



EXECUTIVE SUMMARY

Status Report of Current Regulatory and Legal Proceedings as of September 11, 2014

The following activity, as more fully described in the attached litigation report, has occurred since the report dated July 30, 2014 was circulated. New matters/proceedings since the last Report are preceded by an asterisk ‘*’. Page numbers precede the matter description.

I. Complaints				
* 1	Base ROE Complaint (2014) (EL14-86)	Jul 31	MA AG, together with a group of State Advocates, Publicly Owned Entities, End Users, and End User Organizations, file a complaint to reduce the current Base ROE to 8.84% and to cap the Combined ROE for all rate base components at 12.54%	
		Aug 4	TO’s request extension of time to respond to Sep 10	
		Aug 12	FERC grants extension requested to Sep 10	
		Aug 21	MPUC intervenes	
		Sep 10	TOs submit response; MPUC submits supporting comments; NEPOOL, APPA, EMCOS intervene	
1	206 Investigation: FCM Performance Incentives (Compliance Proceeding) (EL14-52)	Jul 28	FERC issues tolling order allowing it additional time to consider requests for rehearing of <i>May 30 PI Order</i>	
		Aug 4	Interventions filed by: CT AG, RI PUC <i>Compliance Filing activity summarized in ER14-2419, § III below</i>	
4	Base ROE Complaint (2012) (EL13-33)	Aug 20	FERC issues tolling order allowing it additional time to consider requests for rehearing of Jun 19 order	
		Aug 22	2nd Settlement conference re-scheduled for Oct 9	
4	Base ROE Complaint (2011) (EL11-66)	Aug 4	Complainants, TOs and FERC Trial Staff submit briefs on paper hearing	
		Aug 5	TOs move to strike evidence submitted in Complainants’ Jul 21 Petition for Rehearing, urge dismissal of APPA/NRECA and AMP motions to intervene out-of-time, and answer EMCOS’ motion for clarification; Complainants/APPA/NRECA/NHEC answer TOs’ motion for clarification	
		Aug 12	APPA/NRECA answer TOs’ Aug 5 dismissal motion	
		Aug 20	Complainants answer TOs’ Aug 5 motion to strike; TOs answer Complainants Aug 5 answer	
			FERC issues tolling order allowing it additional time to consider requests for rehearing of <i>Opinion 531</i>	
		Aug 22	Complainants/APPA/NRECA/NHEC answer TOs’ Aug 5 motion for clarification	
		Sep 3	Complainants, TOs and FERC Trial Staff submit reply briefs	
		Sep 4	APPA/NRECA/NHEC answer TOs’ Aug 20 answer	
II. Rate, ICR, FCA, Cost Recovery Filings				

6	FCA8 Results Filing (ER14-1409)	Jul 31	NEPGA, EMCOS submit comments on ISO response to deficiency letter; EMCOS request disclosure of the entirety of ISO’s response and additional time to evaluate the information withheld
		Aug 6	FERC notices EMCOS’ request for disclosure
		Aug 11	NHEC supports, and NEPGA and ISO oppose, EMCOS’ request
		Aug 21	FERC issues order partially granting EMCOS’ request
		Aug 22-29	Brookfield, Entergy intervene
		Sep 5	EMCOS file supplemental protest
		Sep 10	NEPGA answers EMCOS’ Sep 5 protest

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| * 8 | 2014/2015 Power Year Transmission Rate Filing (ER09-1532; RT04-2) | Jul 31 | PTO AC submits informational filing identifying adjustments to regional transmission service charges for the Jun 1, 2014 to May 31, 2015 period; this filing will not be noticed for public comment |
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III. Market Rule and Information Policy Changes, Interpretations and Waiver Requests	▼
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| * 8 | Waiver Request: New Capacity Qualification Deadlines (MMWEC) (ER14-2771) | Sep 5
Sep 9 | MMWEC requests limited waiver of FCA9 New Capacity Qualification package deadline; comment date Sep 15
NEPOOL intervenes |
| * 9 | Competitive Offer Test Revisions (ER14-2686) | Aug 22
Sep 8-11 | ISO and NEPOOL jointly file changes so that Test functions as intended when EMOF changes are implemented; comment date Sep 12
Dominion, NRG, NU intervene |
| 9 | ISO CSO Deferral Proposal (ER14-2440) | Aug 4-5
Aug 6

Aug 21 | Dominion, NU intervene
NEPOOL provides add'l info concerning stakeholder consideration of Proposal; supportive comments filed by: Footprint Power, MA AG, MA DPU, NESCOE; protests by: NEPGA, NextEra, NRG, PSEG
ISO and Footprint Power answer Aug 6 protests |
| 9 | FCM PI Jump Ball Compliance Filing (ER14-2419) | Aug 1-4
Aug 4
Aug 6
Aug 15
Aug 28 | CT AG, CT OCC, Dynegy, GDF SUEZ, MPUC, NRG, RI PUC, UI, Verso intervene
Protests filed by: NEPOOL, Brookfield, CT PURA, First Wind, NESCOE, NEPGA/EPISA, Public Systems, NU, PSEG, RENEW
Calpine intervenes and Verso submits protest out-of-time
ISO answers Aug 4 protests
NEPOOL answers ISO Aug 15 answer |
| 10 | Winter 2014/15 Reliability Program (ER14-2407) | Jul 30-31
Aug 1
Aug 4
Aug 15
Aug 18
Sep 9 | Dynegy, NRG, NU, VT PSB intervene
RESA intervenes; comments submitted by: NESCOE, Exelon/Entergy, NEPGA/EPISA, PSEG, AGT & Maritimes
GDF SUEZ protests
ISO answers protests
NEPOOL files answer to protests
FERC accepts Program, effective Dec 3, 2014 |
| 10 | Offer Flexibility Conforming Changes (ER14-2376) | Aug 29 | FERC accepts changes, effective Dec 3, 2014 |
| 10 | Order 755 Regulation Market Changes (ER12-1643) | Aug 1
Aug 22 | ISO files revised tariff sheets to extend effective date of new Regulation Market to Mar 31, 2015
NEPOOL files comments supporting requested extension |
| 10 | Demand Curve Changes (ER14-1639) | Aug 1 | NEPGA submits comments supporting ISO's Jul 11 compliance filing |

IV. OATT Amendments / TOAs / Coordination Agreements	▼
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| 13 | Order 784 Compliance Filing (ER14-877) | Sep 9 | FERC rejects Dec 27, 2013 compliance filing; directs Oct 9, 2014 compliance filing |
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V. Financial Assurance/Billing Policy Amendments	▼
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No Activity to Report

VI. Schedule 20/21/22/23 Changes	▼
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| * 16 | Schedule 21-NSTAR: MBTA LSA (ER14-2596) | Aug 5
Sep 5 | ISO and NSTAR file MBTA LSA
ISO and NSTAR amend MBTA LSA; comment date Sep 26 |
| * 16 | Order 792 Compliance Filing (ER14-2583) | Aug 4
Aug 21-27 | ISO, NEPOOL and PTO AC submit compliance filing
Dominion, Exelon, NRG intervene |

16	Schedule 21-NEP: Centennial Island Hydro SGIA (ER14-2534)	Sep 5	NEP supplements its Centennial Island Hydro SGIA filing
17	Schedule 21-NEP: TSAs (BIPCO and Narragansett) (ER14-2514; ER14-2519)	Sep 2	FERC accepts LSAs and notice of termination of superseded Narragansett LSA, effective Sep 27, 2014
17	Schedule 23 SGIA – Berkshire Wind (WMECO/ISO-NE/ Berkshire Wind) (ER14-2400)	Sep 2	FERC accepts SGIA, effective Jun 23, 2014
2	Schedule 21-GMP: Merger Revisions; Cancellation of Schedule 21-CVPS (ER12-2304)	Aug 4 Aug 22 Sep 11	FERC approves Settlement GPM submits compliance filings, consistent with Settlement; comment date Sep 12 NU intervenes

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

* 17	Capital Projects Report - 2014 Q2 (ER14-2656)	Aug 13 Aug 27 Sep 2	ISO files Report NEPOOL intervenes and files comments NU intervenes
* 18	IMM Quarterly Markets Reports - 2014 Q2 (ZZ14-4)	Aug 12	Internal Market Monitor files report for Q2 2014

IX. Membership Filings

18	September 2014 Membership Filing (ER14-2749)	Aug 29	Memberships: BlueRock Energy, E.ON Global Commodities North America; Terminations: SBR Energy, Dragon Products and Dragon Energy LLC; comment date Sep 19
18	August 2014 Membership Filing (ER14-2451)	July 31	Memberships: SFE Energy Connecticut and SFE Energy Massachusetts

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

* 18	FFT Report: August 2014 (NP14-49)	Aug 27	NERC files report
* 18	FFT Report: July 2014 (NP14-47)	Jul 31	NERC files report
*	Revised Reliability Standards: FAC-001-2 and FAC-002-2 (RD14-12)	Aug 22	NERC files revised FAC Standards for approval; comment date Sep 25, 2014
19	Revised Reliability Standards: VAR-001-4 and VAR-002-3 (RD14-11)	Aug 1	FERC approves Revised VAR Standards, effective Oct 1, 2014
19	Revised Reliability Standards: INT-004-3, INT-006-4, INT-009-2, INT-010-2, INT-011-1 (RD14-4)	Aug 22	NERC submits errata filing clarifying Standards' effective date language; comment date Sep 25
19	NOPR: New Reliability Standard: CIP-014-1 (Physical Security) (RM14-15)	Sep 8	Parties submit comments on proposed Physical Security Reliability Standard; reply comments due Sep 22
21	NOPR: Revised Reliability Standard: MOD-001-2 (RM14-7)	Aug 22-25	NERC, Bonneville, Duke, MISO, NAESB file comments
21	Order 797: New Reliability Standard: EOP-010-1 (Geomagnetic Disturbance Operations)(RM14-1)	Aug 20	FERC issues tolling order allowing it additional time to consider Foundation for Resilient Societies' request FOR rehearing

23	Revised VSL: PRC-005 R1 (RM13-7)	Aug 25	FERC approves revised VSL
* 24	2015 NERC/NPCC Business Plans and Budgets (RR14-6)	Aug 22	NERC submits proposed 2015 Business Plan and Budget for itself and its Regional Entities, including NPCC; comment date Sep 12
		Sep 9	Exelon intervenes

XI. Misc. - of Regional Interest

* 24	203 Application: Calpine/ Constellation (Fore River) (EC14-135)	Sep 5	Applicants request authorization to permit Calpine acquisition of Fore River generating station; comment date Sep 26
24	PURPA Complaint v. MA DPU (EL14-84 et al.)	Aug 15	MA DPU requests extension of time, to Nov 1, 2014, to respond to Complaint
		Aug 18	National Grid and Allco file comments regarding MA DPU request; FERC grants extension request, in part, extending comment deadline to and including Aug 28, 2014
		Aug 28	MA DPU files protest in response to Complaint
		Sep 8	Allco answers MA DPU protest
* 25	E&P Agreements: Blue Sky West & CMP (ER14-2743; ER14-2744)	Aug 29	CMP files Blue Sky West E&P Agreements; comment date Sep 19
* 25	Termination of NE ITC TOA (ER14-2603)	Aug 6	ISO and NE ITC file notice of termination
		Sep 2	FERC accepts notice of termination
* 25	NEP Termination of Dighton Power IA (ER14-2521)	Aug 27	FERC accepts NEP notice of termination of superseded Dighton Power Assoc. IA
* 25	NHEC/PSNH D&E Agreement (ER14-2513)	Sep 11	FERC accepts D&E Agreement, effective July 29, 2014
26	Fitchburg LNS Agreement with Keolis; Termination of MBTA LNS Agreement (ER14-2503)	Sep 10	FERC accepts Fitchburg/Keolis LNS Agreement and termination of Fitchburg/MBTA LNS Agreement, effective Jul 1, 2014
26	LGIA – Block Island Wind (NEP/Deepwater Wind) (ER14-2496)	Sep 2	FERC accepts non-conforming NEP/ Deepwater Wind LGIA; effective Sep 23, 2014
26	PSNH Termination of Newington Essential Power IA (ER14-2397)	Aug 11	FERC accepts PSNH termination notice of superseded Essential Power Newington IA
26	WMECO Termination of HG&E Equipment Rental Agreement (ER14-2389)	Aug 27	FERC accepts WMECO cancellation notice of Equipment Rental Agreement with HG&E, effective Sep 8, 2014
26	PSNH/WMECO Cancellation of superseded Wallingford LCRA (ER14-2386; ER14-2387)	Aug 27	FERC accepts notices of cancellation of LCRAs, effective Sep 8, 2014
27	CL&P Amended Wholesale Distribution Agreement with CMEEC (ER14-2378)	Aug 12	FERC accepts amended CL&P/CMEEC Wholesale Distribution Service Agreement, effective Sep 6, 2014
27	Pootatuck Substation EDC Agreement UI-CL&P (ER14-2355)	Aug 14	FERC accepts UI/CL&P Pootatuck Substation Engineering, Design, and Construction Agreement, effective Jun 2, 2014
27	CL&P Covanta Bristol IA (ER14-2303)	Aug 28	FERC accepts replacement CL&P/Bristol IA, effective Jul 1, 2014
27	CMP Termination of Lewiston IA (ER14-2272)	Aug 12	FERC accepts notice of termination of CMP/Lewiston IA, effective Jun 16

28	FERC Enforcement Action: Direct Energy (IN14-22)	Aug 11	FERC approves agreement settling allegations that Direct Energy violated the Anti-Manipulation Rule by manipulating natural gas prices during May 2012 at Transco Zone 6 to benefit its related financial positions; Direct Energy to pay \$20,000 civil penalty, disgorge \$31,935
28	FERC Enforcement Action: Imperial Irrigation District (IN14-7)	Aug 7	FERC approves agreement resolving investigation of Imperials' role in Sep 8, 2011 southwest blackout; Imperial to pay \$12 million civil penalty
28	FERC Enforcement Action Pending: Staff Notices of Alleged Violations (IN__-__)	Aug 25	FERC issues notice of preliminarily Staff determination that City Power and K. Tsingas violated (i) the Anti-Manipulation Rule by engaging in manipulative Up To Congestion trading in PJM during Jul 2010; and (ii) FERC's market behavior rules by making false statements and omitting material information during the investigation
		Aug 5	FERC issues notice of preliminarily Staff determination that Powhatan Energy Fund <i>et al.</i> violated the FERC's Anti-Manipulation Rule by engaging in manipulative Up To Congestion trading in PJM between Jun and Aug 2010

XII. Misc. - Administrative & Rulemaking Proceedings

* 30	RTO/ISO Common Metrics Report (AD14-15)	Aug 26	FERC staff issues RTO/ISO Common Metrics Report
29	Price Formation in RTO/ISO Energy & Ancillary Services Markets (AD14-14)	Aug 14 Aug 21 Sep 5	FERC issues supplemental notice of and agenda for 1st workshop FERC Staff issues analysis of "Uplift in RTO and ISO Markets" FERC issues notice of Oct 28, 2014 workshop on offer price mitigation and offer price caps, and scarcity and shortage pricing in energy and ancillary services markets; speaker nominations due Sep 23
		Sep 8	FERC holds 1st workshop on uplift payments and the levels of transparency
30	RTO/ISO Winter 2013-2014 Op and Market Performance (AD14-8)	Aug 25	Citizens Utility Board and 202 individuals file comments on price spikes experienced during winter 2013/14
31	NOPR: Open Access and Priority Rights on ICIF (RM14-11)	Sep 10	MISO Transmission Owners file reply comments

XIII. Natural Gas Proceedings

35	Natural Gas-Related Enforcement Actions: BP (IN13-15)	Jul 30 - Sep 9	Subpoena <i>duces tecum</i> issued to ETP, El Paso Marketing, Integrys, Tenaska, Castleton, M. Berry, Exelon, Chesapeake, McGraw Hill, EnCana, Enable Energy, Chevron, Barclays, Total Gas & Power, Shell, ONEOK, Black Martin Pipeline
		Jul 31	Trial Judge denies motions for reconsideration and interlocutory appeal of Jul 3 ruling
		Aug 7	BP appeals to the Commission Trial Judge's Jul 31 rulings
		Aug 14	Commissioner LaFleur, as motions Commissioner, denies Aug 7 appeal
		Sep 2	Chief Judge issues order modifying procedural schedule

XIV. State Proceedings & Federal Legislative Proceedings*No Activity to Report***XV. Federal Courts**

35	2013/14 Winter Reliability Program and Bid Results (14-1104 (consol.))	Aug 29	DC Circuit issues order directing filing of proposed formats for briefing of consolidated cases by Sep 29
36	Orders 773 and 773-A (2nd Cir., 13-2316)	Aug 22 Aug 27 Sep10	FERC files brief NERC files brief NERC files reply brief

36	<i>Orders 1000 and 1000-A</i> (12-1232 (consol.))	Aug 15	DC Circuit denies petitions for review of FERC Order Nos. 1000, 1000-A and 1000-B; issues order indicating that issuance of mandate to be withheld until 7 days after disposition of any timely petition for rehearing or petition for rehearing <i>en banc</i>
36	FCM Re-Design (12-1060)	Sep 3	DC Circuit issues mandate to FERC following Jul 8 order denying petitions for rehearing of the FERC's FCM Re-Design Orders
37	<i>Orders 745 and 745-A</i> (11-1486)	Aug 4	EPSA, APPA, NRECA, Old Dominion and EEI file joint response to the FERC's Jul 7 petition for rehearing
39	PPL EnergyPlus, LLC v. Hanna (3d Cir., 13-4330)	Sep 11	3rd Cir. Affirms D. NJ decision declaring unconstitutional (and therefore null and void) New Jersey's Long Term Capacity Agreement Pilot Program Act

M E M O R A N D U M

TO: NEPOOL Participants Committee Member and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: September 11, 2014

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

We have summarized below the status of key ongoing proceedings relating to NEPOOL matters before the Federal Energy Regulatory Commission (“FERC”), state regulatory commissions, and the Federal Courts and legislatures through September 11, 2014. If you have questions, please contact us.¹

I. Complaints

- **Base ROE Complaint (2014) (EL14-86)**

As reported at the August 1 Participants Committee meeting, on July 31, 2014, the Massachusetts Attorney General (“MA AG”), together with a group of State Advocates, Publicly Owned Entities, End Users, and End User Organizations (together, the “2014 ROE Complainants”),² filed a complaint to reduce the current 11.14% Base ROE to 8.84% (but in any case no more than 9.44%) and to cap the Combined ROE for all rate base components at 12.54%. 2014 Complainants state that they submitted this Complaint seeking refund protection against payments based on a pre-incentives Base ROE of 11.14%, and a reduction in the Combined ROE, relief as yet not afforded through the prior ROE proceedings. Based on an August 4 request by the TOs, the comment date on this filing was extended to September 10, 2014.³ The TOs responded on September 10. In addition, the MPUC submitted comments supporting the Complaint, and interventions were filed by NEPOOL, APPA, and EMCOS. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **206 Investigation: FCM Performance Incentives (Compliance Proceeding) (EL14-52)**

As more fully explained in Section III below (ER14-1050), the FERC instituted this proceeding, pursuant to section 206 of the Federal Power Act (“FPA”), in its May 30 *PI Order*, having concluded in the *PI Order* that the ISO’s existing Tariff, specifically the current FCM payment design, “is unjust and unreasonable, because it fails to provide adequate incentives for resource performance, thereby threatening reliable operation of the system and forcing consumers to pay for capacity without receiving commensurate

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. (“ISO” or “ISO-NE”) Transmission, Markets and Services Tariff (the “Tariff”).

