§§12 and 13) that re-design some aspects of the FCM Market Rules. The Rule changes address the following areas:

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

An April 23, 2010 effective date, which would permit the Rule changes to be in place for FCA4 (beginning August 2, 2010), was requested. The Re-Design Changes, which were addressed in the FCMWG process, were supported by the Participants Committee at its February 5, 2010 meeting. Comments on this filing are due March 15, 2010. 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)

In a new matter since the last report, the ISO and NEPOOL jointly filed on February 16, 2010, revisions to Market Rule 1 that specify the methodology that the Internal Market Monitor will use to evaluate de-list bids submitted by resources at stations with common costs, as well as the methodology that the Internal Market Monitor will use to establish appropriate compensation for resources at a station with common costs that submit de-list bids that are rejected for reliability reasons in an FCA. An April 18, 2010 effective date was requested. The changes were supported by the Participants Committee at its February 5, 2010 meeting. NRG intervened on February 25. Comments on this filing are due March 9, 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).

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

On February 4, 2010, Pittsfield Generating Company and Pawtucket Power Associates ("Generators") requested a waiver of the FCM Rules to allow them to increase the Summer Qualified Capacity for Pittsfield's Altresco generating facility and for Pawtucket's Pawtucket Power generating facility, for FCA4. Pittsfield and Pawtucket indicated that the waiver would permit them to offer into FCA4 an additional 11 MW in the case of Altresco, and an additional 7 MW in the case of Pawtucket. The Generators indicated that in each case the increased capacity would be consistent with the amount authorized in their respective Interconnection Agreements, the amounts used in prior FCAs, and the amounts recently approved by the ISO under I.3.9 of the Tariff following Reliability Committee review on January 19, 2010. The Generators reported that the ISO approved in November the lower amounts for FCA4 based on the facilities' original 1990 Proposed Plan Applications ("PPAs"). On February 25, the ISO submitted comments indicating that it did not oppose the request and asking the FERC for a determination on the waiver request by March 19, 2010. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On January 21, 2010, the FERC accepted, with certain modifications, a *portion* of the ISO's April 28, 2009 Order 719 compliance filing.³⁷ The FERC did not make any findings with respect to the Responsiveness issues, which will be addressed in a later order. The FERC accepted all the changes filed by ISO and NEPOOL with respect to the Long-Term Power Contracting and Market Monitoring issues with no further compliance filing necessary (other than if the ISO voluntarily elects to use the PJM-operated bulletin board). On Demand Response issues, the FERC ordered a further compliance filing to address additional concerns regarding demand response participation in the region's Ancillary Services Markets, particularly with respect to compensation in the Forward Reserve Market. The FERC ordered that the current stakeholder process for evaluating the treatment of Price-Responsive Demand ("PRD") should consider how demand response resources are compensated in the reserve and regulation markets. Further, the FERC stated that if the region committed to retaining the Dispatchable Asset Related Demand ("DARD") structure, it would require an examination of the current rules that require a minimum 5 MW peak load size requirement and do not provide DARDs the ability to aggregate. On February 22, 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. The Connecticut Representatives' request is pending before FERC, with FERC action required on or before March 24, 2010, or the request will be deemed denied.

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

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

Technical Conference on RTO/ISO Responsiveness. The FERC held a technical conference on February 4, 2010 to provide a forum for interested participants to discuss the issue of responsiveness of RTOs and ISOs to their customers and other stakeholders. The technical conference had two panels – one on stakeholder process and the other on board process and other governance issues. Ray Hepper participated on both panels. Speaker materials have been posted to the FERC's eLibrary and written comments on the technical conference may be filed until March 8, 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).

³⁷ ISO New England Inc., 130 FERC ¶ 61,054 (2010), *reh'g requested*.

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

On January 14, 2010, Ampersand Energy Partners requested a waiver of the FCM Rules to allow it to correct an error in the qualification package it submitted for FCA4. Ampersand indicated that the waiver would permit it to offer into FCA4 all of its capacity (10.37 MW), rather than the amount it listed in its qualification package (5 MW), should the auction price fall below 0.75 times CONE. No comments on this request were filed by the February 4, 2010 comment date, and the request is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **VEC Request for Limited Waiver of FCM Rules (ER10-503)**

On February 18, the FERC granted the one business-day waiver of the FCM Rules requested by VEC³⁸ to allow the ISO to consider the Updated Measurement and Verification Plan submitted by VEC on November 16, 2009, which was otherwise due under the Market Rules the Friday before, or November 13. In granting the waiver, the FERC (i) noted that, but for the speed with which VEC corrected its error, the circumstances suggested that relief might not have otherwise been justified, (ii) warned that it would not automatically grant such waiver requests in the future, and (iii) strongly encouraged Participants to pay closer attention to the FCM Rules. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FCM Omnibus 5 Revisions Filing (ER10-419)**

On February 12, the FERC accepted the “Omnibus 5” FCM revisions jointly filed by the ISO and NEPOOL on December 14, 2009. Included in the Omnibus 5 revisions were (1) modifications to the definition of site control to include the filing of siting permits; (2) an adjustment to the excess winter capacity supply obligation (“CSO”) for intermittent power and intermittent settlement only resources; (3) permission for a non-commercial resource with a negative CSO to submit a supply offer in a monthly reconfiguration auction or enter into a capacity supply obligation bilateral; (4) a change to the deadline for submitting a supplemental availability bilateral; (5) a revision to the formula used to determine the net regional clearing price; and (6) the inclusion of the calculation of monthly payments for demand resources that enter into bilateral transactions. Unless the February 12 order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Michelle Gardner (617-345-4697; megardner@daypitney.com), or Emile Buzaid (860-275-0272; ebuzaid@daypitney.com).

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

As previously reported, the FERC conditionally accepted the NCPC Mitigation Reform Changes, subject to the outcome of the Order 719 Compliance Filings (ER10-588; ER09-1051) and to a 30-day compliance filing.³⁹ The “NCPC Mitigation Reform Changes” revised Appendix A to Market Rule 1 to address the market power mitigation of offers for Resources that are committed to satisfy local and system-wide reliability needs, as well as other supporting revisions to the ISO’s mitigation rules. The NCPC Mitigation Reforms Order was not challenged and is final.

On October 30, 2009, as directed in the NCPC Mitigation Reforms Order, the ISO submitted a compliance filing (sub-docket -001) (1) to justify why the proposed “lower of” 10 percent or \$80/MW-day mitigation threshold is appropriate; and (2) to revise the section 205 filing mechanism (that permits a resource owner to request additional compensation in the event it believes it has been unable to recover its fuel and variable O&M costs as a result of mitigation) to be made within 60 days of the receipt of the first invoice (rather than 30 as proposed in the August 5, 2009 filing). The change to the timing of the Section 205 mechanism was unanimously supported by the Markets Committee at its October 15 meeting and the

³⁸ Vermont Electric Cooperative, Inc., 130 FERC ¶ 61,106 (2010).

³⁹ ISO New England Inc. and New England Power Pool, 129 FERC ¶ 61,008 (2009) (“NCPC Mitigation Reforms Order”).

Participants Committee on November 19. On November 20, 2009, Indicated Suppliers⁴⁰ filed a protest to the compliance filing, asserting that the ISO had still failed to justify the proposed \$80/MW-day threshold. On December 7, the ISO filed an answer to Indicated Suppliers' protest, and on December 18, Indicated Suppliers answered the ISO's answer. The compliance filing, and all of the related pleadings, are currently 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).

- **FCA3 Qualification Informational Filing (ER09-1424)**

On February 18, the FERC denied rehearing of its September 18, 2009 order on the ISO's "FCA3 Informational Filing."⁴¹ As reported previously, the FERC accepted the ISO's FCA3 Informational Filing.⁴² Addressing the contested issues concerning Dominion's Salem Harbor units, the FERC found that the ISO's revised stand-alone static de-list bids for the units were just and reasonable.⁴³ The FERC, based on the information provided during the paper hearing proceeding and exercising its section 206 authority, found the ISO's proposed *ad hoc* solution, affecting no party in FCA3 other than Dominion, just and reasonable on a one-time basis.⁴⁴ The FERC also declined to require any further evidentiary submissions, data review, or changes to the bids submitted by Dominion. On February 18, the FERC denied Dominion's and PSEG's requests for rehearing, but granted clarification to provide that, if any changes occur that would suggest that using the useful service life of a unit as the measure for depreciation is no longer correct, including changes in demand or requirements of public authorities, resources could seek relief at that time through the Participant Processes or through a FERC filing.⁴⁵ Any further challenges will need to be taken on appeal to the federal courts and, if challenged, will be reported in Section XIV below.

