

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of August 2, 2022

The following activity, as more fully described in the attached litigation report, has occurred since the report dated June 17, 2022 ("last Report") was circulated. New matters/proceedings since the last Report are preceded by an asterisk '*'. Page numbers precede the matter description.

I. Complaints/Section 206 Proceedings



* 1	206 Proceeding: <i>FTR Collateral Show Cause Order</i> (EL22-63)	Jul 28	FERC issues order finding that the ISO-NE Tariff appears to be unjust and unreasonable in the absence of volumetric minimum collateral requirements for FTR Market Participants; ISO-NE response due on or before Oct 26, 2022 ; interventions due on or before Aug 18, 2022
		Jul 29-Aug 2	DC Energy, NRG intervene
2	RENEW/ACPA Resource Capacity Accreditation & Operating Reserve Designation Complaint (EL22-42)	Jul 20 Aug 1	ISO-NE requests expeditious action on Complaint Complainants answer and provide additional support for ISO-NE's request for expedited action
3	NMISA Complaint Against PTO AC (Reciprocal TOUT Discount) (EL22-31)	Jul 28	FERC denies NMISA Complaint

II. Rate, ICR, FCA, Cost Recovery Filings



* 8	Essential Power Newington CIP-IROL (Schedule 17) Section 205 Cost Recovery Filing (ER22-2469)	Jul 22	Essential Power Newington requests recovery of \$360,261 of incremental medium impact CIP-IROL Costs incurred between Feb 18, 2021 and Jun 30, 2022; comment date Aug 12, 2022
		Jul 26	NESCOE intervenes
* 8	GenConn Middletown CIP IROL (Schedule 17) Cost Recovery Schedule Filing (ER22-2367)	Jul 13	GenConn Energy requests FERC acceptance of a proposed rate schedule to allow GenConn Middletown to begin the recovery period for certain CIP-IROL Costs under Schedule 17 of the ISO-NE Tariff; comment date Aug 3, 2022
		Jul 14-Aug 1	CT PURA, Eversource, National Grid, NESCOE intervene
9	FCA16 Results Filing (ER22-1417)	Jul 18	FERC accepts FCA16 Results filing, eff. Jul 19, 2022
9	Constellation Post-Spin Updates to Mystic COS Agreement (ER22-1192)	Jun 23 Jun 28 Jul 14 Jul 26 Jul 29	Settlement Judge issues his first status report Second settlement conference held Third settlement conference held; parties reach agreement in principle Settlement Judge issues his second status report Deputy Chief ALJ substitutes ALJ Patricia French for ALJ Glazer (who retired) to conduct settlement judge procedures going forward
10	Mystic 8/9 COS Agreement First CapEx Info Filing (ER18-1639)	Jun 27 Jul 20	(-017) Mystic request for clarification or reh'g of <i>Mystic First CapEx Info. Filing Order</i> denied by operation of law (-018) Mystic submits for information revision to Fuel Supply Agreement
* 11	Transmission Rate Annual (2022-23) Update/Informational Filing (ER09-1532; RT04-2)	Jul 29	PTO AC submits informational filing identifying adjustments to Regional Transmission Service charges, Local Service, and Schedule 12C Costs under Section II of the Tariff for 2023, and a Schedule 1 formula rate for Jun 1, 2022 to May 31, 2023 (a 2023 RNS Rate of \$140.94/kW-year and a Schedule 1 formula rate of \$1.75 kW-year, decreases of \$1.84/kW-year and \$0.12/kW-year, respectively); this filing will not be noticed for public comment

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

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|------|---|--------------|--|
| * 12 | CSF Revisions (ER22-2546) | Jul 29 | ISO-NE and NEPOOL jointly file Market Rule 1 revisions to allow storage facilities incapable of consuming electricity from the grid to participate in the New England Markets as Continuous Storage Facilities; comment deadline Aug 19, 2022 |
| * 12 | Info Policy Changes: Cyber Security Exigency Sharing Provisions (ER22-2366) | Jul 13 | ISO-NE and NEPOOL jointly file changes to allow ISO-NE to share confidential information with NERC and federal agencies with cyber security responsibilities, without prior, if a cyber-security event occurs' comment date Aug 3, 2022 |
| | | Jul 15-Aug 1 | Calpine, Eversource, National Grid intervene |
| 12 | New England's Order 2222 Compliance Filing (ER22-983) | Jul 8 | AEE, AEMA, PowerOptions, and SEIA file Joint Protest |
| | | Jul 25 | ISO-NE answers Joint Protest |