² “2014 Complainants” are: the MA AG, Connecticut Public Utilities Regulatory Authority (“CT PURA”), Massachusetts Municipal Wholesale Electric Company (“MMWEC”), New Hampshire Electric Cooperative, Inc. (“NHEC”), Massachusetts Department of Public Utilities (“MA DPU”), New Hampshire Public Utilities Commission (“NH PUC”), the Attorney General of the State of Connecticut (“CT AG”), Connecticut Office of Consumer Counsel (“CT OCC”), Maine Office of the Public Advocate (“MOPA”), New Hampshire Office of the Consumer Advocate (“NH OCA”), Rhode Island Division of Public Utilities and Carriers (“RI PUC”), Vermont Department of Public Service (“VT DPS”), Associated Industries of Massachusetts (“AIM”), The Energy Consortium (“TEC”), Power Options, Inc., Western Massachusetts Industrial Group, Environment Northeast (“ENE”), National Consumer Law Center, the Greater Boston Real Estate Board, and the Industrial Energy Consumer Group (“IECG”).

³ Notice of Extension of Time, *Att’y Gen. of the Commonwealth of Ma., et al. v. Bangor Hydro-Elec. Co., et al.*, Docket No. EL14-86-000 (Aug. 12, 2014).

reliability benefits.”⁴ The FERC directed the ISO to submit in this proceeding “Tariff revisions reflecting a modified version of its [PFP] proposal and an increase in the Reserve Constraint Penalty Factors, consistent with NEPOOL’s proposal.”⁵ The FERC-established refund effective date will be June 9, 2014.⁶ Interventions were filed by NEPOOL, CT AG, CT DEEP, CT OCC, CT PURA, Dynegy, Essential Power, Exelon, MPUC, PSEG, RI PUC, and UI. Requests for clarification and/or rehearing of the *PI Order* were filed by: NEPOOL, Connecticut and Rhode Island,⁷ Dominion, MMWEC, Indicated Generators,⁸ NEPGA, NextEra, Potomac Economics, and PSEG/NERG. On July 28, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC. Developments with respect to the ISO’s compliance filing will be reported in “FCM PI Jump Ball Compliance Filing (ER14-2419)”, Section III below.

• **206 Investigation: Consistency of ISO-NE (DA) Scheduling Practices with Natural Gas Scheduling Practices to be Adopted in Docket RM14-2 (EL14-23)**

As previously reported, on March 20, 2014, the FERC initiated this proceeding, pursuant to Section 206 of the FPA, to ensure that the ISO’s scheduling, particularly its Day-Ahead scheduling practices, correlate with any revisions to the natural gas scheduling practices to be ultimately adopted by the FERC in RM14-2 (*see* Section XIII below).⁹ Noting its concern about the lack of synchronization between the Day-Ahead scheduling practices of interstate natural gas pipelines and electricity markets, the FERC directed each ISO and RTO, including ISO-NE, within 90 days after publication of a Final Rule in Docket RM14-2 in the *Federal Register*:

(1) to make a filing that proposes tariff changes to adjust the time at which the results of its day-ahead energy market and reliability unit commitment process (or equivalent) are posted to a time that is sufficiently in advance of the Timely and Evening Nomination Cycles, respectively, to allow gas-fired generators to procure natural gas supply and pipeline transportation capacity to serve their obligations, or (2) to show cause why such changes are not necessary. In their responses, each ISO and RTO must explain how its proposed scheduling modifications are sufficient for gas-fired generators to secure natural gas pipeline capacity prior to the Timely and Evening Nomination Cycles.¹⁰

The Commission expects to issue a final order in this section 206 proceeding within 90 days of the filings required under the March 20 order. Interventions by over 40 parties, including one by NEPOOL, were filed in the New England-specific docket. On April 10, Puget Sound submitted comments addressing the changing of RTO/ISO practices, including a request that RTO/ISOs be required “to adopt consistent timelines that require bids awards to be submitted prior to the natural gas timely and evening scheduling deadlines”. This matter is pending action in RM14-2. If you have any questions concerning this matter,

⁴ *ISO New England Inc. and New England Power Pool*, 147 FERC ¶ 61,172 at P 23 (May 30, 2014) (“*PI Order*”).

⁵ *Id.* at P 1.

⁶ The June 3 notice of this proceeding was published in the *Fed. Reg.* on June 9, 2014 (Vol. 79, No. 110) pp. 32,937-89.

⁷ “Connecticut and Rhode Island” are: the Connecticut Public Utilities Regulatory Authority (“CT PURA”), the Conn. Office of Consumer Counsel (“CT OCC”), George Jepsen, Att’y Gen. for the State of Conn. (“CT AG”), the Conn. Department of Energy and Environmental Protection (“CT DEEP”), the United Illuminating Company (“UI”) and the Rhode Island Div. of Pub. Utils. and Carriers (“RI PUC”).

⁸ “Indicated Generators” are: Exelon Corp. (“Exelon”), EquiPower Resources Management, LLC (“EquiPower”), Essential Power, LLC (“Essential Power”), and Dynegy Marketing and Trade, LLC and Casco Bay Energy Company, LLC (together, “Dynegy”).

⁹ *Cal. Indep. Sys. Op. Corp. et al.*, 146 FERC ¶ 61,202 (Mar. 20, 2014). The New England 206 proceeding was docketed as EL14-23.

¹⁰ *Id.* at P 19.

please contact Dave Doot (860-275-0102; dt_doot@daypitney.com), Joe Fagan (202-218-3901; jfagan@daypitney.com), or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **FCM Administrative Pricing Rules Complaint (EL14-7)**

Rehearing and clarification remains pending on both of the FERC's January 24 FCM Administrative Pricing-related orders that (i) granted in part, and denied in part, NEPGA's Administrative Pricing Rules Complaint in this proceeding,¹¹ and (ii) accepted changes to the FCM Administrative Pricing Rules in ER14-463 (*see* Exigent Circumstances Filing – FCM Admin. Pricing Rules (ER14-463) below).¹² As previously reported, in the *Jan 24 Orders*, the FERC found that the administrative pricing provisions for situations of Inadequate Supply and Insufficient Competition were unjust and unreasonable. While the FERC declined to adopt NEPGA's proposed revisions, it adopted the revisions proposed by the ISO in its Exigent Circumstances Filing in ER14-463 and also declined to find the existing Capacity Carry Forward Rule unjust and unreasonable.¹³ In its request for rehearing and clarification of the *Jan 24 Orders*, NEPGA requested the FERC: (i) require prospective auctions to utilize ORTP-based prices; (ii) direct ISO-NE to implement for FCA9 a sloped demand curve for all aspects of the FCM, including for individual capacity zones; and (iii) require ISO-NE to eliminate the zero-bid requirement and implement the bidding protocols requested by NEPGA in its initial Complaint in this proceeding. On March 24, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC. If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dt_doot@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **NESCOE FCM Renewables Exemption Complaint (EL13-34)**

Rehearing of the FERC's February 12, 2013 order denying NESCOE's FCM Renewable Exemption Complaint¹⁴ remains pending before the FERC. As previously reported, NESCOE instituted this December 28, 2012 complaint in response to the ISO's December 3, 2012 FCM compliance filing that implemented buyer-side mitigation without an exemption for state-sponsored public policy resources. NESCOE asserted that the ISO's proposed Minimum Offer Price Rule ("MOPR") would likely exclude from the FCM new renewable resources developed pursuant to state statutes and regulations, and thereby result in customers being forced to purchase more capacity than is necessary for resource adequacy and proposed an alternative renewables exemption (the "Renewables Exemption Proposal"). In denying the Complaint, the FERC found that "NESCOE has failed to meet its burden under section 206 to demonstrate that ISO-NE's MOPR is unjust, unreasonable or unduly discriminatory" as applied to the New England Capacity Market.¹⁵ The FERC declined to set the case for hearing, and therefore denied the motion to consolidate this proceeding with the FCA8 Revisions Compliance Filing proceeding (ER12-953),¹⁶ on which it concurrently issued an order conditionally accepting in part and dismissing in part the ISO's proposed compliance filing. Rehearing was requested by NESCOE, the CT PURA, and the MA DPU on March 14, 2013. On March 29, 2013, NEPGA filed an answer challenging NESCOE's request for rehearing. On April 15, 2013, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com), Harold Blinderman (860-275-0357; hblinderman@daypitney.com) or Dave Doot (860-275-0102; dt_doot@daypitney.com).

¹¹ *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 146 FERC ¶ 61,039 (Jan. 24, 2014) ("*Jan 24 NEPGA FCM Admin Pricing Rules Order*"), *reh'g requested*.

¹² *ISO New England Inc.*, 146 FERC ¶ 61,038 (Jan. 24, 2014) ("*Jan 24 Exigent Circumstances Order*", and together with the *Jan 24 NEPGA FCM Admin Pricing Rules Order*, the "*Jan 24 Orders*"), *reh'g requested*.

¹³ *Id.* at P 1.

¹⁴ *New England States Comm. on Elec. v. ISO New England Inc.*, 142 FERC ¶ 61,108 (2013), *reh'g requested*.

¹⁵ *Id.* at P 32.

¹⁶ *Id.* at P 30.

• Base ROE Complaint (2012) (EL13-33)

As previously reported, the FERC, on June 19, 2014, established hearing and settlement judge procedures¹⁷ in response to the December 2012 Complaint by Environment Northeast (“ENE”), Greater Boston Real Estate Board, National Consumer Law Center, and the NEPOOL Industrial Customer Coalition (“NICC”, and together, the “2012 Complainants”). The 2012 Base ROE Complaint challenged the TOs’ 11.14% return on equity (“Base ROE”), and seeks a reduction of the Base ROE to 8.7%. In the *2012 Base ROE Initial Order*, the FERC found that the Complaint “raises issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered.”¹⁸ The FERC rejected Complainants’ request to consolidate this proceeding with the 2011 Base ROE Complaint, though it noted the change in its’ practice for determining public utilities’ ROE announced in that proceeding. Accordingly, the FERC directed the parties to present evidence and any discounted cash flow (“DCF”) analyses in accordance with that guidance.¹⁹ Hearing in this proceeding has been held in abeyance pending the outcome of settlement judge procedures. On July 21, the TOs requested rehearing of the *2012 Base ROE Initial Order*. On August 20, the FERC issued a tolling order affording it additional time to consider the TOs’ rehearing request, which remains pending before the FERC.

Judge John P. Dring was appointed the settlement judge in this case. A first settlement conference was held on July 24. Later that day, Judge Dring issued a status report indicating that the parties were making progress toward settlement, and recommending that the settlement procedures be continued. On July 15, NICC withdrew as a complainant in the case, explaining that NICC members had decided to disband NICC and cease all functions, including advocacy before the FERC. A second settlement conference is scheduled for Thursday, October 9, 2014. If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

• Base ROE Complaint (2011) (EL11-66)

Also on June 19, 2014, the FERC issued *Opinion 531*,²⁰ affirming in part, and reversing in part, Judge Cianci’s Initial Decision²¹ in this proceeding. In *Opinion 531*, the FERC announced a new approach that it will use for determining public utilities’ base ROE and a change in its’ practice on post-hearing ROE adjustments. With respect to the New England TOs’, the FERC applied its new that approach to the facts of this proceeding to determine the NETOs’ base ROE, and established a paper hearing to allow the participants an opportunity to submit briefs on a limited issue regarding application of the new ROE approach.²²

As previously reported, Trial Judge Cianci issued his initial decision on August 6, 2013 finding unjust and unreasonable the 11.14% ROE currently used in calculating formula rates for transmission service in the OATT, and finding that the ROE should be 10.6% for the October 2011 through December 2012 “locked in/refund period” and 9.7% from January 2013 forward, subject to further updating or modification by the FERC.²³ By way of reminder, the FERC established hearing and settlement judge procedures²⁴ following a

¹⁷ *Environment Northeast, et al. v. Bangor Hydro-Electric Co., et al.*, 147 FERC ¶ 61,235 (June 19, 2014) (“*2012 Base ROE Initial Order*”), *reh’g requested*.

¹⁸ *Id.* at P 26.

¹⁹ *Id.*

²⁰ *Martha Coakley, Mass. Att’y Gen. et al.*, 147 FERC ¶ 61,234 (2014) (“*Opinion 531*”), *reh’g requested*.

²¹ *Martha Coakley, Mass. Att’y Gen. et al.*, 144 FERC ¶ 61,012 (2013) (“*Initial Decision*”).

²² *Opinion 531* at P 1.

²³ *See 2011 Base ROE Initial Decision*.

²⁴ *Martha Coakley, Mass. Att’y Gen et al.*, 139 FERC ¶ 61,090 (2012) (“*Base ROE Complaint Order*”). The *Base ROE Complaint Order* was not challenged and is final.

complaint by a number of State, consumer, and consumer advocate parties (the “2011 Complainants”)²⁵ seeking a FERC order reducing the 11.14% Base ROE to 9.2% “due to changes in the capital markets since the *Bangor Hydro* proceeding.”²⁶ After settlement judge procedures before Judge Judith A. Dowd were ultimately unsuccessful and terminated, these proceedings proceeded to now-completed hearings before Judge Cianci.

In *Opinion 531*, the FERC concluded that it is now appropriate to use the same two-step DCF methodology model for the electric industry as it has used for the natural gas and oil pipeline industries.²⁷ The FERC also made a tentative finding that the required long-term growth projection should be based on projected long-term growth in gross domestic product (“GDP”), but established a paper hearing to permit participants to present evidence on the appropriate long-term growth projection to be used in the two-step DCF methodology.²⁸ Applying the two-step DCF methodology to the facts of this proceeding, the FERC found that the TOs’ starting proxy group was consistent with FERC precedent, and after taking official notice of the necessary GDP growth projections, the FERC’s analysis produced a zone of reasonableness of from 7.03% to 11.74%.²⁹ Accordingly, the FERC found it appropriate, based on record evidence, to place the TOs’ base ROE halfway between the midpoint of the zone of reasonableness and the top of that zone (or at the two-thirds point), resulting in a 10.57% Base ROE (subject to adjustment based on the outcome of the paper hearing on long-term growth projections to be used).³⁰ The FERC also indicated that, based on the record in this proceeding and economic trends since 2008 more generally, it would end its practice of updating the ROE based on changes in U.S. bond yields during the proceeding.³¹ Several parties requested rehearing and/or clarification of *Opinion 531*, including: the TOs, EMCOS, American Municipal Power (“AMP”), and NRECA/APPa.³² On August 20, the FERC issued a tolling order affording it additional time to consider the requests for rehearing of *Opinion 531*, which remain pending before the FERC.

In other procedural matters since the last Report, On August 5, 2014, the TOs moved to strike evidence submitted in Complainants’ July 21 Petition for Rehearing, urged dismissal of the APPa, NRECA and AMP motions to intervene out-of-time, and answered EMCOS’ motion for clarification. Also on August 5, Complainants, APPa, NRECA, and NHEC jointly answered the TOs’ July 21 motion for clarification. On August 12, NRECA and APPa answered the TOs’ Aug 5 dismissal motion. Complainants answered the TOs’ August 5 motion to strike the materials provided with their July 21 request for rehearing on August 20, 2014. Also on August 20, the TOs answered Complainants Aug 5 answer. Finally, Complainants, APPa, NRECA, and NHEC jointly answered the TOs’ Aug 5 motion for clarification.

Paper Hearing. On August 4, Complainants, TOs, and FERC Trial Staff submitted their initial briefs on the appropriate long-term growth projection to be used in the two-step DCF methodology. On September 4, Complainants, TOs, and FERC Trial Staff each submitted reply briefs. The paper hearing is pending before the FERC.

²⁵ Complainants are Martha Coakley, Mass. Att’y Gen. (“MA AG”), CT PURA, Mass. Dep’t of Pub. Utils. (“MA DPU”), New Hampshire Pub. Utils. Comm. (“NH PUC”), CT AG, CT OCC, Maine Off. of the Pub. Advocate (“ME OPA”), New Hampshire Off. of the Consumer Advocate, (“NH OCA”), RI PUC, Vermont Dep’t of Pub. Svc. (“VT DPS”), MMWEC, AIM, TEC, Power Options, and the IECG.

²⁶ See *Bangor Hydro-Elec. Co. et al.*, 117 FERC ¶ 61,129 (2006) (“*Opinion 489*”) at PP 79-81, *order on reh’g*, *Bangor Hydro-Elec. Co. et al.*, 122 FERC ¶ 61,265 (2008) at PP 30-34.

²⁷ *Opinion 531* at P 8.

²⁸ *Id.*

²⁹ *Id.* at P 9.

³⁰ *Id.* at PP 9-10.

³¹ *Id.* at P 11.

³² NHEC and MPUC joined as Petitioners in the NRECA/APPa request.

If you have any questions concerning this matter, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

II. Rate, ICR, FCA, Cost Recovery Filings

• FCA8 Results Filing (ER14-1409)

The results of the eighth FCA (“FCA8”) held February 3, 2014 and filed February 28 remain pending before the FERC. In that filing, the ISO reported: (i) that the Capacity Zones for FCA8 are Connecticut, Maine, NEMA/Boston and Rest of Pool; (ii) FCA7 commenced with a starting price of \$15.82/kW-mo. and concluded with a price of \$14.99/kW-month (reset to \$15.00/kW-mo.); (iii) FCA8 concluded with 33,702 MW of resources receiving CSOs to meet an ICR requirement of 33,855 MW (a 1,123 MW deficiency); (iv) administrative pricing rules set the prices for FCA8; (v) new resources that received a CSO in the Maine, Connecticut and Rest-of-Pool will be paid the \$15.00/kW-mo. Capacity Clearing Price; existing resources, the \$7.025/kW-mo. administrative price; (vi) both new and existing resources in NEMA/Boston (where the Carry Forward Rule was triggered) will be paid \$15.00/kW-mo.; and (vii) no de-list bids were rejected for reliability reasons. The ISO asked the FERC to accept the FCA8 rates and results, effective June 28, 2014. On March 25, 2014, the ISO supplemented the FCA8 Results filing to include a Groton Wind CSO (9.751 MW summer; 19.771 MW winter) in Attachment A.

Comments on this filing and the March 25 supplement thereto were due on or before April 14, 2014. Interventions were filed by NEPOOL, CLF, Dominion, Emera, EPSA, Exelon, HQUS, NEPGA, NESCOE, NRG, and PSEG.

The following seven protests/adverse comments were filed:

- ▶ **Joint Parties**³³ (requesting, as a result of what they assert is a flaw in the current Import-Constrained Capacity Zone Capacity Clearing Price Floor administrative pricing rule that resulted in an anomalous and unforeseen result, a one-time waiver to adjust the FCA8 results so that the capacity price in NEMA/Boston for *existing* resources for the 8th capacity commitment period is set at \$10.00/kW-mo. (rather than \$15.00/kW-mo.); and an order directing a stakeholder process to consider any necessary changes to the Import-Constrained Capacity Zone Capacity Clearing Price Floor rule to prevent the potential for unjust and unreasonable results for any future auctions);
- ▶ **EMCOS**³⁴ (requesting the FERC set aside the FCA8 results because those results are “affected by market manipulation, the unilateral exercise of market power, and the operation of a market process deficient in the fact that it failed to permit any supply response to the announcement of a permanent withdrawal of capacity from the Forward Capacity Market.” To the extent the FCA8 results are not set aside, EMCOS requested an evidentiary hearing and investigation addressing market manipulation and the exercise of market power and, like Joint Parties, requested a waiver of the Market Rule provisions that set the prices for capacity located in NEMA/Boston so that the FCA8 NEMA/Boston default price is re-set to no higher than \$10/kW-mo.);
- ▶ **CTAG** (urging the FERC to not accept the FCA8 Results Filing until it, through the Office of Enforcement (“OE”), has investigated whether the rates were “the result of abuse of market power and, therefore, unjust and unreasonable”);
- ▶ **CMEEC/NHEC** (requesting that the FERC, to the extent it accepts the FCA8 results, “initiate an expeditious investigation into whether the auction outcome is (1) reflective of legitimate and

³³ “Joint Parties” are National Grid, MA AG, MA DPU, the Northeast Utilities Companies (“NU”), and the United Illuminating Co. (“UI”).