September 30 Errata Filing. On September 30, 2009, the ISO submitted an informational filing to update the qualified capacity amounts of 28 Demand Resources listed in the July 7 filing that initiated this proceeding. The ISO indicated that the amounts were being updated to reflect the Resources' multi-year Capacity Commitment Period obligation elections, which are subject to different treatment with respect to the reserve margin gross-up. Section 13.7.1.5.1.1 of Market Rule 1 provides for different treatment for Demand Resources that cleared in FCA1 or FCA2 and that elected to have their Capacity Supply Obligation and Capacity Clearing Price apply for multiple Capacity Commitment Periods. The ISO stated that it would utilize the updated qualified Capacity Values for FCA3, which would increase the total qualified capacity amount for FCA3 by approximately 15 MW or 0.035%. No comments on the September 30 errata filing were filed.

If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com), or Emile Buzaid (860-275-0272; ebuzaid@daypitney.com).

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

Requests for rehearing of the June 11 Order remain pending. As previously reported, NRG, Mirant, and GDF SUEZ (collectively, the "Competitive Suppliers") requested clarification or, in the

⁴⁰ "Indicated Suppliers" are Mirant, Boston Gen, NRG, and PSEG.

⁴¹ ISO New England Inc., 130 FERC ¶ 61,108 (2010) ("FCA3 Rehearing Order").

⁴² ISO New England Inc., 128 FERC ¶ 61,266 (2009) ("FCA3 Informational Filing Order"), *reh'g denied and clarification granted*, 130 FERC ¶ 61,108 (2010).

⁴³ Id. at P 43.

⁴⁴ Id. at PP 49-60.

⁴⁵ FCA3 Rehearing Order at P 27.

alternative, rehearing of the FERC's July 14, 2009 Order accepting revisions to the FCM Rules.⁴⁶ (The revisions provide additional detail and refinement to a number of areas the FCM Rules, including the rights and obligations of Market Participants, payments and charges, and performance matters.) On August 28, NEPOOL and the ISO filed answers to the Competitive Suppliers' request. On September 14, 2009, the FERC issued a tolling order affording it additional time to consider the Competitive Suppliers' request, which remains pending before the FERC. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com), or Emile Buzaid (860-275-0272; ebuzaid@daypitney.com).

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

March 27, 2009 Report. The compliance report regarding the treatment of price-responsive demand in the New England electricity markets filed jointly by the ISO and NEPOOL,⁴⁷ with the support of NECPUC, on March 27, 2009 ("March 2009 Report"),⁴⁸ in response to FERC directives,⁴⁹ remains pending before the FERC. The March 2009 Report described stakeholder discussions to date on the topic and recommended that a subsequent report be filed with the FERC no later than July 31, 2009, describing further progress made and requesting, as appropriate, further guidance and direction from the FERC. The March 2009 Report also stated that the ISO expected to extend the present price-responsive programs for an interim period of at least another year and to complete changes to extend such programs through the normal stakeholder process by the end of 2009. On April 13, NICC moved to intervene. On April 14, 2009, the Consumer Demand Response Initiative ("CDRI") filed comments urging the FERC to accept the report and to permit an extended period of discussion on these issues.

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

December 18, 2009 Report. On December 18, 2009, the ISO and NEPOOL filed a further update ("December 2009 Report") summarizing stakeholder deliberations since the July 2009 Report, including the actions taken on the PRD DBD at the December 11, 2009 Participants Committee meeting. On January 28, 2010, the Consumer Demand Response Initiative ("CDRI") submitted a request for FERC policy guidance in response to the December 2009 Report. On February 12, both NEPOOL and the ISO filed responses to the CDRI submission. The NEPOOL response requested that the FERC defer action on

⁴⁶ ISO New England Inc. and New England Power Pool Participants Committee, 128 FERC ¶ 61,023 (2009) ("June 11 Order"), *reh'g requested*.

⁴⁷ NEPOOL joined in the filing based on the March 25, 2009 recommendation of support from the Markets Committee. On Apr. 8, 2009, NEPOOL supplemented the record in this proceeding by indicating that the Participants Committee unanimously supported the Mar. 27 Filing at its Apr. 3, 2009 meeting.

⁴⁸ As previously reported, the FERC granted an extension of time to March 27, 2009 to file a report detailing the ISO's decision to either terminate or continue the Load Response Program after June 1, 2010.

⁴⁹ ISO New England Inc., 123 FERC ¶ 61,266 (2008) ("DALRP Order").

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).

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

As previously reported, the ISO filed, on January 14, 2010, an update to the joint ISO/NEPOOL November 26, 2008 report⁵⁰ regarding the plan to study and develop proposals to resolve issues related to the modeling of internal transmission constraints and tie benefits associated with individual lines. In the January 14, 2010 Update, the ISO proposed to comprehensively review and attempt to resolve during 2010 all outstanding and identified tie benefits issues (including the so-called "Reserved Issues", issues raised during 2009 stakeholder meetings, and tie benefits-related issues raised in Docket No. ER10-438 above) through a NEPOOL stakeholder process and to make a filing with the FERC on or before a date that will allow any related Market Rule or Tariff changes to be effective in time for FCA5 (covering the 2014/2015 Capacity Commitment Period). At its February 5 meeting, the Participants Committee considered and voted on the ISO's January 14 proposal. The ISO's Proposal received 43.25% support from the Participants Committee. On February 8, NEPOOL filed comments reflecting the results of that consideration and vote. NESCOE submitted a motion to intervene out-of-time and comments on February 12. This matter is currently pending before the FERC. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

IV. OATT Amendments / TOAs / Coordination Agreements

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

On February 24, the FERC accepted the operating agreement ("Agreement") governing the operation of transmission infrastructure projects developed by the New England Independent Transmission Company, LLC ("NEITC") within the New England Control Area. As reported previously, the Agreement is designed to terminate automatically when a new NEITC transmission facility is placed into service or a New England transmission facility is acquired, at which time New England ITC would become a PTO under the TOA. Subject to a compliance filing due on or before March 26, 2010 that comports with the FERC's designation and identification requirements of Order Nos. 614 and 714, and unless the February 24 letter order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

On January 5, 2010, the FERC denied the ISO's request for clarification of the VAR Support Rehearing Order.⁵¹ As previously reported, the FERC, on March 9, 2009, denied rehearing⁵² of its

⁵⁰ 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).

⁵¹ ISO New England Inc., 130 FERC ¶ 61,005 (2010).

February 28, 2007 order⁵³ in which it found that, *inter alia*, amendments filed to the ISO OATT's Schedule 2 (VAR Support) do not produce double recovery of capital costs for generating equipment used to generate energy and provide reactive service because FCM transition payments, which are below the cost of new entry, do not compensate resources for their reactive power. In denying rehearing, the FERC stated that parties failed to persuade it that the capacity cost (CC) rate component of Schedule 2 produces any double recovery of capital costs for generating equipment used to generate energy and provide reactive service when combined with either transition payments or payments from the FCM auctions. On April 6, 2009, ISO filed a motion for clarification that references in the March 9 order to tariff changes were inadvertent and no tariff changes are required. In the January 5, 2010 order denying clarification, 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. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtodot@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

V. Financial Assurance/Billing Policy Amendments

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

In a new matter since the last report, the ISO and NEPOOL jointly filed on February 16, 2010, changes to the Financial Assurance and Billing Policies that clarify the prepayment and suspension provisions of those Policies. An April 18, 2010 effective date was requested. The changes were unanimously supported by the Participants Committee at its February 5, 2010 meeting. Comments on this filing are due March 9, 2010. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbval@daypitney.com).

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

On February 3, 2010, Glacial Energy of New England Inc. ("Glacial") submitted an informational filing advising the FERC that it had posted an amendment to its existing Letter of Credit ("LOC") that contained non-conforming provisions approved by the ISO after consultation with the Budget & Finance Subcommittee. The non-conforming language referenced a third party. After reviewing that non-conforming language along with related confidential information at its January 11, 2010 meeting, the Budget & Finance Subcommittee did not object to the addition of the reference to the third party in the LOC in this instance. Comments on this informational filing are due on or before March 2, 2010. If you have any questions concerning this proceeding, please contact Paul Belval (860-275-0381; pnbval@daypitney.com).