IV. OATT Amendments / TOAs / Coordination Agreements

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|------|--|---------------|--|
| * 13 | Phase I/II HVDC-TF Order 881 Compliance Filing (ER22-2468 and (ER22-2467) | Jul 22 | ISO-NE, Phase I/II HVDC-TF Asset Owners, and the 20A Service Providers submit an <i>Order 881</i> compliance filing with changes to the HVDC TOA (ER22-2467) and Schedule 20-Common Attachment M (ER22-2468); comment deadline Aug 12, 2022 |
| * 13 | Order 881 Compliance Filing: New England (ER22-2357) | Jul 12 | ISO-NE, NEPOOL, PTO AC, and CSC submit <i>Order 881</i> (Transmission Line Ratings) compliance filing |
| | | Jul 21-Aug 1 | Eversource, Narragansett Electric, National Grid intervene |
| * 14 | Process Modifications - DER Interconnection/Interconnection Study Coordination (ER22-2226) | Jun 29 | ISO-NE, NEPOOL and the PTO AC file Tariff changes to modify the process for interconnection of new distributed energy resources and improve the coordination of interconnection studies |
| | | Jul 15-Jul 26 | Calpine, Borrego, Eversource, National Grid, NRG, MA DPU intervene |
| | | Jul 20 | AEE , ENGIE , SEIA submit comments supporting changes |
| 14 | Attachment F Corrections & Updates (ER22-2021) | Jun 24 | Public Systems intervene |
| | | Aug 1 | FERC accepts corrections & updates, eff. Aug 2, 2022 |

V. Financial Assurance/Billing Policy Amendments**No Activity to Report****VI. Schedule 20/21/22/23 Changes & Agreements**

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|------|---|-----------|--|
| * 15 | Schedule. 20A (Phase I/II HVDC-TF Service Agreement) Reassignm't Agreements: CMP & UI/ BRTM/ HQUS (ER22-2433/32/31) | Jul 19 | Avangrid Networks files 3 Phase I/II HVDC-TF service agreements to transfer the transmission service rights and obligations that Brookfield Renewable Trading & Marketing (BRTM) currently holds under existing TSAs (1 with CMP; 2 with UI) to HQUS |
| | | Jul 28 | BRTM and HQUS file comments supporting Agreements |
| * 15 | Schedule. 20A (Phase I/II HVDC-TF Service Agreement) Reassignm't Agreement: NEP/BRTM/HQUS (ER22-2398) | Jul 18 | NEP files a Phase I/II HVDC-TF service agreements to transfer the transmission service rights and obligations that BRTM currently holds under an existing TSA to HQUS; |
| | | Jul 26-27 | BRTM, HQUS intervene |
| | | Jul 28 | BRTM and HQUS file comments supporting Agreement |
| 16 | Schedule 21-NEP: Revised RI LSAs Compliance Filing (ER22-1918) | Jul 14 | FERC accepts Revised RI LSA (TSA-NEP-86), eff. Jan, 1, 2022 |

VII. NEPOOL Agreement/Participants Agreement Amendments**No Activity to Report**

VIII. Regional Reports



18	Capital Projects Report - 2022 Q1 (ER22-1880)	Jul 11	FERC accepts 2022 Q1 Report, eff. Apr 1, 2022
* 18	LFTR Implementation: 55th Quarterly Status Report (ER07-476)	Jul 15	ISO-NE files its 55th quarterly report

IX. Membership Filings



* 19	Aug 2022 Membership Filing (ER22-2568)	Jul 29	NEPOOL requests that the FERC accept (i) the memberships of Concurrent; Leapfrog Power; Old Middleboro Road Solar; and Accelerate Renewables; and (ii) the termination of the Participant status of Chris Anthony; Indeck Energy-Alexandria; Standard Normal; and Borrego Solar Systems; comment deadline Aug 22, 2022
* 20	July 2022 Membership Filing (ER22-2260)	Jun 29	NEPOOL requests that the FERC accept (i) the termination of the Participant status of Liberty Power Holdings; and (ii) the name change of Astral (f/k/a/ Able Grid) Infrastructure Holdings, LLC
20	Jun 2022 Membership Filing (ER22-1991)	Jul 5	NEPOOL submits corrected transmittal letter
20	May 2022 Membership Filing (ER22-1738)	Jun 24	FERC accepts (i) the memberships of Altop Energy Trading, Indra Power Business CT, Indra Power Business MA, Leicester Street Solar, and Nexamp Markets; and (ii) Salem Harbor Power Development LP's name change, eff. May 1, 2022

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



20	NPCC Bylaws Changes (RR22-2)	Jul 8	FERC conditionally approves changes to NPCC Bylaws, eff. Jul 8, 2022; compliance filing due on or before Sep 6, 2022
		Jul 29	NERC/NPCC request 30-day extension of time, to Oct 6, 2022, to submit compliance filing
21	Rules of Procedure Changes (CMEP Risk-Based Approach Enhancements) (RR21-10)	Jul 18	NERC submits compliance filing reinstating language in its ROP as directed in the FERC's May 19 order; comment date Aug 8, 2022