³⁴ In this proceeding, “Eastern Massachusetts Consumer-Owned Systems” or “EMCOS” are Belmont, Braintree, Concord, Georgetown, Groveland, Hingham, Littleton (MA), Merrimac, Middleton, Rowley, Taunton, and Wellesley.

appropriate market actions undertaken in accordance with reasonable regional market rules or (2) the product of impermissible economic withholding”);

- ▶ *State Advocates*³⁵ (noting concern, based on Synapse Energy Economics analysis, that Brayton Point retirement and withdrawal from FCA8 may have been an unlawful exercise of market power, requesting FERC, including Staff and OE, further review the FCA8 results and, if any exercise of market power is found to have occurred, directing the ISO to make Market Rule changes to prevent any such exercise of market power in future FCAs);
- ▶ *Public Citizen, Inc.*³⁶ (asserting that Energy Capital Partners “likely closed its Brayton Point generation units not because of environmental compliance problems or uneconomic operations, but rather to “earn more money by obtaining capacity auction payments at its 5 other New England-area power plants than if Brayton Point continued to operate”, urging the FERC to “nullify the results of the FCA8 auction and investigate Energy Capital Partners for violation of the Commission’s rules”, and, if ECP was indeed in violation of the Commission’s rules, demanding revocation of ECP’s market based rate authority); and
- ▶ *UWUA Local 464*³⁷ (urging the FERC to reject the FCA8 results filing and direct an investigation by the Office of Enforcement, alleging ECP knowingly and uneconomically withheld Brayton Point from FCA8 in order to intentionally inflate market prices to benefit its other New England assets).

On April 25, Brayton Point responded to the allegations made against it by parties in this proceeding. On April 28, Public Citizen responded to Brayton Point’s answer. On April 29, answers to pleadings submitted were filed by NEPOOL, the ISO, Dominion, and NEPGA/EPSC. Answers to those pleadings were filed by Dominion (to UWUA Local 464), Public Citizen (to Brayton Point), and Joint Parties (to the three April 29 pleadings). UWUA Local 464 filed on June 10 an answer to Brayton Point’s April 25 pleading.

Deficiency Letter. On June 27, the FERC issued a deficiency letter informing the ISO that additional information was required for the filing to be processed. The ISO was requested to provide within 30 days the information requested (responses to 5 questions). The ISO provided responses to those questions in the deficiency letter on July 17. Comments, if any, on the additional information provided were due on or before July 31. Comments on the additional information were submitted by NEPGA and EMCOS.³⁸ NEPGA, for reasons explained in its comments, urged the FERC to certify the FCA8 Results Filing. For their part, EMCOS submitted a supplemental protest, and requested that the FERC disclose the entirety of the ISO’s response to the deficiency letter, notwithstanding the ISO’s request to treat the redacted portions of its response as “confidential,” and to re-notice the ISO’s complete response once public with additional time to permit intervenors to evaluate the withheld information. The FERC noticed the EMCOS’ request for comment by August 11. NHEC supported the EMCOS’ request, but NEPGA and the ISO opposed, and asked the FERC to deny, the request. On August 21, the FERC issued an order granting EMCOS’ motion in part, and required the ISO to provide intervenors with a non-disclosure agreement (“NDA”) and to provide any intervenor executing that NDA with a copy of the requested non-public documents, subject to certain information remaining redacted, no later than one business day later.³⁹ Intervenors executing the NDA were given until September 5, 2014 to file additional comments. On September 5, EMCOS filed a supplemental

³⁵ “State Advocates” are the New Hampshire Office of Consumer Advocate, Maine Office of the Public Advocate, and the Connecticut Office of Consumer Counsel.

³⁶ Public Citizen, Inc. is a national, nonpartisan consumer advocacy nonprofit organization based in Washington, DC. Public Citizen states that it represents the interests of “more than 350,000 members and supporters across the United States. Our members and supporters are households impacted by the actions of the owners of generation and power marketers in FERC-jurisdictional markets, and by the design and governance of FERC-jurisdictional markets”.

³⁷ The Utility Workers Union of America Local 464 (“UWUA Local 464”) is a local labor organization located in Somerset, Massachusetts, whose approximately 140 members are employed at the Brayton Point Power Station.

³⁸ “EMCOS” are Belmont, Braintree, Concord, Georgetown, Groveland, Hingham, Littleton (MA), Merrimac, Middleton, Rowley, Taunton, and Wellesley.

³⁹ *ISO New England Inc.*, 148 FERC ¶ 61,137 (2014) (“FCA8 Results NDA Order”).

protest, asserting that the FCA8 results were not shown to be just and reasonable, and, accordingly, requesting the FERC to set aside the FCA8 results, and if not inclined to do so, to commence an evidentiary hearing and investigation into the matters of market manipulation and the exercise of market power, as well as grant waiver of Section III.13.2.7.1 with respect to the price set for capacity located in the NEMA/Boston Capacity Zone. On September 10, NEPGA answered, and urged the FERC to deny, EMCOS' Sep 5 supplemental protest. This matter remains pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **2014/2015 Power Year Transmission Rate Filing (ER09-1532; RT04-2)**

On July 31, 2014, the Participating Transmission Owners ("PTOs") Administrative Committee ("PTO AC") submitted a filing identifying adjustments to regional transmission service charges under Section II of the ISO Tariff for the period June 1, 2014 through May 31, 2015. The filing reflected the charges to be assessed under annual transmission formula rates, reflecting actual 2013 cost data, Forecasted Annual Transmission Revenue Requirements associated with projected PTF additions for the 2014 Forecast Period, and the Annual True-up including associated interest. The PTO AC states that the annual updates results in a Pool "postage stamp" RNS Rate of \$89.80 /kW-year effective June 1, 2013, an increase of \$4.48 /kW-year from the charges that went into effect on June 1, 2013. In addition, the annual update to the Schedule 1 formula rate results in a charge of \$1.70 /kW-year, a \$0.01/kW-year decrease over the Schedule 1 charge that last went into effect on June 1, 2013. This filing will not be noticed for public comment. If there are questions on this proceeding, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **FCA1 Results Remand Proceeding (ER08-633)**

As previously reported, the DC Circuit issued on December 23, 2011, a *per curiam* order⁴⁰ that PSEG's May 2010 petition for review be granted, remanding the FERC's orders in this proceeding⁴¹ for further consideration, which remains to be acted on. In particular, the FERC must (i) determine whether PSEG's position (that it should receive the full (unprorated) floor price for all its resources that it could not prorate) would be an appropriate way to interpret the then-existing Market Rules and, if not, (ii) respond to PSEG's objections that any contrary result would result in "undue discrimination" and would be "inconsistent with the fundamental policy goals" of FCM. On October 15, 2012, PSEG filed a motion requesting that the FERC issue an order on remand directing the ISO to pay PSEG the full FCA floor price without further delay (for PSEG, the difference totaling \$2.8 million plus interest). The ISO filed on October 31, 2012 an answer to PSEG's October 15 motion. On November 1, 2012, Connecticut Generators⁴² submitted comments supporting PSEG's request and a few of the Connecticut Generators moved to intervene out-of-time. As noted, this matter remains pending before the FERC.

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

- **Waiver Request: New Capacity Qualification Deadlines (MMWEC) (ER14-2771)**

On September 4, MMWEC requested a waiver of the FCA9 New Capacity Qualification Deadlines to enable ISO consideration of the 2 MW Ipswich Wind Independence Project qualification package. Comments

⁴⁰ *PSEG Energy Res. & Trade LLC and PSEG Power Conn. LLC v. FERC*, No. 10-1103, 2011 U.S. App. LEXIS 25659, (D.C. Cir. Dec. 23, 2011).

⁴¹ *ISO New England Inc.*, 123 FERC ¶ 61,290 (June 20, 2008); *reh'g denied*, 130 FERC ¶ 61,235 (Mar. 24, 2010), *remanded*, *PSEG Energy Res. & Trade LLC and PSEG Power Conn. LLC v. FERC*, No. 10-1103, 2011 U.S. App. LEXIS 25659, (D.C. Cir. Dec. 23, 2011).

⁴² "Connecticut Generators" are CP Energy Marketing (US) Inc. and Bridgeport Energy LLC (collectively, "Capital Power"); Dominion Resources Services ("Dominion"); Milford Power Co. and EquiPower Resources Management (collectively, "EquiPower"); NRG Power Marketing, Conn. Jet Power, Devon Power, Middletown Power, Montville Power, Norwalk Power, and Somerset Power (collectively, "NRG"); and PPL EnergyPlus.

on this waiver request are due on an expedited basis, on or before September 15, 2014. NEPOOL intervened on September 9. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Competitive Offer Test Revisions (ER14-2686)**

On August 22, the ISO and NEPOOL jointly submitted revisions to Market Rule 1 Appendix A to ensure the competitive offer test, which is used by the ISO to determine whether Market Participants are exempt from certain Shortage Event availability penalties, functions as intended when the Energy Market Offer Flexibility (“EMOF”) changes are implemented. While a December 3, 2014 effective was requested, the parties requested a FERC order on this filing by October 21 to facilitate implementation of the Competitive Offer Test Revisions software and process changes together with the EMOF changes. The Competitive Offer Test Revisions were unanimously supported by the Participants Committee at its August 1, 2014 meeting. Comments on this filing are due on or before September 12, 2014. Thus far, doc-less interventions have been filed by Dominion, NRG and NU. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **ISO CSO Deferral Proposal (ER14-2440)**

On July 16, the ISO submitted revisions to the FCM Market Rules and Financial Assurance Policy to allow a new capacity resource to seek a one-year deferral of the start of its Capacity Supply Obligation (“CSO”). A July 17, 2014 effective date was requested. The CSO Deferral Proposal was considered, but not supported, by the Participants Committee at the June 24-26 Summer Meeting. Interventions were filed by Brookfield, Calpine, ConEd, Dominion, Emera, Exelon, GDF SUEZ, NESCOE, NRG, and NU. NEPOOL filed comments providing additional information regarding stakeholder consideration of the CSO Deferral Proposal. Supportive comments were filed by Footprint Power, MA AG, MA DPU, and NESCOE. Protests and adverse comments were filed by NEPGA, NextEra, NRG, and PSEG. Answers to the protests and adverse comments were filed on August 21 by the ISO and Footprint Power. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **FCM PI Jump Ball Compliance Filing (ER14-2419)**

As previously reported, in response to directives in the FERC’s May 30, 2014 *Order on Tariff Filing and Instituting Section 206 Proceeding* (the “PI Order”),⁴³ the ISO submitted, on July 14, 2014, proposed Market Rule changes to its “pay-for-performance” (“PFP”) design. The July 14 compliance filing included changes to address FERC directives in the *PI Order* concerning the treatment of Energy Efficiency resources, higher Reserve Constraint Penalty Factor (“RCPF”) values, and exemptions in instances of certain transmission-related constraints (“ISO PI Compliance Changes”). The ISO PI Compliance Changes were considered by the Participants Committee at its July 10 special meeting. Not a single Participant supported the ISO PI Compliance Changes.⁴⁴ Interventions were submitted by Calpine, Dynegey, Emera, Exelon, GDF SUEZ, MPUC, NRG, and UI. Protests were filed by NEPOOL, Brookfield, CT/RI,⁴⁵ First Wind, NESCOE, NEPGA/EPSCA, Public Systems,⁴⁶ NU, PSEG, Renewable Energy New England, Inc. (“RENEW”), and Verso. On August 15, the ISO answered the August 4 protests. On August 28, NEPOOL answered the ISO’s August 15 protest. If you have any questions related to this proceeding, please contact Dave Doot (860-275-0102; dttdoot@daypitney.com), Pat Gerity (860-275-0533; pmgerity@daypitney.com), or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

⁴³ *ISO New England Inc. and New England Power Pool*, 147 FERC ¶ 61,172 (May 30, 2014) (“PI Order”), clarification and reh’g requested.

⁴⁴ Comments by NEPOOL members during the Participant Processes made clear that there was either no opposition to the other compliance changes filed by ISO-NE or opposition was limited to the ISO’s proposed approach to address the issue of inefficient price signals in instances of intra-zonal transmission constraints.

⁴⁵ “CT/RI” are CT PURA, CT OCC, CT AG, CT DEEP, and the RI PUC.

⁴⁶ “Public Systems” are CMEEC, MMWEC, NHEC, and VEC.

- **Winter 2014/15 Reliability Program (ER14-2407)**

On September 9, the FERC conditionally accepted the Tariff revisions jointly filed by the ISO and NEPOOL intended to maintain reliability through fuel adequacy by creating incentives for dual-fuel resource capability and participation, offsetting the carrying costs of unused firm fuel purchased by generators and providing compensation for demand response services (“Winter 2014/15 Reliability Program”).⁴⁷ In its *Winter 2014/15 Reliability Program Order*, the FERC required the ISO to initiate a stakeholder process by January 1, 2015 to develop a “market-based” proposal to address reliability concerns for the 2015/16 Winter and future winters, as necessary. As part of those efforts, the FERC also directed the ISO to submit a stakeholder meeting schedule on or before October 9 and progress reports every 60 days thereafter for the next 12 months. No Section 206 proceeding was initiated despite requests made in comments (summarized in previous Reports). The FERC also directed the ISO to continue to analyze the appropriateness of the 1.75 volatility ratio of the higher-priced fuel index (included as part of new market monitoring changes) and include its analysis and recommendations as part of the IMM’s Annual Markets Report. The Winter 2014/15 Reliability Program was accepted effective as of December 3, 2014, as requested. Any challenges to the *Winter 2014/15 Reliability Program Order* will be due on or before October 9, 2014. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Offer Flexibility Conforming Changes (ER14-2376)**

On August 29, the FERC accepted EMOF-conforming Market Rule changes, jointly submitted by the ISO and NEPOOL on July 8, that included: changes to Market Rule 1 Sections 1-13; enhancements to the Appendix A mitigation tests; modifications to some of the Appendix F NCPC credit and cost allocation rules; revisions to the Tariff definitions section; and a number of clean-up changes. The changes will become effective December 3, 2014. Unless the August 29 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Order 755 Regulation Market Changes (ER12-1643)**

On August 1, the ISO filed revised tariff sheets to extend the effective date of the new Regulation Market design to March 31, 2015 (rather than October 1, 2014). In its filing, the ISO explained the reasons why it was no longer feasible for the ISO to implement the new Regulation Market on October 1, 2014, and why it would implement the new design on March 31, 2015. The ISO explained that a later effective date would enable it to address the concerns expressed in the May 20 Order⁴⁸ with the revisions rejected by the FERC, particularly the concern about the comparable treatment of limited-energy resources. The ISO stated that it was developing Market Rule revisions to provide for an “energy neutral” dispatch of resources in the new Regulation market (to be considered at the September 12 meeting, Agenda Item #9), which would be filed in September, together with the non-controversial enhancements that also were rejected as part of the May 20 Order. The ISO explained that among the reasons for the March 31, 2015 requested effective date were to allow the ISO time to: (i) receive a FERC order on the September Tariff revisions; (ii) develop the necessary software to accomplish the energy neutral dispatch of Regulation resources; and (iii) not interfere with higher priority market and reliability projects underway now and continuing through Winter 2014/15. On August 22, NEPOOL filed comments supporting the ISO’s request to extend the effective date to March 31, 2015. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Demand Curve Changes (ER14-1639)**

As previously reported, the FERC conditionally accepted on May 30, 2014, the April 1 revisions to the FCM rules jointly submitted by the ISO and NEPOOL that establish a system-wide sloped demand curve

⁴⁷ *ISO New England Inc. and New England Power Pool Participants Comm.*, 148 FERC ¶ 61,179 (Sep. 9, 2014) (“Winter 2014/15 Reliability Program Order”).

⁴⁸ *ISO New England Inc.*, 147 FERC ¶ 61,135 (May 20, 2014).

(“Demand Curve Changes”).⁴⁹ The Demand Curve Changes define the shape of the system-wide sloped demand curve (with key points defined by CONE and the 0.1 days/year LOLE target) illustrated below, extend the period during which a Market Participant may “lock-in” the capacity price for a new resource from five to seven years, establish a limited renewables, and eliminate, at the system-wide level, the administrative pricing rules that were necessary in certain market conditions under the vertical demand curve construct. The Demand Curve Changes were accepted effective June 1, 2014, as requested, for implementation prior to associated FCA9 deadlines. As a condition to its acceptance, the FERC directed the ISO, in a 60-day compliance filing, to clarify how new resources could qualify for the Renewable Technology Resources MOPR exemption in future auctions.⁵⁰ Requests for rehearing of the *Demand Curve Order* were filed by Exelon/Entergy, MMWEC/NHEC, NextEra, NEPGA, PSEG, and TransCanada. On July 28, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC.

Compliance Filing. On July 11, the ISO submitted the required 60-day compliance filing to clarify how new resources could qualify for the renewables exemption in future auctions. In that filing, the ISO explained that “new resources could qualify for the exemption in future auctions, but only as long as the new resources qualify as a renewable technology project (e.g., solar power) under a renewable standard or goal that was in effect on January 1, 2014.” NEPGA submitted comments supporting the compliance filing on August 1, 2014. The compliance filing is pending before the FERC. If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **FCM Performance Incentives Jump Ball Filing (ER14-1050)**

As previously reported, the ISO and NEPOOL submitted on January 17, 2014, two alternative versions of Market Rule changes intended to improve the operating performance of capacity resources in New England -- the “ISO-NE Proposal” and the “NEPOOL Proposal”. Both Proposals sought to further address existing reliability, investment and resource performance challenges in New England. However, the two proposals offered fundamentally different approaches. The ISO-NE Proposal would redefine capacity as a different product where payments are affected by whether a resource is providing energy and/or operating reserves in Real-Time three years hence. Through its “pay-for-performance” mechanism, the ISO Proposal abandoned longstanding capacity market principles in New England and the other RTO markets and converts the FCM from a market designed to ensure long-term resource adequacy to one that is driven primarily by prospective and largely unpredictable actual production. Resources not producing energy or reserves at the time of a “Capacity Scarcity Condition” for any reason would be subject to significant penalties, even if that scarcity condition occurs during very low load conditions, or is caused by transmission outages or even by errors in the ISO’s load forecasting. The NEPOOL Proposal, in contrast, built upon a series of Market Rule changes, either made or are pending, proposed changes that would enhance the current market design and achieved the objective of improving the performance incentives for resources in the ISO-NE electricity markets. The Proposals were submitted pursuant to “jump ball provision” of the Participants Agreement (Section 11.1.5).

On May 30, 2014, the FERC issued an order in response to the jump ball filing.⁵¹ As more fully summarized in the May 31 memorandum circulated to the Committee and posted on the NEPOOL website (http://www.nepool.com/Litigation_Reports.php), the FERC concluded that the existing Tariff, specifically the current FCM payment design, “is unjust and unreasonable, because it fails to provide adequate incentives for resource performance, thereby threatening reliable operation of the system and forcing consumers to pay for capacity without receiving commensurate reliability benefits” and instituted a proceeding under Section 206 of the FPA (see EL14-52 in Section I above). Concluding that neither the ISO-NE Proposal nor the NEPOOL Proposal, standing alone, had been shown to be just and reasonable, the FERC, drawing features from each Proposal, went on to direct the ISO to submit by July 14, 2014 Tariff revisions reflecting a

⁴⁹ *ISO New England Inc. and New England Power Pool Participants Comm.*, 147 FERC ¶ 61,173 (May 30, 2014) (“*Demand Curve Order*”), reh’g requested.

⁵⁰ *Id.* at P 88.