- **Changes to FCM-Related Provisions of the Financial Assurance Policy (ER10-62)**

As previously reported, the FERC conditionally accepted on November 10, 2009, changes to conform the FCM-related provisions of the Financial Assurance Policy to the FCM Market Rules. In accepting the uncontested changes, however, the FERC found that the methodology for calculating a Market Participant's FCM-related Financial Assurance Requirement (the "Methodology") would significantly affect the FA of a Participant shedding a CSO, and, citing its regulations and precedent,⁵⁴ directed that it be included in the ISO Tariff. Those changes were filed December 10, 2009, and accepted on February 19, 2010. Unless the February 19 order is challenged, this proceeding will be concluded. If you have any questions, please contact Paul Belval (860-275-0381; pnbval@daypitney.com).

⁵² ISO New England Inc., 126 FERC ¶ 61,212 (2009) ("VAR Support Rehearing Order"), *clarification denied*, 130 FERC ¶ 61,005 (2010).

⁵³ ISO New England Inc., 118 FERC ¶ 61,163 (2007), *reh'g denied*, 126 FERC ¶ 61,212 (2009).

⁵⁴ 18 C.F.R. § 35.1 and New York Independent System Operator, Inc. and New York Transmission Owners, 129 FERC ¶ 61,044 at P 54 (2009).

VI. Schedule 20/21 Changes

- **Schedule 21-NU Localized Cost Sharing Agreements (NextEra/Dynegy) (ER10-641)**

On January 26, NU submitted a Localized Cost Sharing Agreement (“LCSA”) under Schedule 21-NU with NextEra (LCRA NU-09-04) and a notice of termination of the LCSA with Dynegy (LCRA NU-09-02). The termination of the Dynegy LCSA and new NextEra LCSA recognize that NextEra is now the RNS customer with respect to the 527 MW Bridgeport Energy facility. NU requested that the Notice of Termination and NextEra LCSA each become effective as of December 1, 2009. No comments on this filing were submitted by the February 16 comment date and this filing 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 Cost Sharing Agreements (NextEra/Dynegy) (ER10-473)**

On February 4, the FERC accepted UI’s LCSA under Schedule 21-UI with NextEra and a notice of termination of the LCSA with Dynegy (LCSA-08), each effective December 1, 2009. As previously reported, the termination of the Dynegy LCSA and new NextEra LCSA recognize that NextEra is now the RNS customer with respect to the 527 MW Bridgeport Energy facility. Unless the February 4 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 Sharing Agreements (ER10-315)**

On January 11, the FERC accepted the three LCSAs under Schedule 21-NU filed by NU on November 24. The LCSAs recover certain Localized Costs from Dynegy, Waterbury Generation, and Kleen Energy. Although NU requested waiver of the FERC’s 60-day notice requirement so that the Agreements could become effective as follows: Waterbury – May 13, 2009; Dynegy – October 1, 2009, and Kleen Energy - November 1, 2009, the FERC only granted the necessary waiver with respect to the Kleen Energy LCSA. Waiver was denied for the Waterbury Generation and Dynegy Power LCRAs, which the FERC ordered become effective on January 23, 2010, 60 after the initial filing. Accordingly, NU was directed to refund the time value of the revenues collected from the Waterbury Generation and Dynegy Power LCRAs for the period that the rate was collected without FERC authorization, i.e., from the commencement of service until January 23, 2010. On February 10, NU filed a refund report indicating that it had issued refunds of \$2 to Waterbury Generation and \$1 to Dynegy. Comments, if any, on the refund report are due on or before March 2, 2010. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On December 30, the FERC accepted, effective January 1, 2010, but suspended and set for hearing, the unexecuted service agreement for Local Network Transmission Service between CMP and Kennebunk Light & Power District (“KLPD”) (designated as Service Agreement No. LNSA-CMP-4 under Schedule 21-CMP).⁵⁵ As previously reported, there exists a dispute between CMP and KLPD regarding the imposition of charges for Local Network transmission service (“LNS”) on KLPD loads served from CMP’s West Kennebunk substation, which KLPD asserts is directly connected to PTF for purposes of Section II.12.2(c) of the ISO Tariff and is therefore exempt from LNS charges. In the December 30 order, the FERC found that, based on the information available in the record before it, it could not determine the appropriate charges for the load served from KLPD’s West Kennebunk substation or whether, under the proposed Agreement, KLPD should be charged the PTF rate alone, or the local network rate or direct assignment cost.

The FERC directed that a presiding Administrative Law Judge be designated by the Chief ALJ for the hearing. On January 15, Chief Administrative Law Judge Curtis L. Wagner, Jr. designated

⁵⁵ Central Maine Power Co., 129 FERC ¶ 61,302 (2009).

Administrative Law Judge Joseph R. Nancy as the replacement trial judge. Trial Judge Nancy held a pre-trial conference on January 27, 2010. In accordance with the procedural schedule issued on January 28, an Initial Decision following FERC's "Track II Procedural Time Standards" will be issued on or before November 29, 2010. Hearings are expected to commence not later than August 16, 2010. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

On October 26, Bangor Hydro ("BHE") submitted seven local service agreements under Schedule 21-BHE to reflect the terms of a settlement agreement that extends the discounted LNS rates through 2020 for PPL Maine and PPL Energy Plus and their successors in interest. The service agreements were designated as Original Service Agreement Nos. 71-77 under Schedule 21-BHE. Interventions were filed by PPL Maine, MPUC, and Black Bear Hydro. On December 22, BHE asked the FERC to defer action on the October 26 filing, noting that certain errata had been identified in that filing. On February 23, BHE filed the errata and requested that the FERC accept the agreements, as corrected, and to become effective as requested in the October 26 filing. Comments on the errata filing are due March 16, 2010. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

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

As previously reported, the FERC accepted, on May 28, 2009, changes to Schedule 21-BHE that added components that effectively change the BHE formula rate to a "forward-looking" formula.⁵⁶ 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.⁵⁷ BHE and the MPUC continue to report on the status of negotiations to resolve the open cost allocation issues, noting that they continue to make a good-faith effort to bring these discussions to a conclusion. Most recently (February 16, 2010), BHE committed to provide FERC with a further update no later than March 15, 2010. If there are questions on these matters, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

VII. RMR Agreements

- **Berkshire RMR Agreement - MA Municipals Complaint To Terminate (EL09-3)**

On February 24, 2010, the FERC approved a Settlement among Berkshire Power Company, LLC ("Berkshire") and the Massachusetts Publicly Owned Entity Complainants⁵⁸ in this proceeding.⁵⁹ As previously reported, the Settlement fully resolves all issues raised, or which could have been raised, in this proceeding, by providing for a reduction to zero of the last expected fixed monthly payment (in May 2010). In return, the Complainants agreed not to file, or intervene in, another complaint concerning Berkshire's RMR Agreement, and to waive their rights to receive confidential documents, information and notices from Berkshire under Sections 26 and 28 of the prior settlement approved in Docket No. ER05-1179. Unless the February 24 order is challenged, this proceeding will be concluded. Questions concerning this or any RMR Agreement proceeding can be directed to Pat Gerity (860-275-0533; pmgerity@daypitney.com). Additional 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.

⁵⁶ Bangor Hydro-Electric Co., 127 FERC ¶ 61,186 (2009).

⁵⁷ Id.

⁵⁸ The "Complainants" are Ashburnham, Boylston, Chester Municipal Electric Light Department, Chicopee, Groton, Holden, Holyoke Gas & Electric Dept., Hudson, Paxton, Princeton, Shrewsbury, South Hadley, Sterling, Templeton, West Boylston, Westfield, and MMWEC.

⁵⁹ Ashburnham et al. v. Berkshire Power Co. LLC and ISO New England Inc., 130 FERC ¶ 61, 131 (2010).