XI. Misc. - of Regional Interest



* 22	203 Application: Centrica / CPower (EC22-90)	Jul 13	Centrica and CPower request authorization for the sale of 100% of the equity interests in Centrica to CPower; comment deadline Aug 3, 2022
		Jul 14-22	PJM IMM, Public Citizen intervene
* 22	203 Application: Clearway / TotalEnergies (EC22-84)	Jul 1	Clearway requests authorization for, among other things, TotalEnergies acquisition of a 50% percent indirect interest in the Clearway Group
		Jul 13, 27	PJM IMM, PJM (out-of-time) intervene
* 22	203 Application: Waterside Power / KKR (EC22-79)	Jun 22	Applicants request authorization for the sale of 100% of their equity interests to KKR
		Jun 23	Public Citizen intervenes
22	203 Application: Stonepeak/JERA Americas (EC22-71)	Jun 22	MA AG submits comments, Public Citizen protests filing
		Jul 1	Stonepeak answers protest and comments
* 23	Versant MPD OATT Order 881 Compliance Filing (ER22-2358)	Jul 12	Versant Power submits compliance filing
		Aug 1	Versant Power corrects requested eff. date (now Jul 12, 2025)
* 23	VTransco Shared Structure Participation Agreements (ER22-2189)	Jun 24	VTransco files two Shared Structure Participation Agreements between VTransco and Green Mountain Power

23	LGIA: CL&P / EIP Investment (New Britain, CT Fuel Cell) (ER22-1862)	Jul 11	FERC accepts non-conforming LGIA governing the interconnection of EIP's 20 MW fuel cell project, eff. Apr 12, 2022
24	Maine Power Link Application for Negotiated Rate Authority (ER22-1290)	Jun 22	FERC denies Maine Power Link's request for negotiated rate authority (for failure to show that it has assumed the full market risk for the Project)
24	Versant Power MPD OATT Order 676-I Compliance Filing (ER21-2498)	Jun 29	FERC accepts compliance filing, eff. May 1, 2022
25	Orders 864/864-A (Public Util. Trans. ADIT Rate Changes): New England Compliance Filings (various)	Jul 18 Jul 18 Jul 19	ER20-2553 (NEP – MECO/Nantucket LSA). NEP supplements its Jul 30, 2020 compliance filing ER20-2251 (NEP – Sched. 21-NEP and TSA-MEP-22). NEP supplements its Jul 30, 2020 compliance filing ER20-2219 (NEP – Tariff No. 1). NEP supplements its Jun 29, 2020 compliance filing

XII. Misc. - Administrative & Rulemaking Proceedings



26	New England Gas-Electric Winter Forum (AD22-9)	Jul 21	FERC issues supplemental notice of Sep 8, 2022 forum in Burlington, VT, strongly encouraging those interested to promptly register
26	Joint Federal-State Task Force on Electric Transmission (AD21-15)	Jul 15 Jul 20	FERC issues order listing State Commissioners that will serve on the JFSTF for the Sep 1, 2022 – Aug 31, 2023 term FERC convenes fourth JFSTF meeting
28	Increasing Market and Planning Efficiency Through Improved Software Tech Conf (Jun 21-23, 2022) (AD10-12)	Jun 21-23 Jul 14 Jul 28	FERC holds 13 th annual tech conf FERC issues second supplemental notice attaching a corrected final agenda and speakers' summaries of their presentations Post-tech conf comments filed
* 28	NOPR: Duty of Candor (RM22-20)	Jul 28	FERC issue NOPR proposing to add a new section to its regulations to require that any entity communicating with the FERC or other specified organizations (e.g. ISO/RTOs and their market monitors, NERC and its Regional Entities, transmission providers) related to a matter subject to FERC jurisdiction submit accurate and factual information and not submit false or misleading information, or omit material information; comments and reply comments due [60 days after publication in the Fed. Reg.]
29	NOPR: Extreme Weather Vulnerability Assessments (RM22-16; AD21-13)	Jul 1	NOPR published in <i>Federal Register</i> ; initial comments due Aug 30, 2022
29	NOPR: Interconnection Reforms (RM22-14)	Jul 5	NOPR published in <i>Federal Register</i> ; initial comments due Oct 13, 2022 ; reply comments, Nov 14, 2022
* 31	NOPR: ISO/RTO Credit Information Sharing (RM22-13)	Jul 28	FERC issues NOPR proposing to revise its regulations to permit ISO/RTOs to share among themselves credit-related information regarding market participants; comments and reply comments due [60 days and 90 days, respectively, after publication in the Fed. Reg.]
31	NOPR: Transmission System Planning Performance Requirements for Extreme Weather (RM22-10)	Jun 27	NOPR published in <i>Federal Register</i> ; initial comments due Aug 26, 2022