⁵¹ *See PI Order.*

modified version of the ISO-NE Proposal and an increase in the Reserve Constraint Penalty Factors, consistent with NEPOOL's Proposal. Specifically, the compliance filing was to include (1) changes to implement ISO-NE's proposed two-settlement capacity market design with certain modifications, and (2) changes to increase the RCPF values for Thirty-Minute Operating Reserves to \$1,000/MWh and for Ten-Minute Non-Spinning Operating Reserves to \$1,500/MWh. The FERC established a June 9, 2014 refund effective date.⁵² Requests for clarification and/or rehearing of the *PI Order* were filed by: NEPOOL, Connecticut and Rhode Island, Dominion, MMWEC, Indicated Generators, NEPGA, NextEra, Potomac Economics, and PSEG/NERG. On July 28, the FERC issued a tolling order affording it additional time to consider the requests for clarification and/or rehearing, which remain pending before the FERC.

Compliance Filing (ER14-2419). On July 14, the ISO submitted a filing in response to the PI Order. That filing is summarized under ER14-2419 above.

If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtadoot@daypitney.com), Harold Blinderman (860-275-0357; hblinderman@daypitney.com), Eric Runge (617-345-4735; ekrunge@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

• **Exigent Circumstances Filing – FCM Admin. Pricing Rules (ER14-463)**

NEPGA's request for rehearing and clarification of the *Jan 24 Exigent Circumstances Order* in this proceeding remains pending. As previously reported, the FERC accepted, on January 24, revisions to the FCM administrative pricing rules that (i) addressed what the ISO identified as a "gap" in the Insufficient Competition rules; (ii) set an administrative rate of \$7.025/kW-month to be applied if there is Insufficient Competition (as the ISO proposed to redefine it) or Inadequate Supply in FCA8; and (iii) made additional clarifying changes to the FCM administrative pricing rules (collectively, the "FCM Pricing Rule Changes").⁵³ The FCM Pricing Rule Changes became effective January 24, 2014, as requested. In accepting the filing, the FERC established a \$7.025/kW rate, should the administrative pricing provisions trigger, for FCA8, replacing existing Tariff provisions that it found unjust and unreasonable in the Administrative Pricing Rules Complaint order (*see* EL14-7 in Section I above).⁵⁴ Addressing the ISO's statements about a sloped demand curve as a long-term solution to the issues presented in this proceeding, the FERC, noting its concerns that waiting until Summer 2014 for such a proposal to be filed would not allow sufficient time for implementation by FCA9, the FERC stated

Given ISO-NE's explanation that a sloped demand curve will address the difficult and challenging issues presented here, and based on ISO-NE's statements that its proposal here is intended to be temporary and address concerns for FCA8, we will direct ISO-NE to submit its proposed demand curve by April 1, 2014, to allow sufficient time for implementation prior to FCA9.⁵⁵

Demand Curve Changes were filed by April 1, as directed, and conditionally accepted (*see* ER14-1639 above). NEPGA requested clarification and rehearing of the Jan 24 Exigent Circumstances Order on February 24, 2014. The FERC issued on tolling order on March 24, 2014 affording it additional time to consider the NEPGA rehearing request, which remains pending before the FERC.

⁵² *See* n. 4 *supra*.

⁵³ *Jan 24 Exigent Circumstances Order*.

⁵⁴ The order also accepted the ISO's proposed changes to correct the IC Gap and the remaining administrative pricing provisions. Addressing the questions concerning the "Exigent Circumstances" underlying the filing, the FERC found that the ISO had satisfied the prescribed criteria for an Exigent Circumstances filing: "ISO-NE justifiably determined that failing to immediately implement a change prior to FCA 8 could affect the short-term competitiveness and efficiency of the markets and, in the long-term, affect system reliability." *Id.* at P 52.

⁵⁵ *Id.* at P 30.

If you have any questions concerning this matter, please contact Dave Doot (860-275-0102; dtdoot@daypitney.com), Harold Blinderman (860-275-0357; hblinderman@daypitney.com) or Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FCM Redesign Compliance Filing: FCA8 Revisions (ER12-953 et al.)**

As previously reported, the FERC, on February 12, 2013, conditionally accepted in part, and rejected in part, revisions to the FCM and FCM-related rules in the Tariff (“FCA8 Revisions”) filed by the ISO and the PTO AC.⁵⁶ The *FCA8 Revisions Order* accepted the following aspects of the FCA8 Revisions as compliant with its prior FCM Orders: the ISO’s offer review trigger prices;⁵⁷ unit specific offer review;⁵⁸ the ISO’s proposal to subject a resource to offer floor mitigation until that resource clears in one FCA; imports’ treatment under MOPR;⁵⁹ no exemptions to MOPR for new Self-Supplied Resources;⁶⁰ the application of mitigation to *all* new resources offering into the FCM, including renewables that are procured pursuant to state policy initiatives;⁶¹ \$1.00/kW-month Threshold to trigger IMM review of Dynamic De-List Bids;⁶² and a number of other additional revisions.⁶³ The *FCA8 Revisions Order* rejected: the ISO’s proposed methodology for reducing the offer floor of an uncleared resource that has already achieved commercial operation at the time of an FCA (directing the ISO to submit a revised proposal that subjects a resource to an offer floor until it has demonstrated that it is needed by the market);⁶⁴ and the ISO’s request to model only 4 capacity zones for FCA8 (the ISO’s Capacity Zones Changes were accepted in *ISO New England Inc.*, 147 FERC ¶ 61,071 (2014)). Two requests for rehearing of the *FCA8 Revisions Order* were filed on March 15, 2013, one by MMWEC, NHEC, APPA, NEPPA, and NRECA; the other, by EMCOS and Danvers. On April 11, NEPGA filed an answer to the MMWEC *et al.* request. On April 15, 2013, the FERC issued a tolling order affording it additional time to consider the rehearing requests, which remain pending before the FERC.

If you have any questions concerning these matters, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com), Eric Runge (617-345-4735; ekrunge@daypitney.com) or Dave Doot (860-275-0102; dtdoot@daypitney.com).

IV. OATT Amendments / TOAs / Coordination Agreements

- **Order 784 Compliance Filing (ER14-877)**

On September 9, the FERC *rejected* the ISO’s December 27, 2013 filing in response to *Order 784*.⁶⁵ As previously reported, the ISO explained in its December 27 filing how the Tariff’s deviations from the FERC’s *pro forma* Open Access Transmission Tariff (“OATT”), including the Regulation Market Rules, already meet the requirements and policy goals of *Order 784* and therefore meet the FERC’s requirements for a showing of provisions that are “consistent with or superior to” the *pro forma* OATT. In addition, the ISO asked for a waiver of the new requirement to post on its OASIS historical one-minute and ten-minute certain Area Control Error (“ACE”) data for the most recent calendar year, and to update this posting once per year.

⁵⁶ *ISO New England Inc.*, 142 FERC ¶ 61,107 (Feb. 12, 2013) (“*FCA8 Revisions Order*”).

⁵⁷ *FCA8 Revisions Order* at PP 37-38.

⁵⁸ *Id.* at P 53.

⁵⁹ *Id.* at P 70.

⁶⁰ *Id.* at P 80.

⁶¹ *Id.* at P 97.

⁶² *Id.* at P 126.

⁶³ *Id.* at P 127.

⁶⁴ *Id.* at PP 63-64.

⁶⁵ *ISO New England Inc.*, 148 FERC ¶ 61,180 (Sep. 9, 2014).

In its September 9 order, the FERC (i) found (and explained why) the ISO had failed to demonstrate that the ISO Tariff is consistent with or superior to the reforms directed by *Order 784*,⁶⁶ and (ii) denied the ISO's request to waive *Order 784*'s new data posting requirements.⁶⁷ Accordingly, the FERC directed the ISO on or before October 9, 2014 (a) to submit a compliance filing inserting the new *pro forma* Schedule 3 language regarding consideration of the speed and accuracy of resources into Schedule 3 of the Tariff and (b) to post historical one-minute and ten-minute ACE data on its OASIS, consistent with *Order 784*'s requirements. Any challenges to the FERC's September 9 order will also be due on or before October 9, 2014. If you have any comments or concerns, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

• **Order 1000 Interregional Compliance Filing (ER13-1960; ER13-1957)**

On July 10, 2013, the ISO, NEPOOL and the PTO AC jointly filed revisions to Sections I and II of the Tariff to comply with the interregional coordination and cost allocation requirements of *Orders 1000* and *1000-A* (the "*Order 1000* Interregional Compliance Changes") (ER13-1960). In addition, the ISO, on behalf of itself, NYISO and PJM, filed an Amended and Restated Northeastern ISO/RTO Planning Coordination Protocol ("Amended Protocol") as part of its compliance changes (ER13-1957). The *Order 1000 Interregional Compliance Changes* include (i) revisions to Attachment K to add provisions describing the interregional coordination provisions included in the Amended Protocol, as well as adding other provisions facilitating the consideration of interregional solutions to regional needs; (ii) a new Schedule 15 reflecting the methodology for allocation among ISO-NE and NYISO of the costs of approved interregional transmission projects; (iii) revisions to Schedule 12 describing the regional cost allocation within New England of the costs of approved interregional transmission projects; and (iv) conforming changes to Tariff Section I. The *Order 1000* Interregional Compliance Changes and the Amended Protocol were supported by the Participants Committee at its June 27 Summer Meeting. On August 7, the FERC extended the comment deadline on these filings to and including September 9, 2013. Doc-less motions to intervene were filed by a number of New England parties in both proceedings, including Dominion, Exelon, PPL, PSEG, and NEPOOL (in the Protocol proceeding (in which it was not a filing party)). On August 26, 2013, NEPOOL filed comments supporting the Protocol. NEPOOL added that "From a stakeholder perspective, stakeholder input into revisions to the Protocol as it evolves over time would be easier and more likely to be taken into account if it were made part of the individual regional tariffs of each of the Northeast ISOs rather than existing solely as a stand-alone three-party agreement". On September 9, NESCOE submitted comments generally supporting the filings, but reserving the right to further comment on these filings should the substance of the changes be modified as a result of further FERC (*see* ER13-193 and ER13-196 below) or federal court proceedings. Public Interest Organizations⁶⁸ raised concerns that the Protocol and related amendments "do not meet certain of the transparency and cost allocation aspects of [*Order 1000*]'s minimum requirements." On September 24, 2013, the ISO answered Public Interest Organizations' and NEPOOL's comments. These matters remain pending before the FERC. If you have any comments or concerns, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

• **Order 1000 Compliance Filing (ER13-193; ER13-196)**

Rehearing of the FERC's May 17, 2013 order on the region's *Order 1000* compliance filing⁶⁹ (described in previous Reports) remains pending. As previously reported, the *Order 1000 Compliance Order* accepted the ISO-NE/PTO compliance filing as partially complying with *Order 1000*, but required changes to the compliance proposal. The primary change was the elimination of the Right of First Refusal ("ROFR")

⁶⁶ Id. at PP 14-15 (explaining why it disagreed that inclusion of the Schedule 3 language was unnecessary or would introduce confusion).

⁶⁷ Id. at P 21 ("So long as a market participant in New England may opt to self-supply Regulation Service and access to Area Control Error data may provide some positive value to that participant, we find it appropriate for ISO-NE to post such data")

⁶⁸ "Public Interest Organizations" are Conservation Law Foundation, ENE, Natural Resources Defense Council, Pace Energy and Climate Center, and the Sustainable FERC Project.

⁶⁹ *ISO New England Inc.*, 143 FERC ¶ 61,150 (May 17, 2013) ("*Order 1000 Compliance Order*").

and the establishment of competitive transmission development for all regional transmission projects (with an exception to the elimination of the ROFR for transmission needed for reliability within three years of the needs assessment determination and subject to certain other limiting criteria). Additionally, the *Order 1000 Compliance Order* required that the public policy transmission proposal be revised to: (i) make the ISO, rather than the New England states, the entity that evaluates and selects which transmission projects will be built to meet transmission needs driven by public policy; and (ii) include an *ex ante* default cost allocation method, transparent to all stakeholders, developed in advance of particular transmission facilities being proposed, rather than leaving it to the states to decide cost allocation on a project-specific basis after particular projects are proposed. While requiring these fundamental changes to the public policy transmission part of the filing, the *Order 1000 Compliance Order* also allowed for the NESCOE-driven proposal for both selection of projects and cost allocation to remain in the tariff as a complementary process for voluntary transmission projects alongside the *Order 1000*-compliant process. A more detailed summary of the *Order 1000 Compliance Order* was circulated to the Participants Committee on May 20, 2013. On June 17, the ISO, LS Power, PTO AC and NESCOE each filed requests for clarification and/or rehearing of the *Order 1000 Compliance Order*. On June 28, the ISO answered LSP Power's request concerning the effective date for the *Order 1000* compliance changes. On July 16, the FERC issued a tolling order affording it additional time to consider the requests for clarification and/or rehearing, which remain pending before the FERC.

Order 1000 November 15 Compliance Order Changes. On November 15, 2013, the ISO and the PTO AC jointly submitted proposed revisions to Sections I and II of the Tariff and to the Transmission Operating Agreement (“TOA”) (the “Compliance Revisions”) to comply with the FERC’s May 17, 2013 *Order 1000 Compliance Order*. The revisions included planning revisions (addressing competitive processes for developing new regional transmission projects), cost allocation revisions (regarding the allocation of costs for Public Policy Transmission Projects), and TOA revisions. The Planning Revisions and the Cost Allocation Revisions filed by the ISO and PTO AC were considered but not supported by the Participants Committee at its November 8, 2013 meeting.

Comments on the November 15 filing were filed by **NEPOOL** (seeking two sets of changes to the Planning Revisions filed by the ISO and PTO AC (i) limiting the scope of transmission projects that are grandfathered under the old, non-competitive processes, so that Proposed Projects are not grandfathered but instead are open to competition; and (ii) ensuring that all Qualified Transmission Project Sponsors (“QTPS”) are on an equal footing regarding consulting with the ISO in assessing regional transmission needs and solutions (together, the “NEPOOL Alternative”); but taking no position on the Cost Allocation revisions); **CLF and The Sustainable FERC Project** (supporting the November 15 filing and its public policy planning and regional cost allocation provisions.); EMCOS/Participating Municipals (request the ISO and TOs be required to revise Section 3.3 of Attachment K to eliminate the grandfathering for proposed Transmission Projects, and to revise Schedule 12 to ensure that public power systems not subject to state Public Policy requirements are exempted from any obligation to pay for Public Policy projects); **Environmental Groups**⁷⁰ (each supporting the Cost Allocation Revisions, but noting continuing concern that the region’s planning process fails to produce more cost-effective and efficient planning outcomes); **LSP Transmission** (supporting NEPOOL’s Alternative, requesting a January 1, 2014 effective date for the compliance filing, and protesting the hold harmless provision contained in Attachment O, Section 9.01, the ISO’s evaluation process and the proposed study deposit); **MA DPU** (supporting the Cost Allocation Revisions); **NESCOE** (without expressing a position on the Cost Allocation Revisions, affirming its support for NESCOE it having a central role in determining how public policy planning need relates to cost allocation); **New Hampshire Transmission** (“NHT”) (protesting the November 15 filing and suggesting specific amendments to the proposal to be submitted a short time after an order on the second compliance filing is issued); **Public Systems**⁷¹ (requesting that the FERC adopt MMWEC’s cost allocation proposal and direct the Filing Parties to include an express right of consumer-owned utilities to opt out of the non-regional allocated costs of projects satisfying policy

⁷⁰ “Environmental Groups” are ENE, Connecticut Fund for the Environment, Environment Council of Rhode Island, Health Care Without Harm, The Natural Resources Council of Maine, and The Sustainable FERC Project.

⁷¹ In this proceeding, “Public Systems” are MMWEC and NHEC.

requirements that do not apply to them); and *VT/RI Parties*⁷² (protesting the Cost Allocation Revisions). Answers to the protests and comments were filed on January 15 by the ISO, PTO AC, and MA DPU (to the VT/RI Parties). On February 4, 2014, NHT filed an answer to the January 15 answers by the ISO and PTO AC. The ISO answered the NHT February 4 answer on February 18, 2014.

These matters remain pending before the FERC. If you have any comments or concerns, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

V. Financial Assurance/Billing Policy Amendments

No Activity to Report

VI. Schedule 20/21/22/23 Changes

• Schedule 21- NSTAR: MBTA LSA (ER14-2596)

On August 5, as amended September 5, NSTAR and the ISO filed a non-conforming Local Service Agreement (“LSA”) by and among NSTAR, Massachusetts Bay Transportation Authority (“MBTA”), and the ISO for Local Network Service under Schedule 21-NSTAR of the ISO OATT (the “MBTA LSA”). The MBTA LSA replaces a long-standing bilateral *pro forma* Service Agreement (“Current Agreement”) between MBTA and NSTAR for service under Schedule 21-NSTAR. While the MBTA LSA is based on the form of LSA contained in Schedule 21-Common under the ISO OATT, it is non-conforming and is being filed insofar as it reflects different rates from those set forth in Schedule 21-NSTAR, i.e., a Direct Assignment Charge for the K Street Point of Delivery. A May 1, 2014 effective date was requested. No comments on the initial LSA filing were filed. Comments on the amendments to the LSA are due on or before September 26, 2014. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

• Order 792 Compliance Filing (ER14-2583)

On August 4, the ISO, NEPOOL, and the PTO AC jointly submitted revisions to the Small Generator Interconnection Procedures (“SGIP”) and Small Generator Interconnection Agreement (“SGIA”) set forth in Schedule 23 of the ISO Tariff in response to the requirements of *Order 792*.⁷³ The *Order 792* changes were unanimously supported by the Participants Committee at the June 26, 2014 Summer Meeting. Comments on this filing were due on or before August 25, 2014. Doc-less interventions were filed by Dominion, Exelon and NRG, but no comments were filed. This matter is pending before the FERC. If you have any comments or concerns, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

• Schedule 21-NEP Centennial Island Hydro SGIA (ER14-2534)

On July 30, New England Power Company (“NEP”) filed a non-conforming Small Generator Interconnection Agreement (“SGIA”) between itself and Centennial Island Hydroelectric Company (“Centennial Island Hydro”). The SGIA addresses the interconnection of Centennial Island Hydro’s 0.64 MW hydroelectric generating facility located in Lowell, Massachusetts. The facility is already subject to a 1989 IA with NEP (which will be cancelled upon the acceptance of the SGIA). The SGIA is non-conforming, among other reasons, because the ISO is not a party to the SGIA and this interconnection was not processed under the ISO’s SGIPs. A June 23, 2014 effective date was requested. No Comments on the initial SGIA filing were submitted by the

⁷² “VT/RI Parties” are the State of New Hampshire Public Utilities Commission (“NHPUC”), the Rhode Island Public Utilities Commission (“RIPUC”), the Vermont Public Service Board (“VT PSB”), the Vermont Public Service Department (“VPSD”), Vermont Electric Power Company (“VELCO”), and Vermont Transco (“VT Transco”).

⁷³ *Small Generator Interconnection Agreements and Procedures*, Order No. 792, 145 FERC ¶ 61,159 (Nov. 22, 2013) (“*Order 792*”), *order clarifying compliance procedures*, 146 FERC ¶ 61,214 (Mar. 20, 2014).