VIII. Regional Reports

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

In a new matter since the last report, the ISO filed on February 12 its Capital Projects Report and Unamortized Cost Schedule covering the fourth quarter ("Q4") of calendar year 2009 (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 March 5, 2010. On February 24, NEPOOL moved to intervene and submitted comments. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **Quarterly Markets Reports - 2009 Q3 (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 February 2, 2010, the ISO filed with the FERC the report for the third quarter of 2009 ("2009 Q3"). These filings are not noticed for public comment by the FERC.

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

As previously reported, the ISO committed in the August 5, 2008 Regulation Filing to provide the FERC with quarterly reports on its progress in implementing and carrying out market rule revisions to allow non-generating resources to provide Regulation, including the Alternative Technologies Pilot Program.⁶⁰ On December 14, 2009, FERC issued a letter order accepting the third and fourth quarterly reports filed by the ISO on June 19 and September 18, respectively. The ISO filed its fifth report on December 9, 2009. No comments on the fifth report were filed.

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

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

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

The ISO is required to file status reports every six months on the status of the Load Response programs.⁶¹ The ISO filed the 14th such compliance report on December 30, 2009 (sub-docket -012), covering the April 2009 through October 2009 period. No comments on this report were filed.

IX. Membership Filings

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

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

⁶⁰ 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").

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

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

On January 29, NEPOOL requested the FERC's acceptance of (i) the membership of the following Entities each effective February 1, 2010: Ameresco CT LLC (AR Sector, Load Response Sub-Sector, Small Group Seat), Macquarie Energy, LLC (Supplier Sector), Starion Energy, Inc. (Supplier Sector), and VCharge Inc. (AR Sector, LR Sub-Sector, Small Group Seat); and (ii) the January 1, 2010 terminations of Bridgeport Energy II, LLC (Related Person of Dynegy, Supplier Sector), Consolidated Hydro New Hampshire (AR Sector, Renewable Generation Sub-Sector, Small Group Seat), Galt Power (AR Sector, LR Sub-Sector, Small Group Seat), GenPower Trading, LLC (Generation Sector, Provisional Member Group Seat), IPA New Haven, LLC (Related Person of ANP Funding, Generation Sector), Lowell Cogeneration Co. (Generation Sector Group Seat), Montgomery Energy Billerica Power Partners (Generation Sector Group Seat), Ridgewood Maine Hydro Partners (Related Person of Ridgewood Rhode Island, AR Sector). Comments on this filing are due February 19, 2010.

- **January 2010 Membership Filing (ER10-517)**

On February 24, the FERC accepted (i) the membership of the following Entities each effective January 1, 2010: Centaurus Energy Master Fund, L.P. (Supplier Sector), First Point Power, LLC (Supplier Sector), Just Energy (U.S.) Corp. (Supplier Sector), North American Power and Gas, LLC (Supplier Sector), Royal Bank of Canada (Related Person of RBC Energy Services; Supplier Sector); and (ii) the December 1, 2009 terminations of Fulcrum Power Marketing LLC (Supplier Sector), Sutton Energy, LLC and Invenergy Thermal Connecticut LLC (Generation Sector).

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

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

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

On December 22, 2009, NERC requested FERC approval of two interpretations⁶² of Critical Infrastructure Protection (“CIP”) Reliability Standard CIP-006-2.1 The interpretations address Requirements R1.1 (physical security perimeter), and R4 (physical access controls). No comments on this filing were submitted by the January 21 comment date and the filing is pending before the FERC.

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

On December 18, 2009, and in response to Order No. 716,⁶³ NERC requested FERC approval of the Violation Risk Factors (“VRFs”) for the NUC-001-1 Reliability Standard (Nuclear Plant Interface Coordination). Requirement R2 was changed from Lower to Medium; R4, R5, R7, and R8 were changed from Medium to High, and R9 was changed from Lower to Medium. No comments were submitted by the January 8 comment date and the filing is pending before the FERC.

⁶² All those directly or materially affected by the reliability of the North American bulk power system are permitted to request an interpretation of NERC Reliability Standards. Within 45 days of a request, NERC will present a formal interpretation for balloting. If approved by the ballot pool and the NERC Board of Trustees, the interpretation will be appended to the Reliability Standard and filed for approval with the FERC and the appropriate governmental authorities in Canada to be made effective if and when approved. If approved, the interpretation is incorporated into the Reliability Standard the next time the affected Reliability Standard is revised.

⁶³ Mandatory Reliability Standard for Nuclear Plant Interface Coordination, Order No. 716, 125 FERC ¶ 61,065 (2008).

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

Also on December 18, 2009, NERC requested FERC approval of (i) the Violation Severity Levels (“VSLs”)⁶⁴ for eight of the nine version 2 Critical Infrastructure Protection (“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 on the January 8, 2010 comment date. This matter is currently pending before the FERC.

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

On November 17, 2009, NERC requested FERC approval of its formal interpretation of Reliability Standard TOP-002-2a (Normal Operations Planning), in response to a request from the Orlando Utilities Commission. The formal interpretation provides that (i) requirement R11 mandates that each Transmission Operator (“TOP”) review the state of its TOP area both in advance of each day and during each day (with each day required to have “a study”, though not necessarily a “unique” study, that can be applied to it); (ii) that such study or review may be based on complex computer studies or a manual reasonability review of previously existing study results; and (iii) the requirement is meant to include both determining new limits and identifying potential “exceedances” of pre-defined SOLs -- if system conditions indicate that prior studies and SOLs may be outdated, then the TOP must conduct a study to identify SOLs for the new conditions. Motions to intervene were filed by ISO-NE, Exelon, and Modesto Irrigation District. A protest of NERC’s interpretation of requirement R11 was filed by Cogeneration Association of California. This matter is pending before the FERC.

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

On September 30, 2009, the FERC conditionally approved NERC’s revised Version 2 CIP Reliability Standards (CIP-002 through CIP-009) and NERC’s proposed Version 2 Implementation Plan, effective April 1, 2010, subject to the development of certain modifications to the Standards and a 90-day compliance filing with respect to the Implementation Plan.⁶⁵ The directed modifications include: (i) the addition to CIP-006-2 of a requirement on visitor control programs, including the use of visitor logs to document entry and exit; and (ii) the removal of the last sentence of CIP-008-2 Requirement R1.6.⁶⁶ With respect to the approved Implementation Plan, FERC noted that the Plan “lacks clarity and could be open to multiple interpretations on some topics,” and attached to the order a document reflecting its concerns. FERC directed NERC to submit a 90-day compliance filing addressing or clarifying the matters specified in that attachment.⁶⁷ NERC was also directed to submit as part of that compliance filing an update of the timetable that reflects the plan to address remaining FERC directives from Order 706. On December 17, 2009, FERC denied Edison Electric Institute’s (“EEI’s”) October 30 request for rehearing of certain aspects of the FERC’s September 30 order, but granted EEI’s motion for clarification and request for an

⁶⁴ VRFs assess the impact to reliability of violating a single compliance requirement. VSLs define the degree to which compliance with a Reliability Standard requirement was not achieved. VSLs are considered in conjunction with VRFs in the determination of the possible base penalty range for a violation of a Reliability Standard requirement.

⁶⁵ North American Electric Reliability Corp., 128 FERC ¶ 61,291 (2009), *reh’g denied and clarification granted*, FERC ¶ 61,236 (2009).

⁶⁶ That sentence read “Testing the Cyber Security Incident response plan does not require removing a component or system from service during the test.” FERC found that such a plan *could* include removing a system or component from service during testing and had not directed NERC to make that modification in Order 706.

⁶⁷ Id. at P 41.

extension of time to develop the directed modifications to the visitor control program requirements in CIP-006-2.⁶⁸

Compliance Filing – CIP Version 3 Standards. In response to the September 30 CIP Version 2 Order, NERC filed for approval on December 29, 2009 (i) CIP Version 3 Standards; (ii) a revised Implementation Plan for Newly Identified Critical Cyber Assets and Newly Registered Entities and the Implementation Plan for Version 3 of the CIP Standards CIP-002-3 through CIP-009-3; and (iii) an updated timetable for plans to address the remaining directives from Order 706. No comments on the compliance filing were submitted by the January 19 comment date, and the filing is pending before the FERC.