33	Transmission NOPR (RM21-17)	Jul 8-18	Microgrid Resources Coalition , Smart Electric Power Alliance , Tabors Caramanis submit comments
		Jul 27	GA PSC asked for an additional 30 days for comments and reply comments; absent extension, comments due Aug 17, 2022 ; reply comments, Sep 19, 2022
34	NOI: Removing the DR Opt-Out in ISO/RTO Markets (RM21-14)	Jul 1 Jul 15-Aug 1	Voltus submits comments in support of eliminating the DR Opt-Out Mississippi PSC , R. Borlick respond to Voltus comments
* 35	NOPR: Acct'ng and Reporting Treatment of Certain Renewable Energy Assets (RM21-11)	Jul 28	FERC issues NOPR proposing reforms to the USofA to account for certain renewable energy assets; comments and reply comments due [45 days after publication in the Fed. Reg.]

XIII. FERC Enforcement Proceedings

* 38	Salem Harbor (IN18-8)	Jun 27	FERC approves Stipulation and Consent Agreement that resolved OE's investigation into Salem Harbor's receipt of capacity payments for its New Salem Harbor Generating Station project during the 2017-18 Capacity Commitment Period, a period during which the Project had neither been built nor commenced commercial operation; Salem Harbor must (subject to any limitation imposed by its bankruptcy cases) disgorge \$26.7 million , and pay a \$17.1 million civil penalty
* 40	M3/Utica East/UEOM (IN22-6)	Jun 24	FERC approves Stipulation and Consent Agreement that resolved OE's investigation into M3's and Utica East's failure to submit Utica East's FERC Form No. 6s over a 6-year period; M3 must pay a \$30,000 civil penalty
* 39	sPower Development Company (IN22-5)	Jun 24	FERC approves Stipulation and Consent Agreement that resolved OE's investigation into whether sPower violated § 36.2A of the PJM Tariff by submitting inaccurate information to PJM during the interconnection process; sPower must pay a \$24,000 civil penalty
42	Total Gas & Power North America, Inc. et al. (IN12-17)	Jul 1-22 Jul 5 Jul 13	OE and Petitioners submit revised testimony and exhibits OE opposes Respondents motion to dismiss or stay proceedings Chief Judge denies motion for appointment of special discovery judge

XIV. Natural Gas Proceedings

43	Northern Access Project (CP15-115)	Jun 29	FERC grants Applicants' request for an additional extension of time; Applicants now have until Dec 31, 2024 to construct and place the Project into service
		Jul 22	Rehearing requested of Jun 29 order

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

46	2nd Revised Narragansett LSA Orders (22-1108, 22-1161) (consol.)	Jul 14	Green Development petitions DC Circuit for review of the FERC's <i>2nd Rev Narragansett LSA Allegheny Order</i>
		Jul 15	Court consolidates 2 nd Rev Narragansett LSA cases
		Jul 18	Green Development files initial submissions
		Jul 28	FERC files Certified Index to the Record

47	Mystic ROE (21-1198 et al.) (consol.)	Jul 8	CT Parties and ENECOS jointly move to hold these proceedings in abeyance until 30 days after opinion issues in <i>MISO TOs</i> (16-1325)
		Jul 12	Constellation opposes abeyance request
		Jul 19	CT Parties and ENECOS reply to Constellation opposition
		Jul 27	Court grants abeyance request
48	CASPR (20-1333, 21-1031) (consolidated)**	Jul 22	Petitioners seek third abeyance of proceedings (until Mar 1, 2024)
		Jul 25	Court grants third abeyance request
50	Algonquin Atlantic Bridge Project Cases (21-1115 et al.)	Jun 30	First Circuit transfers cases 20-1458 and 22-1201 to the DC Circuit, subsequently docketed as cases 22-1146 and 22-1147, and consolidates the cases with its pending Atlantic Bridge Project cases
		Jul 19	Parties file motion to sever cases 22-1146/47, propose a briefing schedule for the severed cases, and ask that the remaining cases continue to be held in abeyance

M E M O R A N D U M

TO: NEPOOL Participants Committee Members and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: August 2, 2022

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"),¹ state regulatory commissions, and the Federal Courts and legislatures through August 2, 2022. If you have questions, please contact us.