August 20, 2014 comment date. On September 5, NEP supplemented its filing with a red-line showing how the SGIA modifies the *pro forma* SGIA. This matter is pending before the FERC. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-NEP: BIPCO and Narragansett TSAs (ER14-2514; ER14-2519)**

On September 2, the FERC accepted two local service agreements (“LSA”) under Schedule 21-NEP (Docket No. ER14-2514) submitted by New England Power Company (“NEP”) and the ISO, and the notice of termination (Docket No. ER14-2519) of a NEP/ Narragansett LSA that is to be superseded by the one filed in ER14-2514. The LSAs, one among the ISO, NEP and Block Island Power Company (“BIPCO”), and the other with The Narragansett Electric Company (“Narragansett”), were each executed in order to reflect developments related to The Deepwater Block Island Wind, LLC (“Block Island Wind”) generation project. The LSAs were accepted effective September 27, 2014, as requested. Unless the September 2 order is challenged, these proceeding will be concluded. If there are questions on these matters, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 23 SGIA – Berkshire Wind (WMECO/ISO-NE/Berkshire Wind) (ER14-2400)**

On September 2, the FERC accepted, effective June 23, 2014 as requested, a non-conforming SGIA between WMECO, the ISO and Berkshire Wind Cooperative Corporation (“Berkshire Wind”). As previously reported, the SGIA addresses the interconnection of thirteen total (three additional) 1.6 MW wind turbines at Brodie Mountain in Lanesborough, MA, for a total wind farm capacity of 19.8 MW. Ten of the wind turbines are already interconnected to the System pursuant to a 2010 IA. The SGIA is non-conforming in that it contains limited revisions to the *pro forma* SGIA indemnification provisions. Unless the September 2 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-GMP: Merger Revisions; Cancellation of Schedule 21-CVPS (ER12-2304)**

On August 4, the FERC approved a November 13, 2013 Settlement Agreement and Offer of Settlement (“Settlement”)⁷⁴ reported to resolve all disputes in these proceedings (related to concerns with Schedules 21-GMP and 20A-GMP and notices of cancellation filed in 2012 by GMP).⁷⁵ On August 22, GMP submitted 2 compliance filings (reflecting 2 separate effective dates), consistent with the approved Settlement. Comments, if any, on the compliance filings are due on or before September 12. Thus far, a doc-less intervention was filed by NU. If there are questions on these matters, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

- **Capital Projects Report - 2014 Q2 (ER14-2656)**

In a new matter since the last report, the ISO filed on August 13 its Capital Projects Report and Unamortized Cost Schedule covering the second quarter (“Q2”) of calendar year 2014 (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 Tariff. Highlights include the following new projects: FCA9 (\$2.064 million); Enhance Control Room Flat Panel Displays (\$169,000); and Financial Assurance Business Intelligence Integration (\$150,000); and Passive

⁷⁴ *ISO New England Inc., et al.*, 148 FERC ¶ 61,097 (Aug. 4, 2014).

⁷⁵ *See ISO New England, Inc., Central Vt. Pub. Svc. Corp. and Green Mountain Power Corp.*, 140 FERC ¶ 61,239 (Sep. 24, 2012) (“GMP Merger Order”), *reh’g denied*, 142 FERC ¶ 61,146 (Feb. 25, 2013).

Asset Data Repository (\$78,900). Projects reported to have significant changes include: (i) EMOF changes (\$240,000 increase, reflecting removal of Regulation Market changes from EMOF changes to be implemented December 3); (ii) Divisional Accounting (\$417,200 (deferred to 2015)); and (iii) Control Room Visualization (\$328,600 due to underestimation of costs and consultant turnover). NU filed a doc-less motion to intervene on September 3. NEPOOL filed comments on August 27 supporting the filing. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **IMM Quarterly Markets Reports - 2014 Q2 (ZZ14-4)**

On August 12, 2014, the Internal Market Monitor (“IMM”) filed with the FERC its report for the second quarter of 2014 of “market data regularly collected by [it] in the course of carrying out its functions under ... Appendix A and analysis of such market data,” as required pursuant to Section 12.2.2 of Appendix A to Market Rule 1. Highlights from this report were reviewed by the IMM at the August 1, 2014 Participants Committee meeting. These filings are not noticed for public comment by the FERC.

IX. Membership Filings

- **September 2014 Membership Filing (ER14-2749)**

On August 29, NEPOOL requested that the FERC accept: (i) the memberships of BlueRock Energy, Inc. and E.ON Global Commodities North America LLC (Supplier Sector, each effective August 1, 2014); and (ii) the termination of the Participant status of SBR Energy, Dragon Products and Dragon Energy LLC. This filing is pending before the FERC.

- **August 2014 Membership Filing (ER14-2451)**

On July 31, NEPOOL requested that the FERC accept the memberships of SFE Energy Connecticut Inc. and SFE Energy Massachusetts Inc. (each effective August 1, 2014). This filing is pending before the FERC.

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).

- **FFT Report: August 2014 (NP14-49)**

NERC submitted on August 27, 2014, its Find, Fix, Track and Report (“FFT”) informational filing for the month of August 2014. The August FFT resolves 36 possible violations of 6 Reliability Standards that posed a risk minimal risk to bulk power system (“BPS”) reliability, but which have since been remediated.⁷⁶ The 13 Registered Entities involved each submitted a mitigation activities statement of completion. FFT filings are for information only and will not be noticed for public comment by the FERC.

- **FFT Report: July 2014 (NP14-47)**

NERC submitted on July 31, 2014, its FFT informational filing for the month of July 2014. The July FFT resolves 28 possible violations of 7 Reliability Standards that posed a risk minimal risk to BPS reliability, but which have since been remediated. The 9 Registered Entities involved each submitted a mitigation activities statement of completion.

⁷⁶ Only possible violations that pose a minimal risk to Bulk-Power System reliability are eligible for FFT treatment. See *N. Am. Elec. Reliability Corp.*, 138 FERC ¶ 61,193 (Mar. 15, 2012) at PP 46-56.

- **Revised Reliability Standards: FAC-001-2 and FAC-002-2 (RD14-12)**

On August 22, 2014, NERC filed for approval changes to FAC-001-2 (Facility Interconnection Requirements) and FAC-002-2 (Facility Interconnection Studies) (“FAC Changes”). NERC states that the FAC Changes are designed to eliminate redundancies between the two Standards and to clarify the actions required under each. NERC adds that “the proposed revisions are designed to maintain the existing reliability goals, while providing responsible entities with flexibility regarding how they fulfill the actions required.” NERC requested that the FAC Changes be approved, and the existing FAC-001-1 and FAC-002-1 be retired, effective on the first day of the first calendar quarter that is one year after the date of FERC approval. Comments on the FAC Changes are due on or before September 25, 2014.

- **Revised Reliability Standards: VAR-001-4 and VAR-002-3 (RD14-11)**

On August 1, 2014, the FERC approved changes to VAR-001-4 (Voltage and Reactive Control) and VAR-002-3 (Generator Operation for Maintaining Network Voltage Schedules) (“VAR Changes”). In its June 9, 2014 filing, NERC stated that the VAR Changes are designed to address outstanding directives from *Order Nos. 693*⁷⁷ and *724*⁷⁸ and build upon the previous versions of the Reliability Standards to improve their quality and content. NERC requested that the VAR Changes be approved, and the existing VAR-001-3 and VAR-002-2b be retired. The VAR Changes will become effective October 1, 2014. Unless the August 1 order is challenged, this proceeding will be concluded.

- **Revised Reliability Standards: INT-004-3, INT-006-4, INT-009-2, INT-010-2, INT-011-1 (RD14-4)**

As previously reported, the FERC approved, on June 30, 2014, uncontested changes to five Interchange and Coordination Standards (“INT Changes”).⁷⁹ On August 22, 2014, NERC submitted an errata filing replacing the language in the effective date section of the INT Reliability Standards with “See implementation plan” in order to clarify that the implementation plan contains the correct effective date language. Comments on the errata filing are due on or before September 25, 2014.

- **NOPR: New Reliability Standard: CIP-014-1 (Physical Security) (RM14-15)**

On July 17, 2014, the FERC issued a NOPR proposing to approve NERC’s proposed Physical Security Reliability Standard (CIP-014-1).⁸⁰ NERC has reported that CIP-014 is designed to enhance physical security measures for the most critical Bulk-Power System facilities and thereby lessen the overall vulnerability of the Bulk-Power System to physical attacks. CIP-014 requires Transmission Owners and Transmission Operators to protect those critical Transmission stations and Transmission substations, and their associated primary control centers that if rendered inoperable or damaged as a result of a physical attack could result in widespread instability, uncontrolled separation, or cascading within an Interconnection. CIP-014 also includes requirements for: (i) the protection of sensitive or confidential information from public disclosure; (ii) third party verification of the identification of critical facilities as well as third party review of the evaluation of threats and vulnerabilities and the security plans; and (iii) the periodic reevaluation and revision of the identification of critical facilities, the evaluation of threats and vulnerabilities, and the security plans to help ensure their continued effectiveness. NERC proposed to make CIP-014 effective as of the first day of the first calendar quarter that is 6 months after the date that CIP-014 is approved, as requested. Comments on this NOPR were due on or before September 8,

⁷⁷ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 FR 16416, FERC Stats. & Regs. ¶ 31,242, at PP 1131-1222, *order on reh’g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007) (“*Order 693*”).

⁷⁸ *Elec. Re. Org. Interpretations of Specific Reqs. of Frequency Response and Bias and Voltage and Reactive Control Rel. Standards*, Order No. 724, 127 FERC ¶ 61,158 (2009) (“*Order 724*”).

⁷⁹ The INT Changes revised: (1) INT-004-3 (Dynamic Transfers); (2) INT-006-4 (Evaluation of Interchange Transactions); (3) INT-009-2 (Implementation of Interchange); (4) INT-010-2 (Interchange Initiation and Modification for Reliability); and (5) INT-011-1 (Intra-Balancing Authority Transaction Identification).

⁸⁰ *Physical Security Reliability Standard*, 148 FERC ¶ 61,040 (Jul. 17, 2014).

2014, and were filed by over 30 parties, including a number of industry organizations, Entergy, and NU. Reply comments are due September 22, 2014.⁸¹

- **Revised Reliability Standard: COM-001-2 and COM-002-4 (RM14-13)**

On May 14, 2014, NERC filed for approval changes to COM-1 (Communications) and COM-2 (Operating Personnel Communications Protocols) (together, “COM Changes”). Proposed COM-001 establishes a clear set of requirements for what communications capabilities various functional entities must maintain for reliable communications. Proposed COM-002 improves communications surrounding operating instructions by setting predefined communications protocols, requiring use of the same protocols regardless of the current operating condition (whether normal, alert, and Emergency operating conditions), and requiring entities to reinforce the use of the documented communication protocols through training, assessment, and feedback. NERC requested that the COM Changes be approved effective as of the first day of the first calendar quarter that is 12 months after the date that the COM Changes are approved by the FERC. As of the date of this report, a comment date has not been set for this filing.

- **Revised Reliability Standard: MOD-031-1 (RM14-12)**

On May 13, 2014, NERC filed for approval changes to MOD-31 (Demand and Energy Data) (“MOD-031 Changes”). The MOD-031 Changes are designed to replace, consolidate and improve upon the “existing MOD-C Standards”⁸² in addressing the collection and aggregation of Demand and energy data necessary to support reliability assessments performed by the ERO and Bulk-Power System planners and operators. Specifically, the MOD-031 Changes, in response to *Order 693*, (1) streamline the MOD Reliability Standards to clarify data collection requirements; (2) include Transmission Planners as applicable entities that must report Demand and energy data; (3) require applicable entities to report weather-normalized annual peak hour actual Demand data from the previous year to allow for meaningful comparison with forecasted values; and (4) require applicable entities to provide an explanation of, among other things: (i) how their Demand Side Management forecasts compare to actual Demand Side Management for the prior calendar year and, if applicable, how the assumptions and methods for future forecasts were adjusted.; and (ii) how their peak Demand forecasts compare to actual Demand for the prior calendar year with due regard to any relevant weather-related variations (e.g., temperature, humidity, or wind speed) and, if applicable, how the assumptions and methods for future forecasts were adjusted. Consistent with FERC’s directives, NERC is also proposing to revise the definition of Demand-Side Management to include activities or programs undertaken by any applicable entity, not just a Load Serving Entity or its customers, to achieve a reduction in Demand. NERC requested that the MOD-031 Changes be approved, and the existing MOD-C Standards be retired, effective on the first day of the first calendar quarter that is 12 months after the date that the MOD-031 Changes are approved by the FERC. As of the date of this report, a comment date has not been set for this filing.

- **Revised Reliability Standard: BAL-001-2 (RM14-10)**

On May 9, 2014, NERC filed for approval changes to BAL-001-2 (Real Power Balancing Control Performance) (“BAL-001 Changes”). The BAL-001 Changes add a frequency component to the measurement of a Balancing Authority’s Area Control Error (“ACE”) and allows for the formation of “Regulation Reserve Sharing Groups.” NERC requested that the BAL-001 Changes be approved, and the existing BAL-001-1 Standard be retired, effective on the first day of the first calendar quarter that is 12 months after the date that the BAL-001 Changes are approved by the FERC. As of the date of this report, a comment date has not been set for this filing.

⁸¹ The Physical Security NOPR was published in the *Fed. Reg.* on July 23, 2014 (Vol. 79, No. 141) pp. 42,734-42,743.

⁸² The “existing Mod-C Standards” are: MOD-016-1.1, MOD-017-0.1, MOD-018-0, MOD-019-0.1, and MOD-021-1.

• **NOPR: Revised Reliability Standard: PRC-005-3 (RM14-8)**

On July 17, 2014, the FERC issued a NOPR proposing to approve changes to PRC-005-3 (Protection System and Automatic Reclosing Maintenance) (“PRC-005 Changes”).⁸³ The PRC-005 Changes include in PRC-005 the maintenance and testing of reclosing relays that can affect the reliable operation of the BPS. The FERC also proposes to approve one new definition and six revised definitions, the assigned VRFs and VSLs, and NERC’s proposed implementation plan. The FERC also proposes to direct NERC to submit a report based on actual performance data, and simulated system conditions from planning assessments, two years after the effective date of the proposed standard (to address whether PRC-005-3 applies to an appropriate set of auto-reclosing relays that can affect BPS reliability. Further, the FERC proposes to direct NERC to modify PRC-005-3 to include maintenance and testing of supervisory relays.⁸⁴ The PRC-005 Changes are to become effective, and the existing PRC-005-2 retired, as of the first day of the first calendar quarter that is 12 months after the date that the PRC-005 Changes are approved by the FERC. Comments on the PRC-005-3 NOPR are due on or before September 23, 2014.⁸⁵

• **NOPR: Revised Reliability Standard: MOD-001-2 (RM14-7)**

On June 19, 2014, the FERC issued a NOPR proposing to approve changes to MOD-001-2 (Modeling, Data, and Analysis — Available Transmission System Capability) (“MOD Changes”) proposed by NERC. The MOD Changes replace, consolidate and improve upon the Existing MOD Standards in addressing the reliability issues associated with determinations of Available Transfer Capability (“ATC”) and Available Flowgate Capability (“AFC”). MOD-001-2 will replace the six Existing MOD Standards⁸⁶ to exclusively focus on the reliability aspects of ATC and AFC determinations. NERC requested that the revised MOD Standard be approved, and the Existing MOD Standards be retired, effective on the first day of the first calendar quarter that is 18 months after the date that the proposed Reliability Standard is approved by the FERC. NERC explained that the implementation period is intended to provide NAESB sufficient time to include in its WEQ Standards, prior to MOD-001-2’s effective date, those elements from the Existing MOD Standards, if any, that relate to commercial or business practices and are not included in proposed MOD-001-2. The FERC seeks comment from NAESB and others whether 18 months would provide adequate time for NAESB to develop related business practices associated with ATC calculations or whether additional time may be appropriate to better assure synchronization of the effective dates for the proposed Reliability Standard and related NAESB practices. The FERC also seeks further elaboration on specific actions NERC could take to assure synchronization of the effective dates. Comments on this NOPR were due August 25, 2014,⁸⁷ and were filed by NERC, Bonneville, Duke, MISO, and NAESB. The MOD-001-2 NOPR is pending before the FERC.

• **Order 797: New Reliability Standard: EOP-010-1 (Geomagnetic Disturbance Operations) (RM14-1)**

On June 19, 2014 the FERC approved new Reliability Standard EOP-010-1 (Geomagnetic Disturbance Operations).⁸⁸ The new Reliability Standard requires Bulk-Power System owners and operators to develop and implement operational procedures to mitigate the effects of Geomagnetic Disturbances consistent with the reliable operation of the BPS. The FERC also approved the associated VRFs and VSLs, implementation plan, and effective dates proposed by NERC. Accordingly, EOP-010-1 will become effective January 1, 2015. On July 21, 2014, the Foundation for Resilient Societies (“FRS”) requested rehearing of *Order 797*. On August 20, the FERC

⁸³ *Protection System Maintenance Reliability Standard*, 148 FERC ¶ 61,041 (Jul. 17, 2014).

⁸⁴ *Id.* at PP 1-2.

⁸⁵ The PRC-005-3 NOPR was published in the *Fed. Reg.* on July 24, 2014 (Vol. 79, No. 142) pp. 44,475-44,483.

⁸⁶ The 6 existing MOD Standards to be replaced by MOD-001-2 are: MOD-001-1, MOD-004-1, MOD-008-1, MOD-028-2, MOD-029-1a and MOD-030-2.

⁸⁷ The MOD-001-2 NOPR was published in the *Fed. Reg.* on June 26, 2014, (Vol. 79, No. 123) pp. 36,269-36,273.

⁸⁸ *Reliability Standard for Geomagnetic Disturbance Operations*, Order No. 797, 147 FERC ¶ 61,209 (June 19, 2014) (“*Order 797*”), *reh’g requested*.

issued a tolling order affording it additional time to consider the FRS request, which remains pending before the FERC.

• **NOPR: Revised TOP and IRO Reliability Standards (RM13-15, RM13-14, RM13-12)**

On November 21, 2013, the FERC issued a NOPR⁸⁹ proposing (i) to approve NERC's proposed revisions to Reliability Standard TOP-006-3 (Monitoring System Conditions) filed in RM13-12, but (ii) to remand changes to the following Interconnection Reliability Operations and Coordination ("IRO") and Transmission Operating ("TOP") Reliability Standards filed in RM13-14 and RM13-15:

- ▶ IRO-001-3 (Reliability Coordination — Responsibilities and Authorities);
- ▶ IRO-002-3 (Reliability Coordination – Analysis Tools);
- ▶ IRO-005-4 (Reliability Coordination – Current Day Operations);
- ▶ IRO-0014-2 (Coordination Among Reliability Coordinators);
- ▶ TOP-001-2 (Transmission Operations);
- ▶ TOP-002-3 (Operations Planning);
- ▶ TOP-003-2 (Operational Reliability Data); and
- ▶ PRC-001-2 (System Protection Coordination).⁹⁰

As previously reported, the changes to TOP-006-3 filed April 5, 2013 are targeted to address the respective monitoring role and notification obligation of Reliability Coordinators ("RCs"), Balancing Authorities ("BAs") and Transmission Operators ("TOPs") by clarifying that TOPs are responsible for monitoring and reporting available transmission resources and that BAs are responsible for monitoring and reporting available generation resources. In addition, the changes confirm that RCs, TOPs, and BAs are required to supply their operating personnel with appropriate technical information concerning protective relays located within their respective areas.

The changes to the IRO Standards were to achieve two important overall reliability benefits: (1) delineate a clean division of responsibilities between the Reliability Coordinator and Transmission Operators; and (2) improve system performance by raising the bar on monitoring of Interconnection Reliability Operating Limits ("IROLs") and System Operating Limits ("SOLs") in order to focus monitoring on IROLs and SOLs that are important to reliability.

The changes to the remaining TOP Standards were to upgrade the overall quality of the Standards, eliminate gaps in the requirements, eliminate ambiguity, eliminate redundancies, and address *Order 693* directives. NERC indicated in its April filing that the proposed TOP Standards are also more efficient than the currently-enforceable TOP Reliability Standards because they incorporate the necessary requirements from the eight currently-effective TOP Reliability Standards (TOP-001-1a, TOP-002-2.1b, TOP-003-1, TOP-004-2, TOP-005-2a, TOP-006-2, TOP-007-0, TOP-008-1) and the PER-001-0.2 Reliability Standard into three cohesive, comprehensive Reliability Standards that are focused on achieving a specific result.