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

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

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

On December 31, 2009, NERC requested approval of reliability standards EOP-001-1 (Emergency Operations Planning), EOP-005-2 (System Restoration from Blackstart Resources), and EOP-006-2 (System Restoration Coordination). NERC also seeks FERC approval of the proposed definition of “Blackstart Resource.” According to NERC, the proposed revisions significantly improve the currently enforceable standards, and will upgrade the overall quality of the standards by eliminating gaps and ambiguity in the requirements, eliminating “fill-in-the-blank” standards, and addressing certain FERC Order No. 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 Standards by strengthening the quality of operator training programs. This matter is currently pending before the FERC.

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

On March 11, 2009, NERC filed revisions to reliability standard BAL-004-1 (Time Error Correction). The principal purpose of the proposed revisions is to preserve the status quo with respect to Interconnection Time Monitors (MISO, in the case of the Eastern Interconnection) while NERC, through

⁶⁸ North American Electric Reliability Corporation, 129 FERC ¶ 61,236 (2009).

its standards development process, considers changes to Time Error Correction management.⁶⁹ This matter is currently pending before the FERC.

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

On November 24, 2009, the FERC issued Order 729⁷⁰ approving and directly modifying six Modeling, Data and Analysis (“MOD”) Reliability Standards, which the FERC indicated would address the potential for undue discrimination by requiring industry-wide transparency and increased consistency regarding all components of the available transfer capability (“ATC”) calculation methodology and certain definitions, data, and modeling assumptions. Specifically, in Order 729 and the NOPR⁷¹ which preceded the Order, the FERC noted that the approved reliability standards will: (i) help to eliminate the broad discretion previously afforded transmission service providers in the calculation of ATC; (ii) enhance transparency in the calculation of ATC, requiring transmission operators and transmission service providers to calculate ATC using a specific methodology that is both explicitly documented and available to reliability entities who request it; (iii) require documentation of the detailed representations of the various components that comprise the ATC equation, including the specification of modeling and risk assumptions and the disclosure of outage processing rules to other reliability entities; and (iv) make ATC calculation more transparent, in turn allowing the FERC and others to ensure consistency in its application. In Order 729, the FERC also responded to the comments by nearly thirty parties submitted in response to the NOPR.⁷² Rehearing and/or clarification of aspects of Order 729 was requested by NERC, EEI, Duke, APPA/TAPS, and ISO-NE (whose request focused on clarification of the implementation date of the Standards approved by Order 729). The FERC issued a tolling order on January 20, 2010, affording it additional time to consider the requests for rehearing/clarification, which remain pending.

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

On May 21, 2009 the FERC issued a NOPR proposing to approve, and direct modifications to, a new reliability standard on Transmission Relay Loadability (PRC-023-1) developed by NERC.⁷³ NERC indicated that 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 all fault conditions, not limit transmission loadability, thus allowing system operators the flexibility and time to help maintain system reliability. NERC indicates that development of the Standard addresses key August 14, 2003 blackout recommendations regarding relay loadability issues.

⁶⁹ 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.

⁷⁰ Mandatory Reliability Standards for the Calculation of ATC, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability Standards for the Bulk-Power System, 129 FERC ¶ 61,155 (2009) (“Order 729”), *reh’g requested*.

⁷¹ 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, 126 FERC ¶ 61,249 (2009).

⁷² The MOD NOPR was published in the Federal Register on Mar. 25, 2009 (Vol. 74, No. 56) pp. 12,747-12,769.

⁷³ Transmission Relay Loadability Reliability Standard, 127 FERC ¶ 61,175 (2009).

In proposing to approve 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 proposed Reliability Standard's requirements govern all relays subject to the proposed Reliability Standard applied to protect, in any capacity, the applicable facilities defined in the proposed Reliability Standard. The FERC also directed the ERO to revise the violation risk factors and violation severity levels assignments of the Reliability Standard before the Reliability Standard's effective date. On July 9, 2009, the American Public Power Association ("APPA"), EEI, the Electric Power Supply Association ("EPSA"), and the National Rural Electric Cooperative Association ("NRECA") filed a motion for extension of time to file comments due to the many new technical and policy issues raised by the NOPR. On July 13, 2009, that request was granted, with the comment date extended to August 17, 2009. Comments were filed by over 50 parties. This matter is currently pending before the FERC.

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

On March 20, 2009, FERC issued a final rule⁷⁴ 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, 2009.⁷⁵ However, on April 20, 2009, NERC filed a request for clarification or, in the alternative, rehearing of Order 722, to address which VSLs should be used for FAC-010-2, FAC-011-2, and FAC-014-2. On May 20, 2009, FERC issued a tolling order affording it additional time to consider NERC's request for clarification or rehearing. NERC's rehearing request remains pending before the FERC. In response to the requirements of Order 722, NERC filed new VSLs for the three FAC Standards on May 29. Comments on the May 29 compliance filing were due July 6, and were filed only by the Transmission Agency of Northern California.

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

As previously reported, the FERC has accepted the VRFs filed to accompany the revised Reliability Standards (CIP-002-1 through CIP-009-1) submitted (in sub-docket -008) in response to the requirements of Order 706-B,⁷⁶ and the VSL assignments for those CIPs (sub-docket -009).

Implementation Plan. In response to the requirements of Order 706-B, NERC submitted on September 15 a plan for the implementation of CIP-002-1 through CIP-009-1 for owners and operators of U.S. nuclear power plants. On December 17, 2009, the FERC issued an order⁷⁷ determining that additional information is needed to evaluate NERC's implementation plan, and directing NERC to make a further compliance filing providing additional information regarding the scope of systems determination. On January 19, 2010, NERC submitted a compliance filing to provide FERC with the additional information requested in the December 17 order. On February 12, Exelon filed comments. The compliance filing is currently pending before the FERC.

⁷⁴ Version Two Facilities Design, Connections and Maintenance Reliability Standards, 126 FERC ¶ 61,255 (2009) ("Order 722"), *reh'g requested*.

⁷⁵ Order 722 was published in the Federal Register on Mar. 30, 2009 (Vol. 74, No. 59) pp. 14,008-14,040.

⁷⁶ Mandatory Reliability Standards for Critical Infrastructure Protection, Order No. 706-B, 126 FERC ¶ 61,229 (2009), *clarification denied*, 127 FERC ¶ 61,273 (2009).

⁷⁷ Mandatory Reliability Standards for Critical Infrastructure Protection, 129 FERC ¶ 61,224 (2009).

- **Reliability Standards – TIER Report (RM06-16)**

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 report⁷⁸ 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.

- **Revised Reliability Standards Development Procedure (RR10-4)**

On February 5, 2010, FERC approved the request filed by NERC on November 23, 2009 to amend the Reliability Standards Development Procedure (“RSDP”) in Appendix 3A of NERC’s Rules of Procedure. The amendments to NERC’s RSDP add processes for developing standards in response to national security emergency situations by utilizing shortened standards development process, and by specifying conditions under which access to some information may be limited, if necessary to protect national security. The amendments also modify the RSDP by altering the way Violation Risk Factors (“VRFs”) and Violation Severity Levels (“VSLs”) are approved and developed. Specifically, the amendments (1) designate VSLs and VRFs as “compliance elements” not considered part of a Reliability Standard, (2) remove VSLs and VRFs from the components of a Reliability Standard that must be balloted, and (3) provide a separate process that gives NERC’s Board of Directors the authority to approve VSLs and VRFs with no restrictions on the action it can take with respect to modifying proposed VSLs and VRFs. No comments were submitted by the December 14, 2009 comment date.

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

As previously reported, the FERC conditionally accepted the 2010 Business Plans and Budgets for NERC and the Regional Entities on October 15, 2009.⁷⁹ The 2010 plan calls for NERC to allocate to NPCC \$4,788,703. NPCC requested \$11,354,085 in statutory funding and \$1,099,307 for non-statutory functions. In accepting the 2010 budgets, the FERC directed NERC and NPCC to submit in a compliance filing including additional information on the 2010 net energy for load calculations and allocation to load serving entities for the Compliance Program Assessments. In response to the requirements of the October 15 order, NERC has submitted three filings: (1) a November 20 Informational Filing providing information on NERC’s “Situational Awareness for NERC, FERC and Regions” (“SAFNR”); and (2) a December 17 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, which are pending before the FERC.

⁷⁸ The TIER Report is available on-line at http://elibrary.ferc.gov/idmws/File_list.asp?document_id=13753678.

⁷⁹ North American Electric Reliability Corp., 129 FERC ¶ 61,040 (2009) (“October 15 Order”).