I. Complaints/Section 206 Proceedings

- **206 Proceeding: FTR Collateral Show Cause Order (EL22-63)**

On July 28, 2022, the FERC instituted a Section 206 proceeding finding that the existing tariffs of certain ISO/RTOs, including the ISO-NE Tariff, appear to be unjust and unreasonable.² The FERC found that ISO-NE's Tariff appears to be unjust and unreasonable in the absence of volumetric minimum collateral requirements for FTR Market Participants ("volumetric FTR collateral requirements"). Accordingly, ISO-NE was directed, on or before October 26, 2022, to either: (1) show cause as to why the Tariff remains just and reasonable and not unduly discriminatory or preferential; or (2) explain what changes to the Tariff it believes would remedy the identified concerns if the FERC were to determine that the Tariff has in fact become unjust and unreasonable or unduly discriminatory or preferential.³ Alternatively, if it is so inclined, ISO-NE may propose Tariff revisions on the subject of the *FTR Collateral Show Cause Order* under FPA Section 205 and request that these proceedings be held in abeyance pending disposition of that proceeding.⁴

This 206 order follows PJM's *Green Hat* experience,⁵ a 2019 request by the Energy Trading Institute requesting a FERC-convened technical conference to consider a potential rulemaking to improve ISO/RTO credit practices,⁶ and a two-day technical conference in February 2021 that discussed principles and best practices for credit risk management in organized wholesale electric markets.⁷ In the *FTR Collateral Show Cause Order*, the

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

² *CAISO, ISO-NE, NYISO, and SPP*, 180 FERC ¶ 61,049 (July 28, 2022) ("*FTR Collateral Show Cause Order*").

³ *Id.* at P 31.

⁴ *Id.* at P 32.

⁵ See *GreenHat Energy, LLC*, 175 FERC ¶ 61,138 (2021) (order to show cause) (*GreenHat Show Cause Order*); *GreenHat Energy, LLC*, 177 FERC ¶ 61,073 (2021) (order assessing civil penalties). In June 2018, GreenHat Energy LLC ("GreenHat") defaulted on its obligations to PJM after amassing one of the largest FTR portfolios in the PJM region. At the time of its default, GreenHat had only \$559,447 on deposit as collateral with PJM and no other material assets. However, over the subsequent three-year period ending in May 2021, this FTR portfolio incurred approximately \$179 million in losses, which were borne by non-defaulting market participants in PJM.

⁶ Energy Trading Institute Request for Technical Conference and Petition for Rulemaking to Update Credit and Risk Management Rules and Procedures in the Organized Markets, *Credit Reforms in Organized Wholesale Electric Markets*, Docket No. AD20-6-000 (Dec. 16, 2019).

⁷ See Supp. Notice of Tech. Conf., *RTO/ISO Credit Principles and Practices*, Docket No. AD21-6, et al. (Feb. 10, 2021).

FERC stated that, although the record developed through the technical conference highlighted numerous different approaches to managing credit risk, “we believe that two specific practices may be particularly critical to effectively managing credit risk for FTRs: the use of a mark-to-auction mechanism and a volumetric minimum collateral requirement for FTRs.”⁸ ISO-NE has implemented a mark-to-auction mechanism but not volumetric FTR collateral requirements.

The FERC issued on July 28, 2022, a notice of this proceeding and of the refund effective date, which will be the date of publication of the notice in the *Federal Register* (which has not yet happened). Those interested in participating in this proceeding are required to intervene on or before **August 18, 2022**. Thus far, doc-less interventions have been filed by DC Energy and NRG. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **RENEW/ACPA Resource Capacity Accreditation & Operating Reserve Designation Complaint (EL22-42)**

As previously reported, RENEW Northeast, Inc. (“RENEW”) and the American Clean Power Association (“ACPA”) filed a Complaint on March 15, 2022 under Section 206 of the Federal Power Act (“FPA”) against ISO-NE seeking a FERC order directing ISO-NE to make changes to its rules for capacity accreditation and operating reserve designations, effective no later than FCA18 with respect to capacity accreditation and promptly with respect to operating reserve designations. RENEW/ACPA asserted that the changes are needed to address undue preferences granted under ISO-NE’s rules and procedures to gas-fired generation resources that have neither dual-fuel capability nor dedicated, firm natural gas supply arrangements (“Gas-Only Resources”). Complainants asserted that the undue preferences arise in the context of capacity accreditation through an assumption of 100% fuel availability for Gas-Only Resources, and in the context of operating reserves, through the absence of any pre-dispatch requirements to confirm fuel availability. ISO-NE’s response and comments, following a request for extension granted by the FERC, were due on or before April 14, 2022.

On April 14, 2022, [ISO-NE](#) responded to the Complaint. Protests and comments on the Complaint were filed by: [NEPOOL](#), [AEE](#), [Calpine](#), [EDF](#), [FirstLight](#), [LS Power](#), [NEPGA](#), [NESCOE](#), [Public Interest Orgs](#),⁹ [Vistra/LSP Power](#), [State Parties](#),¹⁰ [EPSA](#), [National Hydropower Assoc.](#), and the Solar Energy Industries Association (“[SEIA](#)”). On April 29, RENEW/ACPA answered the ISO-NE and NEPOOL motions to dismiss and answered the protests and comments filed in opposition to the Complaint. On May 17, ISO-NE answered the April 29 RENEW/ACPA answer. Interventions only were filed by AEP, Avangrid, Avangrid Renewables, Borrego, Brookfield, Constellation, CPV, Towantic, Dominion, ENE, Excelebrate, National Grid, NextEra, NH OCA, North East Offshore, NRG, Public Systems,¹¹ CT PURA, MA DPU, MPUC, Repsol, APPA, EPSA, the Institute for Policy Integrity at New York University School of Law, and Public Citizen. Since the last Report, on July 20, 2022, ISO-NE submitted a letter requested expeditious action on the Complaint (a request NEPOOL supported). Complainant supported the request for expedited action on August 1, 2022 (adding that the FERC “should grant the Complaint and direct ISO-NE to submit a compliance