Because the proposed TOP and IRO Reliability Standards were interrelated, and because the proposed revisions to Reliability Standard TOP-006-3 involved similar issues raised in the TOP and IRO proposals concerning monitoring of the interconnected transmission network and notification of and by registered entities, the FERC addressed all three proposals together in the one NOPR. Although the FERC acknowledged that the proposed TOP and IRO Reliability Standards contain some improvements over the current Standards, concerns

⁸⁹ *Monitoring System Conditions - Transmission Operations Reliability Standard, Transmission Operations Reliability Standards and Interconnection Reliability Operations and Coordination Reliability Standards*, 145 FERC ¶ 61,158 (Nov. 21, 2013) ("*Nov 21 NOPR*").

⁹⁰ The changes in proposed PRC-001-2 were administrative in nature and were limited to removal of three requirements in currently-effective PRC-001-1 that were to be addressed in proposed TOP-003-2.

that the changes would create reliability gaps in the Standards that are critical to reliable operation of the BPS resulted in the proposed remand of the proposed TOP Standards.⁹¹ The FERC went on to explain that

given the interrelationship between the TOP and IRO Reliability Standards and that NERC requests that both sets of standards be addressed together, we believe a remand of the proposed IRO standards in addition to those of the TOP will enable NERC to more comprehensively consider modifications to the standards that would address the reliability concerns identified in this NOPR. This approach, in turn, should allow NERC more flexibility in developing appropriate modifications that address our concerns since changes to the TOP standards might require, in some instances, commensurate changes to the IRO standards.⁹²

Initially, comments are the *Nov 21 NOPR* were due on or before February 3, 2014.⁹³ However, on December 20, NERC requested that the FERC defer action in this proceeding to January 31, 2015 to allow NERC time to consider the reliability concerns raised by the FERC in the *Nov 21 NOPR* and by an independent review commissioned by NERC that identified proposed TOP-001-2, PRC-001-2, IRO-001-3, and IRO-005-4 as high risk standards requiring improvement. On January 6, 2014, the ISO/RTO Council and NRECA filed comments supporting NERC's requested deferral. On January 14, 2014, the FERC granted NERC's motion to defer action on the *Nov 21 NOPR* until January 31, 2015, including deferral of the comment due date. Comments were nonetheless submitted on February 3, 2014 by BPA and Idaho Power. On July 1, 2014, NERC submitted the second of its promised quarterly status reports regarding the status of revisions. In the July report, NERC reported that standard drafting team and NERC Staff are diligently working to revise the IRO and TOP Reliability Standards, with two meetings having been held in April and one scheduled for late July.

- **Revised VSL: PRC-005 R1 (RM13-7)**

On August 25, the FERC approved a revised VSL for PRC-005 reflecting that the VSL level for failure to include station batteries in a time-based maintenance program would be "severe", as requested by NERC on June 4, 2014.

- **NOPR: BAL-002-1a Interpretation Remand (RM13-6)**

This May 16, 2013 NOPR, which proposes to remand NERC's proposed interpretation of BAL-002 (Disturbance Control Performance Reliability Standard) filed February 12, 2013 (which would prevent Registered Entities from shedding load to avoid possible violations of BAL-002), remains pending.⁹⁴ NERC asserted that the proposed interpretation clarifies that BAL-002-1 is intended to be read as an integrated whole and relies in part on information in the Compliance section of the Reliability Standard. Specifically, the proposed interpretation would clarify that: (1) a Disturbance that exceeds the most severe single Contingency, regardless if it is a simultaneous Contingency or non-simultaneous multiple Contingency, would be a reportable event, but would be excluded from compliance evaluation; (2) a pre-acknowledged Reserve Sharing Group would be treated in the same manner as an individual Balancing Authority; however, in a dynamically allocated Reserve Sharing Group, exclusions are only provided on a Balancing Authority member by member basis; and (3) an excludable Disturbance was an event with a magnitude greater than the magnitude of the most severe single Contingency. The FERC, however, proposes to remand the proposed interpretation because it believes the interpretation changes the requirements of the Reliability Standard, thereby exceeding the permissible scope for interpretations.

⁹¹ *Id.* at P 4.

⁹² *Id.*

⁹³ The *Nov 21 NOPR* was published in the *Fed. Reg.* on Dec. 5, 2013 (Vol. 78, No. 234) pp. 73,112-73,128.

⁹⁴ *Electric Reliability Organization Interpretation of Specific Requirements of the Disturbance Control Performance Standard*, 143 FERC ¶ 61,138 (2013) ("BAL-002-1a Interpretation Remand NOPR").

Comments on the *BAL-002-1a Interpretation Remand NOPR* were due on or before July 8, 2013,⁹⁵ and were filed by NERC, EEI, ISO/RTO Council, MISO, NC Balancing Area, Northwest Power Pool Balancing Authorities, NRECA, and WECC. This NOPR remains pending before the FERC.

- **2015 NERC/NPCC Business Plans and Budgets (RR14-6)**

On August 22, 2014, NERC submitted its proposed Business Plan and Budget, as well as the Business Plans and Budgets for the Regional Entities, including NPCC, for 2015. FERC regulations⁹⁶ require NERC to file its proposed annual budget for statutory and non-statutory activities 130 days before the beginning of its fiscal year (January 1), as well as the annual budget of each Regional Entity for their statutory and non-statutory activities, including complete business plans, organization charts, and explanations of the proposed collection of all dues, fees and charges and the proposed expenditure of funds collected. NERC reports that its proposed 2015 Funding requirement represents an overall increase of approximately \$10.3 million (18.2%) over NERC's 2014 Funding requirement. NERC reports that a significant portion of its budget increase is for NERC's costs to participate in the Cyber Risk Information Sharing Program ("CRISP"); \$8.94 million of NERC's costs for CRISP will be funded by participating utilities and other entities. The NPCC U.S. allocation of NERC's net funding requirement is \$3.7 million. NPCC has requested \$14.78 million in statutory funding (a U.S. assessment per kWh (2013 NEL) of \$0.0000425) and \$1.13 million for non-statutory functions. Comments on this filing are due on or before September 12, 2014.

XI. Misc. - of Regional Interest

- **203 Application: Calpine/Constellation (Fore River) (EC14-135)**

On September 5, 2014, Calpine Fore River Energy Center, LLC ("Calpine") and Constellation Mystic Power, LLC ("Constellation") requested FERC authorization for the acquisition by Calpine of the Fore River Generating Station and certain associated assets from Constellation. Comments on this filing are due on or before September 26, 2014. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **PURPA Complaint v. MA DPU (Allco Renewable Energy) (EL14-84 et al.)**

On July 28, 2014, Allco Renewable Energy Limited ("Allco") petitioned the FERC to pursue an enforcement action under the Public Utility Regulatory Policies Act of 1978 ("PURPA") against the MA DPU.⁹⁷ Allco seeks a FERC order that would invalidate the MA DPU's regulations that Allco asserts prevents Allco's affiliate QFs from recovering their long-run avoided cost rate (a rate fixed at the outset for the entirety of a QF contract based upon the utility's projected future avoided costs). On August 15, MA DPU requested an extension of time, to November 1, 2014, to respond. National Grid supported the MA DPU's request and Allco indicated it had no objection to an extension that would not prevent the FERC from issuing a decision within the 60-day period provided for in PURPA. On August 18, the FERC granted the extension request, in part, extending the time to file interventions and comments, to and including August 28, 2014. On August 28, the MA DPU filed its protest to the Complaint. Allco answered the MA DPU protest on September 8. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

⁹⁵ The *BAL-002-1a Interpretation Remand NOPR* was published in the *Fed. Reg.* on May 23, 2013 (Vol. 78, No. 99) pp. 30,245-30,810.

⁹⁶ 18 CFR § 39.4(b) (2014).

⁹⁷ Section 210(h)(2) of PURPA permits the FERC to initiate, and for QFs to petition the FERC to initiate, an enforcement action against a State regulatory authority for failure to implement the FERC's PURPA regulations. If the FERC declines to initiate an enforcement action, the petitioning QF then has the right to bring an action in the appropriate U.S. district court to enforce the PURPA regulations.

- **FirstEnergy PJM DR Complaint (EL14-55)**

On May 23, 2014, the same day that DC Circuit vacated *Order 745* (see Section XV below), FirstEnergy filed a complaint against PJM requesting that the FERC require the “removal of all portions of the PJM Tariff allowing or requiring PJM to include demand response as suppliers to PJM’s capacity markets”. FirstEnergy also requested that the results of the PJM capacity auction due to be released that same day, to the extent it included and cleared demand response resources, be considered void and legally invalid. PJM’s response, and all comments and interventions were initially due on or before June 12, 2014. However, on June 11, the FERC extended that date to 30 days after the submission by FirstEnergy of an amended complaint (which as of the date of this Report, still has not yet occurred). Thus far, more than 50 parties have moved to intervene; no comments or responses have yet been filed. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **E&P Agreements: Blue Sky West & CMP (ER14-2743; ER14-2744)**

On August 29, Central Maine Power (“CMP”) filed Engineering and Procurement (“E&P”) Agreements between CMP and Blue Sky West II, LLC (“Blue Sky West”) to facilitate the interconnection of the Blue Sky West’s 191 MW wind farm in Bingham, Mayfield Township and Kingsbury Plantation, Maine. CMP requested that the Agreements be accepted as follows: (1) the Original E&P Agreement effective October 26, 2012; (2) the First Revised E&P Agreement effective March 20, 2014; and (3) the Second Revised E&P Agreement effective July 17, 2014. Comments on the E&P Agreement filing are due on or before September 19, 2014. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Termination of NE ITC TOA (ER14-2603)**

On September 2, the FERC accepted a notice of cancellation of the Transmission Operating Agreement (“TOA”) between the New England Independent Transmission Company (“NE ITC”) and the ISO. The TOA, which the ISO reported was by design a transitional document to remain in place only until the NE ITC had transmission facilities to place in service in New England, expired by its own terms on February 1, 2013. The TOA further provided that any such termination would be subject to a FERC determination under Section 205 of the FPA that the termination is just, reasonable, and not unduly discriminatory or preferential. The TOA termination is effective February 1, 2013, as requested. Unless the September 2 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).

- **NEP Termination of Dighton Power Assoc. IA (ER14-2521)**

On August 27, the FERC accepted a notice of cancellation of New England Power Company d/b/a National Grid (“NEP”)’s Interconnection Agreement (“IA”) with Dighton Power Associates. NEP indicated that the IA was superseded by a new three-party *pro forma* LGIA, which was executed and became effective November 5, 2013. Unless the August 27 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).

- **NHEC/PSNH D&E Agreement (ER14-2513)**

On September 11, the FERC accepted an executed Design & Engineering Agreement between NHEC and PSNH that addresses cost allocation and cost responsibility for the planned co-locating of certain distribution level (12.47 kV) facilities of NHEC onto distribution structures to be owned, operated and maintained by PSNH in Deerfield, New Hampshire. The NHEC distribution lines will not directly interconnect to PSNH’s transmission or distribution system. The Agreement was accepted effective as of July 29, 2014, as requested. Unless the August 14 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).

- **Fitchburg LNS Agreement with Keolis; Termination of MBTA LNS Agreement (ER14-2503)**

On September 10, the FERC accepted, effective July 1, 2014, a transmission service agreement (“LNS Agreement”) between Fitchburg Gas and Electric Light Company (“Fitchburg”) and Keolis Commuter Services (“Keolis”), together with a notice of cancellation of Fitchburg’s LNS Agreement with Massachusetts Bay Transportation Authority (“MBTA”), in connection with the change in commuter rail service in Massachusetts that took place on July 1, 2014, with Keolis taking over commuter rail service operations from MBTA on that day. As previously reported, the ISO was not a counter-party because the LNS Agreement was an assignment of an agreement that pre-dated the formation of the RTO. Unless the September 10 order is challenged, this proceeding will be concluded. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **LGIA – Block Island Wind (NEP/Deepwater Wind) (ER14-2496)**

On September 2, the FERC accepted a non-conforming Large Generator Interconnection Agreement (“LGIA”) between NEP and Deepwater Block Island Wind, LLC (“Block Island Wind”). The LGIA addresses the interconnection of the Block Island Wind generation project to a 34.5 kV substation to be constructed on Block Island and owned by NEP’s affiliate, The Narragansett Electric Company d/b/a/ National Grid (“Narragansett”), and connected to the Rhode Island mainland by a 34.5 kV undersea cable being constructed pursuant to the Town of New Shoreham Project. The LGIA is non-conforming as it is a two-party agreement between NEP and Block Island Wind (and the point of interconnection under the LGIA will reside on Narragansett’s distribution facilities.) The LGIA was accepted effective September 23, 2014, as requested. Unless the September 2 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).

- **PSNH Termination of Essential Power Newington IA (ER14-2397)**

On August 11, the FERC accepted a notice of cancellation filed by Public Service Company of New Hampshire (“PSNH”) of its Interconnection Agreement (“IA”) with Essential Power Newington. PSNH indicated that the IA was superseded by a new three-party *pro forma* LGIA, which was executed and became effective June 17, 2014 due to an increase in the generating capacity of the Newington, NH facility. The cancellation notice was accepted effective June 17, 2014, as requested. The August 11 order was not challenged and is final and unappealable. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **WMECO Termination of HG&E Equipment Rental Agreement (ER14-2389)**

On August 27, the FERC accepted a notice of cancellation filed by WMECO of its Equipment Rental Agreement with the City of Holyoke Gas and Electric Department (“HG&E”). As previously reported, with commercial operation of WMECO’s new Fairmont substation, HG&E no longer needed the two circuit switchers that it had temporarily rented from WMECO to interconnect two 115 kV radial transmission lines between HG&E’s Prospect and WMECO’s Fairmont substation. The cancellation notice was accepted effective as of September 8, 2014, as requested. Unless the August 27 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).

- **PSNH/WMECO Cancellation of superseded Wallingford LCRA (ER14-2386; ER14-2387)**

Also on August 27, the FERC accepted notices of cancellation filed by PSNH and WMECO of Localized Costs Responsibility Agreements (“LCRA”) with the Town of Wallingford, Connecticut. The LCRAs were superseded by a revised LCRA that is filed only in the CL&P eTariff database. The notices were accepted effective as of September 8, 2014, as requested. Unless the August 27 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).

- **CL&P Amended Wholesale Distribution Service Agreement with CMEEC (ER14-2378)**

On August 12, the FERC accepted an amended Wholesale Distribution Service Agreement (“WDSA”) filed by The Connecticut Light and Power Company (“CL&P”) with CMEEC, reflecting the fact that the Third Taxing District of the City of Norwalk, CT is directly connected to PTF and takes RNS Service under the Tariff. The WDSA was accepted effective as of September 6, 2014, as requested. Unless the August 12 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).

- **Pootatuck Substation EDC Agreement: UI & CL&P (ER14-2355)**

On August 14, the FERC accepted an executed Engineering, Design, and Construction Agreement (“EDC Agreement”) between UI and CL&P for the planned Pootatuck Substation in Shelton, CT. The EDC Agreement was accepted effective as of June 2, 2014, as requested. Unless the August 14 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).

- **CL&P Covanta Bristol IA (ER14-2303)**

On August 28, the FERC accepted an IA between CL&P and Covanta Bristol that replaced a 1985 Electricity Purchases Agreement that expired June 30, 2014. The IA will govern the continued interconnection of Covanta Bristol’s 16.3 MW steam turbine QF. Because there are no modifications to the facility, an agreement under Schedule 23 was not required. The IA was accepted effective as of July 1, 2014, as requested. Unless the August 28 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).

- **CMP Termination of Lewiston IA (ER14-2272)**

On August 12, the FERC accepted a notice of cancellation of CMP’s IA with the City of Lewiston, Maine. As previously reported, CMP indicated that Lewiston requested termination of the IA because it does not intend to resume generating power from the 2.5 MW hydroelectric facility that is the subject of the IA. The notice of cancellation was accepted effective as of June 16, 2014, as requested by Lewiston. Unless the August 12 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).

- **MISO Methodology to Involuntarily Allocate Costs to Entities Outside Its Control Area (ER11-1844)**

On December 18, 2012, Judge Sterner issued his 374-page initial decision which, following hearings described in previous reports, found at its core that “it is unjust, unreasonable, and unduly discriminatory to allocate costs of Phase Angle Regulating Transformers (“PARs”) of the International Transmission Company (“ITC”) to NYISO and PJM”,⁹⁸ which the Midwest ISO (“MISO”) and ITC proposed unilaterally to do (without the support of either PJM or NYISO) in its October 20, 2010 filing initiating this proceeding. For a summary of specific findings, please refer to any of the January to June 2013 Reports.

On January 17, 2013, ITC and MISO challenged the Initial Decision through their Brief on Exceptions. Briefs opposing exceptions were filed by the FERC Trial Staff, MISO TOs, NYISO, NY TOs, PJM, and the PJM TOs. On February 25, Joint Applicants moved to strike a portion of the PJM Brief Opposing Exceptions. On March 12, PJM answered Joint Applicants February 25 motion. MISO (now called “Midcontinent Independent System Operator, Inc.”) moved to lodge a NYISO “Broader Regional Markets Informational Report” filed March 19, 2014 in ER08-1281 and a related January 16, 2014 “Ontario-Michigan Interface PAR Performance Evaluation Report” (“Evaluation Report”) prepared by MISO, IESO and PJM. Oppositions to that motion to lodge were filed by FERC Staff, NYISO, NY TOs, PJM, and PSEG.

⁹⁸ *Midwest Indep. Trans. Sys. Op., Inc.*, 141 FERC ¶ 63,021 (Dec. 18, 2012) (“MISO Initial Decision”) at P 923.

This matter remains pending before the FERC. If there are any questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **FERC Enforcement Action: Direct Energy (IN14-22)**

On August 11, 2014, the FERC issued an order approving a Stipulation and Consent Agreement (“*Direct Energy Agreement*”) between OE and Direct Energy LLC.⁹⁹ The *Direct Energy Agreement* settles allegations that Direct Energy violated the FERC’s Anti-Manipulation Rule by manipulating natural gas prices during May 2012 at Algonquin and Transco Zone 6 New York (Transco Zone 6) in order to benefit its related financial positions. Direct Energy agreed to pay a *civil penalty of \$20,000, disgorge \$31,935*, and submit annual compliance and compliance monitoring reports.¹⁰⁰

- **FERC Enforcement Action: Imperial Irrigation District (IN14-7)**

On August 7, 2014, the FERC issued its second order related to a 12-hour blackout that occurred in the Southwest on September 8, 2011, approving a Stipulation and Consent Agreement (“*Imperial Agreement*”) between OE, NERC and Imperial Irrigation District (“Imperial”).¹⁰¹ Imperial agreed to pay a civil penalty of *\$12 million* (\$3 million to the US Treasury and NERC (divided equally between them), \$9 million in reliability enhancement measures, including construction of one or more utility-scale battery energy storage facilities within Imperial’s transmission operations area), and undertake compliance reporting for one year.¹⁰²

- **FERC Enforcement Action Pending: Staff Notices of Alleged Violations (IN__ - __)**

City Power and K. Tsingas. On August 25, 2014, the FERC issued a notice that Staff has preliminarily determined that (i) City Power Marketing, LLC (“City Power”) and K. Stephen Tsingas violated the FERC’s Anti-Manipulation Rule by engaging in manipulative Up To Congestion trading in PJM during July 2010; and (ii) City Power violated the FERC’s market behavior rules (18 C.F.R. § 35.41 (2014)) by making false statements and omitting material information during the investigation.

Powhatan Energy, HEEP Fund, CU Fund, and H. Chen. On August 5, 2014, the FERC issued a notice that Staff has preliminarily determined that Houlian (Alan) Chen, HEEP Fund Inc., and CU Fund Inc., and Powhatan Energy Fund, LLC, violated the FERC’s Anti-Manipulation Rule by engaging in manipulative Up To Congestion trading in PJM between June and August 2010. Staff alleges that Chen (on behalf of Powhatan, HEEP Fund, or CU Fund) engaged in Up To Congestion transactions in PJM designed to falsely appear to be spread trades, as a vehicle for collecting Marginal Loss Surplus Allocation (“MLSA”) payments from PJM, by placing millions of megawatt hours of offsetting trades between the same two trading points, in the same volumes and the same hours—an intentional effort to cancel out the financial consequences from any spread between the two trading points while capturing large amounts of MLSA payments. Staff alleges this strategy amounted to wash trading, long prohibited by the FERC.