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

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

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

XI. Misc. - of Regional Interest

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

On January 7, 2010, Northeast Utilities Service Co. submitted an application on behalf of its affiliate, Public Service Company of New Hampshire (“PSNH”), requesting FERC terminate, on a service territory-wide basis, the mandatory power purchase obligations required by the FERC for QFs with a net generating capacity of 5 MW or greater. For QFs with a net generating capacity greater than 20 MW (“Large QFs”), PSNH relies on the rebuttable presumption that Large QFs in Day 2 markets have nondiscriminatory access to those markets. For QFs with a net generating capacity between 5 MW and 20 MW (“Small QFs”), PSNH intends to overcome the rebuttable presumption that Small QFs do not have nondiscriminatory access to markets. One comment and two protests were submitted by the February 12, 2010 comment date. On February 18, PSNH responded to the two protests. This matter is currently pending before the FERC.

- **Transparency of Energy Market Enforcement Process (PL10-1; PL10-2)**

On December 17, 2009, the FERC acted to make its energy market enforcement process more transparent in an order directing the Secretary to issue a Staff’s Preliminary Notice of Violations (a “Notice”) for each enforcement action, and in a policy statement on the process for disclosure of exculpatory materials in an enforcement action.

⁸⁰ 18 CFR § 39.3(c) (2009).

Staff's Preliminary Notice of Violations (PL10-2). In its December 17 order,⁸¹ the FERC authorized the Secretary to issue a Notice after the subject of the investigation has had an opportunity to respond to staff's preliminary findings letter, and upon authorization of the Office of Enforcement ("OE"). A Notice will include: (1) the identity of the entity or entities under investigation; (2) the time and place of the alleged conduct; (3) the rules, regulations, statutes or orders that staff alleges were violated; and (4) a concise description of the alleged wrongful conduct. FERC issued this order to benefit the public interest by informing the regulated community about the views of the OE regarding each matter, thereby providing a better understanding of compliance obligations. On January 19, 2010, FERC received two requests for clarification and/or rehearing of certain aspects of the order. On February 16, 2010, FERC issued a tolling order affording it additional time to consider those requests, which remain pending before the FERC.

Disclosure of Exculpatory Materials (PL10-2). On December 17 the FERC also issued a policy statement⁸² formalizing the process by which the OE will provide exculpatory evidence to subjects of its investigations and respondents in administration enforcement proceedings.

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

On February 9, 2010, the FERC filed a first revised Engineering and Procurement Agreement ("E&P Agreement") with Record Hill Wind. As reported most recently in the September 2009 report, the FERC accepted, on August 5, 2009, CMP's original E&P Agreement with Record Hill Wind LLC (designated as service agreement CMP-EP-2 under Schedule 22 of the ISO Tariff). The amendment filed in February addresses engineering and procurement activities that will take place in addition to those set forth in the original E&P Agreement. CMP has requested a December 28, 2009 effective date, the date of execution of the original E&P Agreement by Record Hill. Comments on this filing are due March 2, 2010.

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

On June 10, the FERC dismissed the Integritys 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).⁸³ As previously reported, the Integritys 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.

⁸¹ Order Authorizing Secretary to Issue Staff's Preliminary Notice of Violations, 129 FERC ¶ 61,247 (2009), *reh'g requested*.

⁸² Policy Statement on Disclosure of Exculpatory Materials, 129 FERC ¶ 61,248 (2009).

⁸³ Integritys Energy Services, Inc. v. New Brunswick Power Generation Corporation et al., 127 FERC ¶ 61,232 (2009), *reh'g requested*.

Also on August 10, 2009, NBP submitted a filing containing a horizontal market power study in compliance with the FERC's June 10 order. NBP requested that the FERC accept its compliance filing and immediately terminate proceedings under this Docket. On September 9, Integrys filed a protest to the compliance filing and on September 24 NBP filed an answer to the Integrys protest. On October 16, 2009, the FERC requested NBP submit additional information within 30 days regarding the horizontal market power study, which NBP submitted on November 9, 2009. On November 30, Integrys filed a protest regarding the additional information submitted on November 9, 2009. On January 15, 2010, the FERC requested NBP submit additional information and analyses regarding the horizontal market power study which NBP did not include in its November 9 response. On February 16, the FERC granted NBP's request for an extension until March 18, 2010 to submit the requested information. The compliance filing submitted by NBP, including the protest and answer 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.⁸⁴ 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; dt_doot@daypitney.com).

XII. Misc. - Administrative & Rulemaking Proceedings

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

On February 3, FERC Staff 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.⁸⁵ Comments on the metrics must

⁸⁴ See *New York Independent System Operator, Inc.*, 128 FERC ¶ 61,049 (2009); *New York Independent System Operator, Inc.*, 128 FERC ¶ 61,239 (2009).

⁸⁵ See "Electricity Restructuring: FERC Could Take Additional Steps to Analyze Regional Transmission Organizations' Benefits and Performance," GAO-08-987 (Sep. 2008).

be filed on or before March 5, 2010. Reply comments must be filed on or before March 19, 2010. Proposed NEPOOL comments on the FERC's notice will be considered at the March 5 Participants Committee meeting.

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

On March 22, the FERC issued a supplemental notice for a technical conference to be held on March 3, 2010 that will focus on the mechanics of market-based rate application and subsequent filings, including triennial market power reviews, change in status filings, and the submission of Electric Quarterly Reports. FERC staff will address the most frequently-asked questions that arise on, the most common errors that are made with, and highlight what tools are currently available to sellers in order to simplify, such filings. All interested persons are invited to attend.

- **Small Hydropower Development Technical Conference (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 by the Feb 4, 2010 comment date.

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

As previously reported, the FERC held a regional technical conference in Philadelphia on September 21, 2009 as part of FERC staff's assessment of the nation's Order 890 transmission planning processes. Written comments were submitted by over 100 parties, including comments by NEPOOL. NEPOOL's comments were summarized and considered at the November 19 Participants Committee meeting. Additional comments and reply comments were filed by nearly 50 parties.

- **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 28.⁸⁶ 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.

- **Credit Reform NOPR (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

⁸⁶ The NOI was published in the Federal Register on Apr. 28, 2008 (Vol. 73, No. 82) pp. 22867-22871.

circulated to the Committee on January 29 with the materials for the February 5 meeting. Comments on the Credit Reform NOPR are due March 29, 2010.⁸⁷ Proposed NEPOOL Comments on the NOPR will be considered at the March 5 Participants Committee meeting.

- **Market Transparency / EQR NOI (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 meeting on February 10, 2010. Based on that discussion, NEPOOL will not be providing comments in this proceeding. Comments on the NOI are due March 30, 2010.⁸⁸

- **Variable Energy Resources NOI (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 are due March 29, 2010,⁸⁹ though pending before FERC are motions by BPA and EEI requesting FERC extend the comment period for an additional 14 days until April 12, 2010. As of the date of this report, four parties have submitted comments. AN outline of proposed NEPOOL comments will be considered by the Participants Committee at its March 5 meeting.

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

On January 21, 2010, the FERC issued a NOPR proposing to amend its regulations pursuant to section 203 and 205 of the FPA to ensure that certain acquisitions of public utilities by holding companies that do not influence the control of the utility do not trigger certain market-based rate requirements or cross-subsidization restrictions.⁹⁰ 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

⁸⁷ The NOI was published in the Federal Register on Jan. 27, 2010 (Vol. 75, No. 17) pp. 4310-4316.

⁸⁸ The NOI was published in the Federal Register on Jan. 29, 2010 (Vol. 75, No. 19) pp. 4805-4809.

⁸⁹ The NOI was published in the Federal Register on Jan. 27, 2010 (Vol. 75, No. 17) pp. 4316-4323.