⁸ The FERC explained that (i) the mark-to-auction mechanism mitigates the risk of default by updating collateral requirements to reflect the most recent valuation of the FTR position and (ii) volumetric FTR collateral requirements ensure that a market participant is required to post a minimum amount of collateral to cover potential defaults, even when the market participant has offsetting positions. With respect to volumetric FTR collateral requirements, the FERC expressed a concern that netting of FTRs with negative collateral requirements against FTRs with positive collateral requirements can lead to insufficient collateral for a portfolio’s risk should future congestion be significantly different than historical congestion. Without explicit \$/MWh volumetric FTR collateral requirements, the FERC is “concerned that market participants may be able to minimize their collateral requirements without a corresponding reduction in risk”. The ISO-NE Financial Assurance Policy (“FAP”) allows for some limited offsetting. See FAP § VI (allowing for netting of FTRs with the same or opposite path, same contract month and type). *FTR Collateral Show Cause Order* at PP 28-29.

⁹ “Public Interest Orgs” are the Sustainable FERC Project, Acadia Center, Conservation Law Foundation (“CLF”), Sierra Club, and Natural Resources Defense Council (“NRDC”).

¹⁰ “State Parties” are the Connecticut Department of Energy and Environmental Protection (“CT DEEP”), the Massachusetts Attorney General (“MA AG”), and the Connecticut Attorney General (“CT AG”).

¹¹ “Public Systems” are Connecticut Municipal Electric Energy Cooperative (“CMEEC”), Massachusetts Municipal Wholesale Electric Company (“MMWEC”), New Hampshire Electric Cooperative, Inc. (“NHEC”), and Vermont Public Power Supply Authority (“VPPSA”).

filing that timely implements the proposed remedies”, and could address the wish for “constructive *ex parte* communications with [FERC] Staff ... with an appropriately crafted waiver of the *ex parte* limitations”). No action has yet been taken and this Complaint remains pending before the FERC. If you have any questions concerning this Complaint, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **NMISA Complaint Against PTO AC (Reciprocal TOUT Discount) (EL22-31)**

On July 28, 2022, the FERC denied the Northern Maine Intendent System Administrator’s (“NMISA”) complaint against the Participating Transmission Owners (“PTOs”) Administrative Committee (“PTO AC”), holders of the exclusive Section 205 rights in this matter, for failure to consider and implement a reciprocal discount to the Through and Out (“TOUT”) charges applied to transactions between the New England and Northern Maine regions (“TOUT Discount”).¹² In denying the Complaint, the FERC found that “NMISA has not demonstrated that the failure of the PTO AC and ISO-NE to offer NMISA reciprocal treatment is unduly discriminatory or preferential”.¹³ Specifically, the FERC cited its longstanding policy permitting such charges, found for a number of reasons NYISO and NMISA not similarly situated, and noted that NMISA’s showing that the proposed approach might be superior for NMISA insufficient to meet its statutory burden. Challenges, if any, to the order denying the Complaint are due on or before August 29, 2022. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **206 Proceeding: ISO-NE Tariff Schedule 25 and Section I.3.10 (EL21-94)**

As previously reported, the FERC instituted on September 7, 2021 a proceeding under FPA Section 206 to consider whether Schedule 25 and Tariff section I.3.10 may be unjust and unreasonable.¹⁴ This proceeding arises out of issues raised in the NECEC Transmission LLC (“NECEC”)/Avangrid Complaint Against NextEra/Seabrook (related to the interconnection of the New England Clean Energy Connect transmission project (“NECEC Project”)) summarized below (EL21-6). Specifically, the FERC identified a concern that “Schedule 25’s definition of Affected Party and Tariff section I.3.10 may be unjust and unreasonable to the extent they may allow generating facilities and their components to be identified as facilities on which adverse impacts must be remedied before an elective transmission upgrade can interconnect to the ISO-NE transmission system, even though generators are not subject to the [FERC]’s open access transmission principles,” and could result in upgrades identified on an Affected Party’s system without any obligation for the Affected Party to construct the identified upgrades.¹⁵