Twin Cities. On June 12, 2014, the FERC issued a notice that Staff has preliminarily determined that Twin Cities Power-Canada, U.L.C. and certain affiliated companies, including Twin Cities Energy and Twin Cities Power, and individuals Allan Cho, Jason F. Vaccaro, and Gaurav Sharma each violated the FERC’s prohibition of electric energy market manipulation by scheduling and trading physical power in MISO to benefit related swap positions that settle off of real-time MISO prices, including the Cinergy Hub Balance-of-Day Swap traded on IntercontinentalExchange, Inc. (“ICE”), during the period January 1, 2010 through January 31, 2011.

Recall that Notices of Alleged Violations (“NoVs”) are issued only after the subject of an enforcement investigation has either responded, or had the opportunity to respond, to a preliminary findings letter detailing

⁹⁹ *Direct Energy Services, LLC*, 148 FERC ¶ 61,114 (Aug. 11, 2014) (“*Direct Energy Order*”).

¹⁰⁰ *Id.* at PP 19-21.

¹⁰¹ *Imperial Irrigation District*, 148 FERC ¶ 61,108 (Aug. 7, 2014) (“*Imperial Order*”).

¹⁰² *Id.* at PP 1, 18-19.

Staff's conclusions regarding the subject's conduct.¹⁰³ NoVs are designed to increase the transparency of Staff's nonpublic investigations conducted under Part 1b of its regulations. A NoV does not confer a right on third parties to intervene in the investigation or any other right with respect to the investigation.

• **Waiver of Transmission Standards of Conduct: Emera Maine (f/k/a Bangor Hydro) Request (TS11-5)**

Emera Maine's October 31, 2011 amended waiver request remains pending before the FERC. As previously reported, the FERC denied, without prejudice, Bangor Hydro's initial request for waiver of the FERC's Standards of Conduct requirements.¹⁰⁴ Bangor Hydro requested a limited waiver from the FERC's Standards of Conduct requirements,¹⁰⁵ to the extent necessary, to permit its transmission function personnel to undertake the actions necessary to re-sell into the New England Market energy from the Rollins Project which the MPUC has mandated it purchase but cannot otherwise sell at retail. The FERC stated that it would revisit its determination if Bangor Hydro brought forward information demonstrating that it met the criteria for waiver set forth in section 358.1(c) and summarized in the order (i.e. a demonstration that Bangor Hydro has no access to information concerning the operation of the transmission facilities by the ISO and that it obtains information about such matters only by viewing the ISO's OASIS). In response to the *BHE Standards of Conduct Order*, Bangor Hydro amended its waiver request in 2 respects: First, Bangor Hydro revised its request to apply only to the energy required to be purchased from the Rollins Project and the Exeter Agri-Energy Project. Second, Bangor Hydro committed, as a condition of the waiver (if granted), not to engage in any purchases or sales of wholesale electric capacity or energy except for those required under Maine laws and/or regulations or orders of the MPUC. The MPUC filed comments supporting Bangor Hydro's amended waiver request on November 15, 2011. This matter remains pending before the FERC.

XII. Misc. - Administrative & Rulemaking Proceedings

• **Price Formation in RTO/ISO Energy & Ancillary Services Markets (AD14-14)**

On June 19, 2014, the FERC initiated a proceeding to evaluate price formation issues in RTO/ISO energy and ancillary services markets. In its notice, the FERC announced a series of staff workshops to facilitate a discussion with market operators and their stakeholders on the existing market rules and operational practices related to:

- ▶ use of uplift payments;
- ▶ offer price mitigation and offer price caps;
- ▶ scarcity and shortage pricing; and
- ▶ operator actions that affect price.

Sep 8 Workshop. The FERC held its first workshop on September 8, 2014. The September 8 workshop focused on the technical, operational and market issues that give rise to uplift payments and the levels of transparency. The workshop also previewed the scope of the remaining price formation topics. The webcast of the September 8 workshop will be archived and available for 3 months on the FERC's website at <http://ferc.capitolconnection.org/>. Speaker materials have been posted in the FERC's eLibrary. Also posted in eLibrary is a FERC staff report issued August 21 that analyzes "Uplift in RTO and ISO Markets."

Oct 28 Workshop. On September 5, the FERC announced that it will hold a second workshop addressing the technical, operational, and market issues related to offer price mitigation and offer price caps,

¹⁰³ See *Enforcement of Statutes, Regulations, and Orders*, 129 FERC ¶ 61,247 (Dec. 17, 2009), *order on requests for reh'g and clarification*, 134 FERC ¶ 61,054 (Jan. 24, 2011).

¹⁰⁴ *Bangor Hydro-Elec. Co.*, 136 FERC ¶ 61,182 (Sep. 15, 2011) ("*BHE Standards of Conduct Order*").

¹⁰⁵ See 18 C.F.R. § 358 (2013) *et seq.*

and scarcity and shortage pricing in energy and ancillary services markets operated by RTOs and ISOs, on Tuesday, October 28, 2014 from 8:45 a.m. to 5:00 p.m. The workshop will be open for the public to attend. Those wishing to participate in the program should nominate themselves no later than September 23 at: <https://www.ferc.gov/whats-new/registration/10-28-14-speaker-form.asp>. Further details and a formal agenda will be issued prior to the October 28 workshop. The FERC has established a web page for this issue at <http://www.ferc.gov/industries/electric/indus-act/rto/energy-price-formation.asp>.

• RTO/ISO Common Metrics Report (AD14-15)

On August 26, 2014, FERC Staff published a “Common Metrics” report, the primary purpose of which is to provide a platform for review of ISO, RTO and utility performance. The Common Metrics Report provides the following two components for a performance review: (1) an analysis of the metrics data to confirm that the data provided by ISOs, RTOs and utilities in regions outside ISO and RTO markets are consistent with the definitions of the common metrics; and (2) an evaluation and confirmation that the common metrics are measuring the same activities and have the same meaning across the industry. FERC Staff determined 30 metrics meeting the criteria for common metrics. FERC Staff reported that further analysis is needed, and indicated that it would request approval for further data collection on performance metrics for the 2008-2012 and 2010-2014 periods from the Office of Management and Budget (“OMB”).

• RTO/ISO Winter 2013-2014 Op and Market Performance (AD14-8)

On April 1, 2014, the FERC held a technical conference to explore the impacts of and actions taken to respond to recent cold weather events by RTO/ISOs. Discussion focused on: the impact of cold weather events on operational planning and real-time operations, market prices and performance, and regional infrastructure; the actions taken in response to those impacts; gas procurement; and lessons learned that can be shared between regions and applied in future events. ISO-NE’s materials were circulated to the Committee on April 1, and are posted with the composite materials for the April 4 meeting. Speaker materials are posted in the FERC’s eLibrary as well as at:

<http://www.ferc.gov/EventCalendar/EventDetails.aspx?ID=7272&CalType=&CalendarID=116&Date=&View=Listview>.

For those that may have missed the conference, a free recording of the conference will be archived at <http://ferc.capitolconnection.org/> for at least three months. Post-conference comments were filed by over 40 parties, including: ISO-NE, APPA, Dominion, EEI, Entergy, EPSA, Essential Power, Exelon, Macquarie, MMWEC/CMEEC, PSEG, Vitol. Since the last Report, the Citizens Utility Board and 202 individuals filed comments on price spikes experienced by energy users during winter 2013/14.

• NOPR: MBR Authorization Refinements (RM14-14)

On June 19, the FERC issued a NOPR proposing to revise its current standards, and to streamline certain aspects of its filing requirements, for obtaining market-based rates (“MBR”) for sales of electric energy, capacity, and ancillary services.¹⁰⁶ In addition, the FERC clarified certain standards for obtaining and retaining MBR authority. Among other changes, the FERC proposes (i) to permit sellers in RTO/ISO markets with Commission-approved market monitoring and mitigation to include a statement that they are relying on such mitigation to address any potential horizontal market power concerns in lieu of submitting the indicative screens; (ii) to permit sellers to explain that their qualified capacity is fully committed in lieu of including indicative screens in their filings in order to satisfy the FERC’s horizontal market power tests and to submit a change in status filing when there is a net increase of 100 MW or more; (iii) to relieve sellers of their obligation to file quarterly land acquisition reports and of the obligation to provide information on sites for generation capacity development in market-based rate applications and triennial updated market power analyses; (iv) to require a change in status filing if there is a 100 MW increase in cumulative nameplate capacity added in any relevant geographic market;

¹⁰⁶ *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Elec. Energy, Capacity and Ancillary Svcs. by Public Utils.*, 147 FERC ¶ 61,232 (June 19, 2014) (“MBR NOPR”).

and (v) require corporate org charts with all MBR applications and notices of change in status. Comments on this NOPR are due September 23, 2014.¹⁰⁷

• **NOPR: Open Access and Priority Rights on ICIF (RM14-11)**

On May 15, the FERC issued a NOPR proposing to waive the Open Access Transmission Tariff requirements of 18 CFR 35.28 (2013), the Open Access Same-Time Information System requirements of Part 37 of its regulations, 18 CFR 37 (2013), and the Standards of Conduct requirements of Part 358 of its regulations, 18 CFR 358 (2013), for any public utility that is subject to such requirements solely because it owns, controls, or operates Interconnection Customer's Interconnection Facilities ("ICIF"),¹⁰⁸ in whole or in part, and sells electric energy from its Generating Facility. The Commission also proposes to find that requiring the filing of an OATT is not necessary to prevent unjust or unreasonable rates or unduly discriminatory behavior with respect to ICIF over which interconnection and transmission services can be ordered. The NOPR also proposes a 5-year safe harbor period during which an ICIF owner subject to the blanket waiver, who initially has excess capacity on its ICIF because it intends to serve its own or its affiliates' future phased generator additions or expansions, may establish a rebuttable presumption for priority right over third parties to use that excess capacity. Comments on this NOPR were due on or before July 29, 2014.¹⁰⁹ Comments were submitted by over 20 parties, including: APPA, AWEA, EEI, EPSA, First Wind, NextEra, NRECA, and NRG. Since the last Report, the MISO Transmission Owners filed comment replying to the comments of MISO and the ITC Companies. This matter is pending before the FERC.

• **WIRES Request for Policy Statement on ROE for Electric Transmission (RM13-18)**

On June 26, 2013, WIRES¹¹⁰ petitioned the FERC to institute an expedited generic proceeding and to provide such policy and clarifications as necessary to provide "greater stability and predictability regarding regulated rates of return on equity for existing and future investments in high voltage electric transmission infrastructure." Specifically, WIRES recommended a new policy that (1) standardizes selection of proxy groups; (2) denies complainants a hearing on rates of return for existing facilities unless it is shown that existing returns are at the extremes of the zone of reasonableness; (3) allows consideration of competing infrastructure investments of other industries; (4) permits use of other rate of return methodologies; and (5) supports use of more forward-looking data and modeling. In addition, WIRES urged the FERC to support consideration of a project's actual and anticipated benefits when a complaint is filed against the ROE for an existing project. Although the WIRES petition has not been noticed for public comments, more than 16 sets of comments have been filed. On October 3, 2013, WIRES submitted a summary of the comments and analysis filed to that point in the proceeding. On October 16, the Organization of PJM States noted its position that the WIRES petition did not present a compelling reason for the FERC to initiate a generic rulemaking proceeding or abandon its Discounted Cash Flow methodology. On November 5, 2013, a letter from US Senator Angus King, urging the FERC to establish a more certain regulatory environment that provide investors the level of confidence necessary to support and encourage needed infrastructure investments, was posted in eLibrary. This matter is pending before the FERC.

¹⁰⁷ The *MBR NOPR* was published in the *Fed. Reg.* on July 25, 2014 (Vol. 79, No. 143) pp. 43,536-43,572.

¹⁰⁸ ICIF is the term used by the FERC in the NOPR to refer to "generator tie lines".

¹⁰⁹ The NOPR was published in the *Fed. Reg.* on May 30, 2014 (Vol. 79, No. 104) pp. 31,061-31,072.

¹¹⁰ WIRES, the Working group for Interest in Reliable and Economic Electric Systems, describes itself as a national non-profit association of investor-, member-, and publicly-owned entities dedicated to promoting investment in a strong, well-planned, and environmentally beneficial high voltage electric transmission grid. Information about its principles and members is available on its website www.wiresgroup.com.

• **Order 771: Availability of e-Tag Information to FERC Staff (RM11-12)**

Rehearing of portions of *Order 771* has been requested and remains pending. As previously reported, *Order 771*,¹¹¹ issued December 20, 2012, granted the FERC access, on a non-public and ongoing basis, to the complete electronic tags (“e-Tags”) used to schedule the transmission of electric power interchange transactions in wholesale markets. *Order 771* requires e-Tag Authors (through their Agent Service) and Balancing Authorities (through their Authority Service) to take steps to ensure FERC access to the e-Tags covered by this Rule by designating the FERC as an addressee on the e-Tags. The FERC stated that the information made available under this Final Rule will bolster its market surveillance and analysis efforts by helping it detect and prevent market manipulation and anti-competitive behavior. In addition, *Order 771* requires e-Tag information be made available to RTO/ISOs and their Market Monitoring Units, upon request to e-Tag Authors and Authority Services, subject to appropriate confidentiality restrictions. *Order 771* became effective February 26, 2013.¹¹² In response to requests for clarification and/or rehearing of *Order 771* filed by EEI/NRECA, Open Access Technology International, Inc., NRECA (separately), and Southern Companies (collectively, the “Rehearing Requests”), the FERC issued, on March 8, 2013, *Order 771-A*.¹¹³ *Order 771-A* addressed only those issues that needed to be answered on an expedited basis to allow affected entities to comply with the requirement to ensure FERC access in a timely manner to the e-Tags covered by *Order 771*.¹¹⁴ The FERC noted that it would issue an additional rehearing order, addressing the remaining issues raised on rehearing and clarification, which therefore remain pending before the FERC.

• **NOPR: Incorporation of WEQ Version 003 Standards (RM05-5)**

The FERC NOPR, which proposes to amend FERC regulations by incorporating by reference **Version 003** of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by the Wholesale Electric Quadrant (“WEQ”) of the North American Energy Standards Board (“NAESB”),¹¹⁵ issued July 18, 2013, remains pending. The Version 003 Standards update earlier versions of these standards previously incorporated by reference into FERC regulations at 18 CFR 38.2. The Version 003 standards include modifications to support Order Nos. 890, 890-A, 890-B and 890-C, including the standards to support Network Integration Transmission Service on an Open Access Same-Time Information System (“OASIS”), Service Across Multiple Transmission Systems (“SAMTS”), standards to support FERC policy regarding rollover rights for redirects on a firm basis, standards that incorporate the functionality for transmission providers to credit redirect requests with the capacity of the parent reservation and standards modifications to support consistency across the OASIS-related standards. The Version 003 Standards also include modifications to the OASIS-related standards that NAESB states support *Order Nos. 676, 676-A, 676-E and 717* and add consistency. In addition, there are modifications to the Coordinate Interchange standards to compliment recent updates to e-Tag specifications, modifications to the Gas/Electric Coordination standards to provide consistency between the two markets, and re-organized and revised definitions to create a standard set of terms, definitions and acronyms applicable to all NAESB WEQ standards. The Version 003 Standards include the Standards addressed in *Order 676-G* and the

¹¹¹ *Availability of E-Tag Info. to Comm’n Staff*, Order No. 771, 141 FERC ¶ 61,235 (Dec. 20, 2012) (“*Order 771*”), order on reh’g and clarification, 142 FERC ¶ 61,181 (2013).

¹¹² *Order 771* was published in the *Fed. Reg.* on Dec. 28, 2012 (Vol. 77, No. 249) pp. 76,367-76,380.

¹¹³ *Availability of E-Tag Info. to Comm’n Staff*, Order No. 771-A, 142 FERC ¶ 61,181 (Mar. 8, 2013) (“*Order 771-A*”).

¹¹⁴ *Order 771-A* clarified that: (1) Balancing Authorities and their Authority Services will have until 60 days after publication of this order to implement the validation requirements of *Order 771*; (2) validation of e-Tags means that the Sink Balancing Authority, through its Authority Service, must reject any e-Tags that do not correctly include the FERC in the CC field; (3) the requirement for the FERC to be included in the CC field on the e-Tags applies only to e-Tags created on or after March 15, 2013; (4) the FERC will deem all e-Tag information made available to the FERC pursuant to *Order 771* as being submitted pursuant to a request for privileged and confidential treatment under 18 CFR 388.112; (5) the FERC is to be afforded access to the Intra-Balancing Authority e-Tags in the same manner as interchange e-Tags; and (6) the requirement on Balancing Authorities to ensure FERC access to e-Tags pertains to the Sink Balancing Authority and no other Balancing Authorities that may be listed on an e-Tag.

¹¹⁵ *Standards for Bus. Practices and Communication Protocols for Pub. Utils.*, 144 FERC ¶ 61,026 (Jul. 18, 2013) (“*WEQ Version 003 Standards NOPR*”).

recent Smart Grid Standards. Comments on the WEQ Version 003 Standards NOPR were due on or before September 24, 2013,¹¹⁶ and were filed by 11 parties, including APPA, EEI, and the IRC. This matter is pending before the FERC.

XIII. Natural Gas Proceedings

For further information on any of the natural gas proceedings, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Jennifer Galiette (860-275-0338; jgaliette@daypitney.com).

• NOPR: Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities (RM14-2)

On March 20, 2014, the FERC issued a series of orders addressing gas-electric coordination. At the forefront, was this NOPR, in which the FERC proposes to revise its natural gas act regulations in order to better coordinate the scheduling of natural gas and electricity markets and to provide additional flexibility to natural gas shippers.¹¹⁷ Specifically, the NOPR proposes to: (i) start the Gas Day earlier, at 4:00 a.m. Central Clock Time (“CCT”)¹¹⁸ rather than 9:00 a.m., in order to ensure that gas-fired generators are not running short on gas supplies during the morning electric ramp periods; (ii) institute a later start to the first day-ahead gas nomination opportunity (called the Timely Nomination Cycle), from 11:30 a.m. to 1 p.m. The FERC said that because the Timely Nomination Cycle is the most liquid of the gas nomination cycles, this change will allow electric utilities to finalize their scheduling before gas-fired generators must make gas purchase arrangements and submit nomination requests for natural gas transportation service to the pipelines; and (iii) modify the current intraday nomination timeline to provide 4 (rather than 2) intraday nomination cycles in order to provide greater flexibility to all pipeline shippers. The NOPR adds an early morning nomination cycle with a mid-day effective flow time and a new late-afternoon nomination cycle during which firm nominations would have precedence over or be permitted to bump already scheduled interruptible service. Ultimately, the standard cycles will be 8:00 a.m. CCT (bump), 10:30 a.m. CCT (bump), 4:00 p.m. CCT (bump) and 7:00 p.m. CCT (no-bump).

To provide shippers additional flexibility, the NOPR also proposes to: (i) clarify its policy with respect to the “No-Bump” Rule for Pipelines with Enhanced Nomination Services (the ability of a pipeline to permit firm shippers to bump an interruptible shipper’s nomination during any enhanced nomination opportunity proposed by the pipeline (beyond the standard nomination opportunities). The FERC indicated that under the revised intraday nomination timelines proposed here, pipelines offering enhanced nomination services should be permitted to bump interruptible shippers at least until the time when the bumping notice under the newly proposed Intra-Day 3 schedule is provided (in the Commission’s proposal 6:00 p.m. CCT); and (ii) require Multi-Party Transportation Contracts; and (ii) FERC proposes to require all interstate pipelines to offer multi-party service agreements, providing multiple shippers the flexibility to share interstate pipeline capacity to serve complementary needs in an efficient manner.