⁹⁰ Control and Affiliation for Purposes of Market-Based Rate Requirements under Section 205 of the Federal Power Act and the Requirements of Section 203 of the Federal Power Act, 130 FERC ¶ 61,046 (2010).

company files an Affirmation in Support of Exemption from Affiliation Requirements (the “Affirmation”), a new FERC form. The Affirmation would be designed to ensure a holding company purchaser will not change or influence the control of the public utility. This proposed process is designed to allow FERC to monitor and sanction entities that violate any statement made in the Affirmation. Comments on the NOPR are due March 29, 2010.⁹¹

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

On September 17, 2009, the FERC issued a NOPR to incorporate by reference in its regulations NAESB WEQ standards to categorize various demand response products and services and to support the measurement and verification of these products and services in wholesale electric energy markets (NAESB Phase I M&V Standards).⁹² The NOPR explains that the NAESB Phase I M&V Standards are intended to enhance the transparency and consistency of the methods used to measure and verify demand response products in wholesale electricity markets administered by RTOs/ISOs. They include 40 definitions and 31 business practice standards to identify: (i) basic product categories, (i.e., energy service, capacity service, reserve service and regulation service); and (ii) measurement and verification characteristics of demand response products and services offered in ISO/RTO markets (e.g. reduction deadlines, advance notification instructions, telemetry accuracy, and communication protocols). Comments on the NOPR were filed by 21 parties, including ISO-NE, prior to the October 22, 2009 comment date.⁹³

- **Order 676-E – WEQ Version 002.1 Business Practices (RM05-5)**

On November 24, 2009, the FERC issued Order 676-E⁹⁴ to revise its regulations to incorporate by reference in its regulations at 18 CFR 38.2 the latest version (Version 002.1) of certain business practice standards adopted by the Wholesale Electric Quadrant (“WEQ”) of the North American Energy Standards Board (“NAESB”). NAESB’s Version 002.1 Standards include standards adopted by NAESB in response to Order Nos. 890, 890-A, and 890-B. The Version 002.1 Standards incorporated by reference in Order 676-E modify NAESB’s Commercial Timing Table (WEQ-004 Appendix D) and Transmission Loading Relief Standards (WEQ-008) to provide clarity and align NAESB’s business practice standards with the reliability standards adopted by the NERC, and amend certain ancillary services definitions appearing in the OASIS Standards (WEQ-001) relating to the inclusion of demand response resources as potential providers of ancillary services. On December 22, 2009, Southern Company requested clarification and/or rehearing of Order 676-E, noting a perceived ambiguity between the study process for Conditional Firm Service contained in its OATT and in the business practice standards incorporated by reference into the FERC’s regulations by way of Order 676-E. The FERC issued an order on February 18, 2010 denying Southern Company’s December 22 request for rehearing, but granting Southern Company’s request for clarification of certain issues.⁹⁵ The FERC clarified that Order 676-E and Southern Company’s OATT are consistent because Southern Company will be in compliance with the study process for Conditional Firm Service contained in its OATT if it follows the NAESB’s business

⁹¹ The NOPR was published in the Federal Register on Jan. 28, 2010 (Vol. 75, No. 18) pp. 4498-4509.

⁹² Standards for Business Practices and Communication Protocols for Public Utilities, 128 FERC ¶ 61,263 (2009). When NAESB adopts a business practice standard as a “Final Action”, the standard is considered complete from NAESB’s perspective, but, compliance with such a standard is not mandatory until such time as the FERC takes formal action to incorporate such a standard by reference into its regulations. NAESB’s Phase I M&V Standards were adopted in the WEQ’s 2009 Annual Plan 5(a) Final Action.

⁹³ The NOPR was published in the Federal Register on Sep. 22, 2009 (Vol. 74, No. 182) pp. 48,173-48,177.

⁹⁴ Standards for Business Practices and Communication Protocols for Public Utilities, Order No. 676-E, 129 FERC ¶ 61,162 (2009), *reh’g denied and clarification granted*, 130 FERC ¶ 61,116 (2010).

⁹⁵ Standards for Business Practices and Communication Protocols for Public Utilities, 130 FERC ¶ 61,116 (2010).

practice standards and provides the customer with a choice as to whether it wants to study system conditions, numbers of hours, or both with respect to requests for Conditional Firm Service.

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

On January 21, 2009, the FERC issued an order establishing certain procedures related to the electronic filing of Tariffs that becomes mandatory on April 1, 2010 pursuant to Order No. 714.⁹⁶ The order identifies the ways in which electronic tariff filings will affect aspects of FERC procedures, particularly the determination of statutory filings, statutory action dates, and changes in docketing procedures. A re-scheduled technical conference was held on February 26, 2010 to address certain specific issues resulting from FERC's order, including the tariff filing definitions used for electronic filing and the attachments that are required for each tariff filing type.

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>.

On January 21, a broad coalition of electric and gas industry associations,⁹⁷ asserting they represent all the major segments of the electric power and natural gas industries serving every consumer in the United States, issued a letter addressed to US Senators outlining their recommendations to address oversight and transparency of over-the-counter ("OTC") derivatives markets. The associations recommended that OTC derivatives reform should:

- provide a clear exemption for commodity market end-users of OTC derivatives products;
- promote, but not mandate, clearing of standardized derivatives between large financial dealers;
- promote greater regulatory oversight and transparency of OTC derivatives through increased financial reporting and authority to the CFTC;
- promote the harmonization and clear delineation of regulatory authorities and functions among the SEC, CFTC, FERC and other Federal agencies, emphasizing that all electricity products and services provided under a FERC-approved tariff and subject to regulatory oversight by the FERC should be exempt from duplicative regulation by the CFTC; and
- amend the proposed definition of a swap to ensure that physical transactions with enforceable delivery obligations are excluded from the definition of swap.

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).

⁹⁶ Standards for Business Practices and Communication Protocols for Public Utilities, Order No. 676-E, 129 FERC ¶ 61,162 (2009).

⁹⁷ The Associations were: America's Natural Gas Alliance, American Exploration and Production Council, American Gas Association ("AGA"), American Public Power Association ("APPA"), American Public Gas Association, American Wind Energy Association ("AWEA"), Edison Electric Institute ("EEI"), Electric Power Supply Association ("EPSA"), Independent Petroleum Association of America, Interstate Natural Gas Association of America, Large Public Power Council, Natural Gas Supply Association, National Rural Electric Cooperative Association, and US Oil & Gas Association.

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

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

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

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

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.
08-1199	5/23/08	Public Parties	ER04-157-004 ER04-157-006 (RTO ROE Proceeding)	117 FERC ¶ 61,129 (Oct 31, 2006) 122 FERC ¶ 61,265 (Mar 24, 2008)	On January 29, 2010, the DC Circuit denied Public Parties’ petition for review (2010 U.S. App. LEXIS 1977). The court of appeals held that FERC in effect insisted on evidence establishing a causal link between the bonus and benefits to consumers, noting that the FERC was concerned not just with ensuring completion of the projects but with accelerating completion, and the FERC adduced substantial evidence to show that the bonus was likely to increase the speed with which the projects were completed. It also held that it was not necessary for the FERC to pinpoint specific actions that facility owners would take because of the bonus, and that allowing inclusion of CWIP in the rate base did not nullify the incentive effects of the bonus.

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)	Consolidated with Case No. 09-1040 (ROE Incentives for NU M-N Project). In 09-1039, the CT DPUC and CT AG have challenged the FERC rulings granting UI's proposed 100 percent CWIP incentive for costs associated with construction of the Bethel-Norwalk 345-kV transmission line and upgrades to the existing 115-kV line from Middletown to Norwalk, CT and UI's proposed 50 basis point ROE adder for advanced technologies. In 09-1040, the CT Parties have challenged the FERC rulings granting NU's request for a limited waiver of the Dec 31, 2008 termination date for the 100 basis point ROE incentive, and conditionally granting the 50 basis point advanced transmission technology incentive. In light of the decision in Jan 29 decision in 08-1199, the Court ordered the parties to file motions to govern future proceedings in the case by Mar 4, 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 is due Mar 11; final briefs, Apr 1, 2010.
09-1231	8/31/09	MPS	EL08-48-000; -001; -002 (SEMA – Cost Allocation)	128 FERC ¶ 61,008 (Jul 2, 2009)	As previously reported, this case is being held in abeyance pending completion of related FERC proceedings (see EL08-48 above).
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.