Accordingly, the FERC directed ISO-NE to: (1) show cause as to why Schedule 25 and Tariff section I.3.10 remain just and reasonable or (2) explain what changes to Schedule 25 and/or Tariff section I.3.10 it believes would remedy the identified concerns if the FERC were to determine that Schedule 25 and/or Tariff section I.3.10 has become unjust and unreasonable and proceeds to establish a replacement rate. On September 8, 2021, the FERC issued a notice of the proceeding and of the refund effective date, which will be October 13, 2020 (the date the NECEC/Avangrid Complaint Against NextEra/Seabrook was filed). Those interested in participating in this proceeding were required to intervene on or before October 5, 2021.¹⁶ NEPOOL, NESCOE, Brookfield, Calpine, Dominion, Eversource, HQ US, LS Power, MA AG, MMWEC, National Grid, NECEC Transmission, NEPGA, NextEra, NRG, CT DEEP, MA DOER, Pixelle Androscoggin (out-of-time), Vistra (out-of-time), ACPA, EPSA, RENEW, and Public Citizen intervened.

¹² *Northern Maine Indep. Sys. Administrator, Inc. v. ISO New England Participating Transmission Owners Administrative Comm.*, 180 FERC ¶ 61, 044 (July 28, 2022) (order denying reciprocal TOUT discount complaint).

¹³ *Id.* at PP 14-15.

¹⁴ *NECEC Transmission LLC and Avangrid, Inc. v. NextEra Energy Resources, LLC et al. and ISO New England Inc.*, 176 FERC ¶ 61,148 (Sep. 7, 2021) (“Sep 7 Order”).

¹⁵ *Id.* at P 20.

¹⁶ The Notice was published in the *Fed. Reg.* on Sep. 14, 2021 (Vol. 86, No. 175) p. 51,140.

ISO-NE Answer. On November 8, 2021, ISO-NE submitted its answer explaining why Schedule 25 and Tariff section I.3.10 remain just and reasonable. ISO-NE called for the FERC to “assist Affected Parties and Interconnection Customers in resolving any disputes pertaining to upgrades on Affected Systems—such as the dispute between NECEC Transmission and NextEra Energy Seabrook, LLC in Docket No. EL21-6—as quickly as possible.” Interested parties had until January 7, 2022 to address whether ISO-NE’s existing Tariff remains just and reasonable and if not, what changes to ISO-NE’s Tariff should be implemented as a replacement rate.

Comments. Comments were filed by the January 7, 2022 deadline by [NEPOOL](#), [NECEC/Avangrid](#), [NEPGA](#), [NextEra](#). On January 20 [NextEra](#) answered the NECEC/Avangrid comments. On January 28, [NECEC](#) answered NextEra’s January 20 answer and [ISO-NE](#) answered NECEC’s Jan 7 comments.

This matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **NECEC/Avangrid Complaint Against NextEra/Seabrook (EL21-6)**

Still pending before the FERC is the October 13, 2020 complaint by NECEC and Avangrid Inc. (together, “Avangrid”) requesting FERC action “to stop NextEra from unlawfully interfering with the interconnection of the NECEC Project and seeking, among other things, an initial, expedited order that would grant certain relief¹⁷ and direct NextEra to immediately commence engineering, design, planning and procurement activities that are necessary for NextEra to construct the generator owned transmission upgrades during Seabrook Station’s Planned 2021 Outage (the “Complaint”). NextEra submitted an answer to the Complaint (requesting the FERC dismiss or deny the Complaint) and National Grid filed comments. Doc-less interventions only were filed by Dominion, Eversource, Calpine, Exelon, HQ US, MA AG, MMWEC, NESCOE, NRG, and Public Citizen. Avangrid answered NextEra’s answer and NextEra answered Avangrid’s answer (“supplemental answer”), repeating its request that the FERC dismiss or deny the Complaint. Avangrid subsequently answered the supplemental answer.

Amended Complaint. On March 26, 2021, Avangrid amended the Complaint to reflect that aspects of the relief originally requested in the Complaint were no longer feasible within the timeline previously sought. Avangrid continued to seek expeditious FERC action, requesting in its March 26 filing a FERC order on or before May 7, 2021 (which did not occur). On April 15, 2021, NextEra answered the amended Complaint. On April 20, 2021, Avangrid answered NextEra’s April 15 answer. On May 6, 2021, ISO-NE submitted a letter to express importance of prompt resolution of these matters. On May 17, Avangrid submitted a letter supporting ISO-NE’s May 6, 2021 letter.

Additional Briefing. On September 7, 2021, the FERC issued an order establishing additional briefing in this proceeding and instituted a broader Section 206 proceeding (see EL21-94 above).¹⁸ Initial briefs¹⁹ were due on

¹⁷ Directing NextEra to comply with the ISO-NE OATT, to comply with open access requirements, and to cease and desist unlawful interference with the NECEC Project; and to have the FERC temporarily revoke NextEra’s blanket waiver under Part 358 of the FERC’s regulations and to initiate an investigation and require NextEra to preserve and provide documents related to the interconnection of the NECEC Project.