Noting that the natural gas and electricity industries are best positioned to work out the details of how changes in scheduling practices can most efficiently be made and implemented, consistent with the policies discussed in the NOPR, the FERC provided the industries 6 months to reach consensus on standards, consistent with FERC’s guidance in the NOPR, including any revisions or modifications to the proposals provided herein. Comments are due November 28, 2014¹¹⁹ and should include the consensus standards or notifying the FERC of their inability to reach consensus on any revisions to the FERC’s proposals. The FERC also noted its expectation that the electric industry (particularly the

¹¹⁶ The *WEQ Version 003 Standards NOPR* was published in the *Fed. Reg.* on July 26, 2013 (Vol. 78, No. 144) pp. 45,096-45,104.

¹¹⁷ *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, 146 FERC ¶ 61,201 (Mar. 20, 2014).

¹¹⁸ CCT, pursuant to the NAESB WGQ standards, reflects daylight savings changes.

¹¹⁹ The NOPR was published in the *Fed. Reg.* on Apr. 1, 2014 (Vol. 79, No. 62) pp. 18,223-18,243.

ISO/RTOs) would participate in these efforts to help ensure that the resulting consensus reasonably accommodates the interests of both industries.

On June 18, NAESB submitted a status report regarding its activities in response to Gas-Electric Scheduling Coordination NOPR. In that report, NAESB indicated that its efforts drew in nearly 500 active participants and over 700 participants monitoring the activity. NAESB further indicated that, although consensus on an alternative package incorporating all aspects of the proposals included in the NOPR was not reached during more than 8,000 straw and binding votes by the wholesale gas and wholesale electric market participants, the process resulted in commonalities that allowed the NAESB Board to move the process forward and request standards development in certain areas. Specifically, NAESB reported that those areas included standards related to the nomination deadline for the timely day-ahead scheduling of gas transportation, the nomination deadline of evening day-ahead scheduling of gas transportation and the nomination deadlines for scheduling intraday gas transportation through three cycles. Standards development will remain neutral on the gas day start time, as clear lines separated the positions of most of the wholesale gas and electric market participants. NAESB committed to provide to the FERC a status report and the record of its efforts by September 29, 2014.

• **NOI: Enhanced Natural Gas Market Transparency (RM13-1)**

On July 9, 2014, the FERC issued a notice that, in order to assess better whether the reporting requirement described in the NOI would enhance natural gas transparency, the FERC will seek additional information from certain natural gas marketers regarding what portion of their total natural gas sales are jurisdictional natural gas sales. To obtain that information, OE will send data requests to certain natural gas marketers who, in turn, will have 15 days to respond. The FERC indicated that, after those responses are received, it will consider what, if any, further action in this docket will be necessary and/or appropriate. As previously reported, in a November 15, 2012 NOI, the FERC sought input on what changes, if any, should be made to the regulations under the natural gas market transparency provisions of section 23 of the Natural Gas Act (“NGA”) to improve natural gas market transparency. Comments in response to the NOI were received from over 30 parties.

• **Posting of Offers to Purchase Capacity (Section 5 Proceeding) (RP14-442)**

Similar to the ISO/RTO 206 Order in EL14-22 et al. (*see* Section I above), the FERC also instituted a proceeding under Section 5 of the Natural Gas Act to examine whether interstate natural gas pipelines are providing notice of offers to purchase released pipeline capacity in accordance with section 284.8(d) of the Commission’s regulations.¹²⁰ On or before May 19, natural gas pipelines must either revise their respective tariffs to provide for the posting of offers to purchase released capacity, or otherwise demonstrate that they are in full compliance with FERC regulations.¹²¹ The FERC also requested that NAESB develop business practice and communication standards specifying: (1) the information required for requests to acquire capacity; (2) the methods by which such information is to be exchanged; and (3) the location of the information on a pipeline’s website. Each pipeline must explain in its compliance filing how it will fully comply with 18 CFR § 284.8(d) until NAESB develops, and the FERC implements, the requested standards, including how the pipeline will provide shippers the ability to post offers to purchase capacity on the Informational Posting section of its website.¹²²

¹²⁰ *Posting of Offers to Purchase Capacity*, 146 FERC ¶ 61,203 (Mar. 20, 2014).

¹²¹ *Id.* at P 6.

¹²² *Id.*

• Natural Gas-Related Enforcement Actions

The FERC continues to closely monitor and enforce compliance with regulations governing open access transportation on interstate natural gas pipelines. Since the last Report, there was a great deal of activity in the following on-going, gas-related enforcement proceeding:

<u>Company</u>	<u>Alleged Violation(s)</u>	<u>Civil Penalty/Disgorgement</u>
BP America Inc. BP Corp. N. Amer. BP Amer. Production BP Energy Co. (together, "BP") (IN13-15)	The FERC established a hearing to determine whether BP violated section 4A of the Natural Gas Act and the FERC's Anti-Manipulation Rule as alleged by OE Staff. OE Staff alleged that BP traded physical natural gas at Houston Ship Channel ("HSC") to increase the value of BP's financial position at HSC, uneconomically using BP's transportation capacity, making repeated early uneconomic sales at HSC, taking steps to increase BP's market concentration at HSC. In doing so, OE staff alleged, BP suppressed the HSC Gas Daily index with the goal of increasing the value of BP's financial position at HSC. The activity occurred from mid-September 2008 through November 2008.	Show Cause Order ¹²³ \$28 million (civil penalty) \$800,000 (disgorgement)

XIV. State Proceedings & Federal Legislative Proceedings

No Activity to Report

XV. Federal Courts

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

- **2013/14 Winter Reliability Program (14-1104, 14-1105, 14-1103 (consolidated))**
Underlying FERC Proceedings: ER13-1851¹²⁴ and ER13-2266¹²⁵
Appellants: TransCanada and RESA

On June 6, 2014, TransCanada and the Retail Energy Supply Association filed petitions for review of the FERC's orders on the 2013/14 Winter Reliability Program (14-1104 and 14-1105, respectively). Also on June 6, 2014, TransCanada filed a petition for review of FERC's orders on the 2013/14 Winter Reliability Program Bid Results Filings (ER14-1103). On July 3, 2014, these proceedings were consolidated. On July 7, the FERC requested a minimum of 60 days after Petitioners' opening briefs to file its brief. On July 23, leave to intervene was granted to ISO-NE, NEPGA, PSEG and Essential Power. On August 29, parties were ordered to submit, on or before September 29, proposed formats for the briefing of the consolidated cases.

¹²³ *BP America Inc. et al.*, 144 FERC ¶ 61,100 (Aug. 5, 2013).

¹²⁴ 144 FERC ¶ 61,204 (Sep. 16, 2013); 147 FERC ¶ 61,026 (Apr. 8, 2014).

¹²⁵ 145 FERC ¶ 61,023 (Oct. 7, 2013); 147 FERC ¶ 61,027 (Apr. 8, 2014).

- **Orders 773 and 773-A (2nd Cir., 13-2316)**
Underlying FERC Proceedings: RM12-6 and RM12-7¹²⁶
Appellants: NY PSC and People of the State of New York

The NY PSC and the People of the State of New York have petitioned the Second Circuit Court of Appeals for review of FERC's orders on *Orders 773* and *773-A* (Revised "Bulk Electric System" Definition and Procedures). Briefs have thus far been filed as follows: NYPSC/State of NY (May 2, 2014); NARUC (May 28); FERC (August 22); NERC (August 27); NERC reply brief (September 10, 2014).

- **New England's Order 745 Compliance Filing (12-1306)**
Underlying FERC Proceedings: ER11-4336¹²⁷
Appellants: EPSA and NEPGA

On July 16, 2012, EPSA and NEPGA filed a petition for review of FERC's orders on New England's *Order 745* (Demand Response Compensation) filings. On August 16, 2012, EPSA and NEPGA filed a statement of issues as well as an unopposed motion to hold case in abeyance pending the final resolution of Case Nos. 11-1486, et al. (*EPSA et al. v. FERC*) (see *Orders 745* and *745-A* below). On August 23, 2012, the Court granted the motion to hold the case in abeyance. Motions to govern future proceedings will be due 30 days following the course issuance of mandate in the *Order 745* appeal.

- **Orders 1000 and 1000-A (12-1232 consolidated with 12-1233, 12-1250, 12-1276, 12-1279, 12-1280, 12-1285, 12-1292, 12-1293, 12-1296, 12-1299, 12-1300, 12-1304, 12-1448, 12-1478, and 7th Cir. 12-2248)**
Underlying FERC Proceedings: RM10-23¹²⁸
Appellants: SC PSA, Coalition for Fair Transmission, PSEG, and Sacramento Municipal Utility District

Petitions for review of FERC's Orders 1000, 1000-A, and 1000-B, as identified in previous reports, were denied by the DC Circuit in an August 15, 2014 order.¹²⁹ The Court issued a companion order indicating that it would withhold issuance of the mandate until seven days after disposition of any timely petition for rehearing or petition for rehearing *en banc*.

- **FCM Re-Design (12-1060 consolidated with 12-1074, 12-1085, and 12-1149) ****
Underlying FERC Proceedings: ER10-787; EL10-57; EL10-50¹³⁰
Appellants: NEPGA, NSTAR, MMWEC/NHEC, VT DPS/VT PSB, NRG

As previously reported, the DC Circuit denied the petitions for rehearing of the FERC's FCM Re-Design Orders on July 8, 2014.¹³¹ The mandate was issued to the FERC on September 3, 2014. Unless the DC Circuit's decision is appealed to the US Supreme Court, these appeals will be concluded.

¹²⁶ 141 FERC ¶ 61,236 (Dec. 20, 2012); 143 FERC ¶ 61,053 (Apr. 18, 2013).

¹²⁷ 138 FERC ¶ 61,042 (Jan. 19, 2012); 139 FERC ¶ 61,116 (May 17, 2012).

¹²⁸ 136 FERC ¶ 61,051 (Jul. 21, 2011); 139 FERC ¶ 61,132 (May 17, 2012).

¹²⁹ *S. Car. Pub. Serv. Auth. v. Federal Energy Regulatory Commission*, 2014 U.S. App. LEXIS 15674 (Aug. 15, 2014).

¹³⁰ 131 FERC ¶ 61,065 (Apr. 23, 2010); 132 FERC ¶ 61,122 (Aug. 12, 2010); 135 FERC ¶ 61,029 (Apr. 13, 2011); 138 FERC ¶ 61,027 (Jan. 19, 2012).

¹³¹ *New England Power Generators Assoc. v. Federal Energy Regulatory Commission*, 757 F.3d 283; 2014 U.S. App. LEXIS 12802 (Jul. 8, 2014).

- **Orders 745 and 745-A (11-1486 consolidated with 11-1489, 12-1088, 12-1091 and 12-1093)**
Underlying FERC Proceedings: RM10-17-000¹³²
Appellants: EPSA, CAISO, ODEC, EEI, CA PUC

As previously reported, the DC Circuit vacated *Order 745*¹³³ in its entirety as impermissibly encroaching on “states’ exclusive jurisdiction to regulate the retail market” in a 2-1 decision (“Decision”) issued on May 23, 2014. The DC Circuit vacated *Order 745* on two separate and independent grounds. First, it held that the FERC does not have jurisdiction to regulate demand response. The Court reasoned that: (i) the states retain exclusive authority to regulate the retail market; (ii) absent an express statutory grant of authority, the FERC cannot regulate areas left to the states; (iii) the FPA provides the FERC with authority over wholesale sales of electricity, but demand response is not such a sale; (iv) the authority of the FERC to regulate wholesale power rates under the FPA cannot be read so broadly as to allow direct regulation of demand response; and (v) demand response, while not necessarily a retail sale, is part of the retail market, involving retail customers, their decision whether to purchase at retail, and the levels of retail electricity consumption. Therefore, the Court concluded, the FERC has no authority to directly regulate demand response. “FERC’s authority over demand response resources is limited: its role is to assist and advise state and regional programs.”

As an alternative and secondary basis for its decision against *Order 745*, the Court concluded that the FERC order was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” The Court found that the FERC failed to reasonably consider and address arguments that *Order 745* will result in over-compensation of demand response resources, resulting in unjust and discriminatory rates. The Court further found that the FERC failed to demonstrate how its proposed pricing construct would result in just compensation. The Decision and preliminary implications of the Decision were summarized in more detail in the memo included with the supplemental materials circulated and posted for the June 6 meeting.

On July 7, the FERC petitioned the Court for rehearing *en banc* of the May 23 Decision. On July 18, the Court, on its own motion, directed EPSA, APPA, NRECA, Old Dominion and EEI to file a joint response to the FERC petition for rehearing. That response was filed on August 4, 2014. The petition for rehearing is pending before the Court.

- **PPL EnergyPlus, LLC v. Nazarian (4th Cir., 13-2424)**

On June 2, 2014, the 4th Circuit Court of Appeals affirmed the September 30, 2013 decision of the United States District Court for the District of Maryland¹³⁴ which found that a Maryland Public Service Commission (“MD PSC”) order directing three Maryland distribution utilities to enter into a ‘contract for differences’ for capacity and energy in the PJM control area (the “CfD”) with a gas-fired merchant generator selected by the MD PSC (the “MD PSC Order”) violated the Supremacy Clause of the United States Constitution and cannot be

¹³² 134 FERC ¶ 61,187 (Mar. 15, 2011); 137 FERC ¶ 61,215 (Dec. 15, 2011).

¹³³ *Order 745* required RTOs and ISOs to include provisions in their tariffs that assured demand response would be paid at LMP for interrupting their loads when such interruption was cost effective.

¹³⁴ *PPL EnergyPlus, LLC v. Nazarian*, 974 F.Supp. 2d 790 (D. Md. Sep. 30, 2013); 2013 U.S. Dist. LEXIS 140210, 2013 WL 5432346 (“*District Court Decision*”). The *District Court Decision* was summarized in past Litigation Reports.

enforced.¹³⁵ In affirming the District Court decision, the 4th Circuit found the MD PSC Order both field¹³⁶ and conflict pre-empted.¹³⁷

With respect to field pre-emption, the 4th Circuit stated that a “wealth of case law confirms FERC’s exclusive power to regulate wholesale sales of energy in interstate commerce, including the justness and reasonableness of the rates charged.”¹³⁸ It found the federal scheme (i.e. the PJM Market) “carefully calibrated to protect a host of competing interests” (representing “a comprehensive program of regulation that is quite sensitive to external tampering”),¹³⁹ and leaving “no room either for direct state regulation of the prices of interstate wholesales of [energy], or for state regulations which would indirectly achieve the same result.” Accordingly, the 4th Circuit concluded that the MD PSC Order “field preempted because it functionally sets the rate that CPV receives for its sales in the PJM auction.”¹⁴⁰ The MD PSC Order “compromises the integrity of the federal scheme and intrudes on FERC’s jurisdiction” because the MD PSC Order “effectively supplants the rate generated by the auction with an alternative rate preferred by the state.” The 4th Circuit rejected arguments that the CfD payments “represented a separate supply-side subsidy implemented entirely outside the federal market.”¹⁴¹ And, even if the presumption against preemption were to apply, the Court found that that it was “overcome by the text and structure of the FPA, which unambiguously apportions control over wholesale rates to FERC.”¹⁴²

With respect to conflict pre-emption, the 4th Circuit found that the MD PSC Order “presents a direct and transparent impediment to the functioning of the PJM markets, and is therefore preempted”.¹⁴³ Preemption was appropriate because of the “extensive and disruptive” impact of the MD PSC Order on matters within federal control (the PJM markets). It found that the MD PSC Order had “the potential to seriously distort the PJM’s auction’s price signals, thus ‘interfer[ing] with the method by which the federal statute (i.e. the PJM Markets) was designed to reach its goals.’”¹⁴⁴ “Maryland’s initiative disrupts [the PJM scheme] by substituting the state’s preferred incentive structure for that approved by FERC.”¹⁴⁵ “Maryland has sought to achieve through the

¹³⁵ *PPL EnergyPlus, LLC v. Nazarian*, 2014 U.S. App. LEXIS 10155.

¹³⁶ “Field preemption” is a doctrine based on the Supremacy Clause of the U.S. Constitution that holds that any federal law, including regulations of a federal agency, takes precedence over any conflicting state law. Preemption can be implied when federal law/regulation “occupies the field” in which the state is attempting to act/regulate. Field preemption occurs when there is “no room” left for state regulation. Accordingly, a state may not pass a law or take any action in a field, like the regulation of wholesale power sales, pervasively regulated by federal law/regulation.

¹³⁷ “Conflict preemption” occurs where there is a conflict between a state law and a federal law. (“[E]ven if Congress has not occupied the field, state law is naturally preempted to the extent of any conflict with a federal statute.”). Such a conflict occurs when “the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. The court must look to “the entire scheme of the statute” and determine “[i]f the purpose of the [federal] act cannot otherwise be accomplished--if its operation with its chosen field [would] be frustrated and its provisions be refused their natural effect. Where a state law conflicts with a federal law, the Court does not balance the competing federal and state interests. Any state law, however clearly within a State’s acknowledged power, which interferes with or is contrary to federal law, must yield.”

¹³⁸ Slip op. at p. 14.

¹³⁹ *Id.* at p. 10.

¹⁴⁰ *Id.* at p. 16.

¹⁴¹ *Id.* at pp. 18-19.

¹⁴² *Id.* at p. 20. The Court noted the limited scope of its holding, which “is addressed to the specific program at issue” and did not “express an opinion on other state efforts to encourage new generation.” *Id.* at p. 21.

¹⁴³ *Id.* at p. 27.

¹⁴⁴ *Id.* at p. 23.

¹⁴⁵ *Id.* at p. 24. (“Two features of the Order render its likely effect on federal markets particularly problematic. First, as noted, the CfDs are structured to actually set the price received at wholesale. They therefore directly conflict with the auction rates approved by FERC. Second, the duration of the subsidy -- twenty years -- is substantial.”)

backdoor of its own regulatory process what it could not achieve through the front door of FERC proceedings. Circumventing and displacing federal rules in this fashion is not permissible.”¹⁴⁶

Petitions for rehearing *en banc* were filed by MD PSC and CPV Maryland on June 16, 2014. On June 17, 2014, the 4th Circuit stayed the mandate pending the *en banc* ruling on the Petitions. On June 30, 2014, the 4th Circuit denied the petitions for rehearing *en banc*. Unless appealed to the US Supreme Court, these proceedings will be concluded.

• **PPL EnergyPlus, LLC v. Hanna (3d Cir., 13-4330)**

On September 11, 2014, the 3rd Circuit Court of Appeals affirmed¹⁴⁷ the analogous October 11, 2013 decision of the United States District Court for the District of New Jersey declaring unconstitutional (and therefore null and void) New Jersey’s Long Term Capacity Agreement Pilot Program Act (“LCAPP”).¹⁴⁸ In affirming the New Jersey District Court’s decision, the 3rd Circuit concluded:

LCAPP compels participants in a federally-regulated marketplace to transact capacity at prices other than the price fixed by the marketplace. By legislating capacity prices, New Jersey has intruded into an area reserved exclusively for the federal government. Accordingly, federal statutory and regulatory law preempts and, thereby, invalidates LCAPP and the Standard Offer Capacity Agreements.¹⁴⁹

Any petition for rehearing or rehearing *en banc* must be filed on or before September 25, 2014. If no petition for rehearing is filed, any petition for *certiorari* to the U.S. Supreme Court must be filed on or before December 10, 2014.

¹⁴⁶ *Id.* at p. 25.

¹⁴⁷ *PPL EnergyPlus, LLC v. Hanna*, __ F.Supp.2d __ (D. NJ. Oct. 11, 2013); 2013 U.S. Dist. LEXIS 147273, (“*NJ Order*”).

¹⁴⁸ *PPL EnergyPlus, LLC v. Hanna*, 2014 U.S. App. LEXIS ____ (Sep. 11, 2014).

¹⁴⁹ *Id.* slip op. at 31.

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