INDEX
Status Report of Current Regulatory and Legal Proceedings
as of February 28, 2010

I. Complaints

Dartmouth Power Complaint (Appeal of RBA Denial).....	(EL09-42)	2
ICAP Import Contract Complaints	(EL09-48; EL09-47)	1
Integrus Complaint - NBP Generation Market Power in NMISA	(EL09-32)	26
MA Municipals Complaint To Terminate Berkshire RMR Agreement	(EL09-3)	17
MPS LSCPR Complaint	(EL08-48)	3
NECPUC ROE Complaint.....	(EL08-69)	3

II. Rate/ROE Filings

2010 Administrative Costs Budget.....	(ER10-154)	5
CMP Inclusion of MPRP CWIP in RNS Rate	(ER09-938)	6
FCA1 Proration Results Filing	(ER08-633)	8
FCA1 Results Filing	(ER08-633)	8
FCA3 Results Filing	(ER10-186)	4
ICR-Related Values for 2010/2011 Final ARA and Jump Ball Market Rule Changes	(ER10-438)	4
ICR-Related Values and HQICCs - 2011/2012 ARA2.....	(ER10-714)	4
ROE Incentives for MPC Project (CMP and MPS).....	(EL08-77)	6
ROE Incentives for MPRP (CMP)	(EL08-74)	7
ROE Incentives for NEEWS (NU and NGrid)	(ER08-1548)	7
RTO ROE Proceedings.....	(ER04-157 et al.)	8

III. Market Rule 1 Changes, Interpretations and Waiver Requests

Ampersand Request for Limited Waiver of FCM Rules	(ER10-600)	11
De-List Bids for Stations with Common Costs.....	(ER10-750)	9
FCA3 Qualification Informational Filing	(ER09-1424)	12
FCM Omnibus 5 Revisions Filing	(ER10-419)	11
FCM Phase II Market Rule Changes: Rights and Obligations, Payments and Charges and Performance	(ER09-1144)	12
FCM Re-Design: Revisions to MR1 §§ 12 and 13	(ER10-787)	9
NCPC Mitigation Reform.....	(ER09-1546)	11
Order 719 Compliance Filings.....	(ER10-588,ER09-1051)	10
Pittsfield and Pawtucket Request for Limited Waiver of FCM Rules	(ER10-722)	9
Reports on Future of Load Response Programs	(ER08-830)	13
Tie Benefits Calculation and Allocation.....	(ER08-41)	14
VEC Request for Limited Waiver of FCM Rules.....	(ER10-503)	11

IV. OATT Amendments/Coordination Agreements

NEITC Operating Agreement.....	(ER10-637)	14
Order 719 Compliance Filings.....	(ER10-588, ER09-1051).....	10
Schedule 2 (VAR Support) Amendments - Transition Period Double Recovery Issue.....	(ER07-397)	14

V. Financial Assurance/Billing Policy Amendments

Changes to FCM-Related Provisions of the Financial Assurance Policy	(ER10-62)	15
Glacial Energy Non-Conforming LOC.....	(ER10-725)	15
Pre-Payment and Suspension Clarifications	(ER10-752)	15

VI. Schedule 20/21 Updates

Schedule 21-BHE Change to Forward Looking Formula Rate (ER09-934) 17
 Schedule 21-BHE Local Service Agreements (ER10-111) 17
 Schedule 21-CMP Conforming Changes to Reflect MPRP CWIP Inclusion in RNS Rate.. (ER09-938) 6
 Schedule 21-CMP KLPD LNS Agreement (ER10-199) 16
 Schedule 21-NU Localized Cost Sharing Agreements (ER10-315) 16
 Schedule 21-NU Localized Cost Sharing Agreements (NextEra/Dynegy) (ER10-641) 16
 Schedule 21-UI Localized Cost Sharing Agreements (NextEra/Dynegy) (ER10-473) 16

VII. RMR Agreements

Berkshire RMR Agreement - MA Municipals Complaint to Terminate (EL09-3) 17

VIII. Regional Reports

ISO's 2009 Q4 Capital Projects Report..... (ER10-741) 18
 Load Response Status Reports..... (ER03-345) 18
 Quarterly Markets Reports - 2009 Q3 (ZZ10-4) 18
 Quarterly Reports Regarding Non-Generating Resource Regulation Market Participation . (ER08-54) 18
 Quarterly Status Reports on LFTR Implementation (ER07-476; RM06-08)..... 18

IX. Membership Filings

February 2010 Membership Filing (ER10-684) 18
 January 2010 Membership Filing (ER10-517) 18
 March 2010 Membership Filing (ER10-799) 18

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

2010 NERC/NPCC Business Plans and Budgets..... (RR09-9) 24
 3-Year ERO Performance Assessment Report (RR09-7) 25
 Formal Interpretation – Reliability Standard CIP-006-2b (RD10-8)..... 19
 Formal Interpretation – Reliability Standard TOP-002-2a (RD10-3)..... 20
 Formal Interpretation – Reliability Standard VAR-002-1a (RD09-5)..... 21
 Order 722 – Revised Reliability Standards for Facilities Design, Connections
 and Maintenance (FAC-010-002, FAC-011-002, and FAC-014-002)..... (RM08-11) 23
 Order 729 - Revised MOD Reliability Standards (RM09-5; RM06-16) (RM09-5; RM08-19;
 RM06-16) 22
 Proposed Clarification to CIP Standards (RM06-22) 23
 Reliability Standards – TIER Report..... (RM06-16) 24
 Reliability Standard - Transmission Relay Loadability (RM08-13) 22
 Revised Reliability Standard - BAL-004-1 (RM09-13) 21
 Revised Reliability Standards – EOP-001-1, EOP-005-2 and EOP006-2 (RM10-16) 21
 Revised Reliability Standards - PER-004-2 and PER-005-1 (RM09-25) 21
 Revised (Version 2) CIP Reliability Standards – CIP-002 – CIP-009..... (RD09-7)..... 20
 Revised Reliability Standards Development Procedure (RR10-4) 24
 Violation Security Levels – CIP-002-2 through CIP-009-2 (RD10-6)..... 20
 Violation Security Levels – NUC-001-1 (RD10-7)..... 19

XI. Misc. Regional Interest

CMP/Record Hill Engineering & Procurement Agreement – First Amendment..... (ER10-764) 26
 Transparency of Energy Market Enforcement Process..... (PL10-1; PL10-2) 25
 Integrys Complaint - NBP Generation Market Power in NMISA (EL09-32) 26
 NYISO Report on Regional Markets; Long-Term Solutions to Lake Erie Loop Flow (ER08-1281) 27
 PSNH Application to Terminate Mandatory Purchase Obligation from QFs > 5MW (QM10-4)..... 25

XII. Misc: Administrative & Rulemaking Proceedings

Conference on Transmission Planning Processes Under Order 890..... (AD09-8) 28
 Credit Reform NOPR (RM10-13) 28
 e-Tariff Filing Procedures..... (RM01-5) 31
 Market Transparency / EQR NOI..... (RM10-12) 29
 NOI Regarding Annual Charges Assessments for Public Utilities (AD08-7) 28
 NOPR – Exempting Non-Controlling Investments in Utilities from MBR Requirements... (RM09-16) 29
 NOPR - Measurement Standards for Demand Response Services (RM05-5) 30
 Order 676-E – WEQ Version 002.1 Business Practices (RM05-5) 30
 RTO/ISO Performance Metrics (AD10-5) 27
 Small Hydropower Development Technical Conference (AD09-9) 28
 Technical Conference on MBR Filings and EQR Reports (AD10-4) 28
 Technical Conference on RTO/ISO Responsiveness..... (ER09-1051 *et al.*) 10
 Variable Energy Resources NOI (RM10-11) 29

XIII. State Proceedings & Federal Legislative Proceedings

Congressional Developments - CFTC/FERC Jurisdiction Issues..... 31
 MPUC – Investigation of Maine Utilities Continued Participation in ISO-NE..... (MPUC 2008-156) 32
 MPUC Review of CMP Petition for CPCN for MPRP (MPUC 2008-255) 32

XIV. Federal Court Appeals

2009 ISO Administrative Costs Recovery (ER09-197)..... 09-1220 34
 CT DPUC et al. (ER08-966 (ROE Incentives for NU M-N Project)) 09-1040 34
 CT DPUC/CT AG (ER07-653 (ROE Incentives for UI Bethel-Norwalk Upgrade Costs) ... 09-1039 34
 MPS LSCPR Complaint (ER08-48) 09-1231 34
 Public Parties (ER04-157-004 and -006 (RTO ROE Proceeding)) 08-1199 33
 Remand-FCM Settlement/Transition Rules (ER06-1465, ER03-563) 06-1403, 06-1427,
 07-1193 33