¹⁸ *NECEC Transmission LLC and Avangrid, Inc. v. NextEra Energy Resources, LLC et al. and ISO New England Inc.*, 176 FERC ¶ 61,148 (Sep. 7, 2021).

¹⁹ The FERC requested additional briefing from the Parties, as well as from ISO-NE, on the following issues: (i) whether or not Seabrook’s breaker is properly identified as a part of Seabrook’s generating facility; (ii) if Seabrook’s breaker is part of Seabrook’s generating facility, under what authority, if any, Seabrook may be subject to the upgrade obligations imposed on Affected Parties under the ISO-NE Tariff; (iii) if Seabrook’s breaker is part of Seabrook’s generating facility, what obligations, if any, Seabrook has under its LGIA with respect to replacement of the breaker and whether or not ISO New England Operating Documents and Applicable Reliability Standards impose an obligation to replace the breaker. If Seabrook’s breaker is appropriately classified as a system protection facility, what obligations Seabrook has to replace the breaker. If the Seabrook LGIA obligates Seabrook to act, a description of the scope of Seabrook’s obligation under the LGIA; (iv) whether there exists any solution for the interconnection of the NECEC Project that may be implemented without the replacement of Seabrook’s breaker; and (v) If replacement of Seabrook’s breaker is necessary for the interconnection of the NECEC Project,

or before October 7, 2021, and were filed by [ISO-NE](#), [Avangrid](#), [NextEra](#), [MA AG](#), [NEPGA/EPSC](#), [MA DOER](#). Reply briefs were due on or before October 22, 2021, and were filed by [Avangrid](#), [NextEra](#), [ISO-NE](#). Avangrid answered NextEra's November 4 answer, NextEra moved to lodge a letter from a Branch Chief of the Nuclear Regulatory Commission ("NRC"), including an Inspection Report for Seabrook Station for the time period from July 1, 2021 through September 30, 2021 (together, the "NRC Seabrook Report"), to directly refute a central claim of Avangrid (that Seabrook should have already replaced the Generation Breaker at issue in this proceeding). Avangrid opposed that motion to lodge (asserting that the NRC Seabrook Report is outside the scope of these proceedings and will not assist the FERC in its decision making). With briefing complete, this matter is again pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **NextEra Energy Seabrook Declaratory Order Petition re: NECEC Elective Upgrade Costs Dispute (EL21-3)**

In a related matter, and also still pending before the FERC, is a Petition for a Declaratory Order filed by NextEra Energy Seabrook, LLC ("Seabrook") a week earlier than the Avangrid Complaint that seeks clarity on the scope of Seabrook's "FERC-jurisdictional regulatory obligations with respect to the project ("NECEC Elective Upgrade"), and to resolve its dispute with NECEC" (the "Seabrook Petition"). Specifically, Seabrook asked the FERC to declare that: (1) Seabrook is not required to incur a financial loss to upgrade, for NECEC's sole benefit, a 24.5 kV generator circuit breaker and ancillary equipment ("Generation Breaker") at Seabrook Station; (2) "Good Utility Practice" for replacement of the nuclear plant Generation Breaker is defined in terms of the practices of the nuclear power industry, such that Seabrook's proposed definition of that term is appropriate for use in a facilities agreement with NECEC; and (3) Seabrook will not be liable for consequential damages for the service it provides to NECEC under a facilities agreement (collectively, the "Requested Declarations"). Alternatively, Seabrook asked that the FERC declare that nothing in ISO-NE's Tariff requires Seabrook to enter into an agreement to replace the Generation Breaker, and therefore, Seabrook and the Joint Owners are entitled to bargain for appropriate terms and conditions to recover their costs, to define Good Utility Practice, and to limit liability associated with providing the service ("Alternative Declaration").

Comments on the Seabrook Petition were filed by Eversource, MMWEC and NEPGA. Avangrid and NECEC Transmission (together, "Avangrid") protested the Seabrook Petition. Doc-less interventions only were filed by Dominion, Eversource, Calpine, Exelon, HQ US, National Grid, NESCOE, NRG, and Public Citizen. NextEra answered Avangrid's protest and Avangrid answered NextEra's answer. On May 6, 2021, ISO-NE submitted a letter in this proceeding, as well as in EL21-6, to express importance of prompt resolution of these matters. NextEra moved to lodge both an August 29, 2021 filing containing an executed Engineering and Procurement Agreement ("E&P Agreement") between Seabrook and NECEC that was filed with the FERC on August 19, 2021 and the NRC Seabrook Report. Avangrid answered that motion, asserting that the NRC Seabrook Report was outside the scope of the proceeding and the motion to lodge should be denied. This matter remains pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Base ROE Complaints I-IV: (EL11-66, EL13-33; EL14-86; EL16-64)**

There are four proceedings pending before the FERC in which consumer representatives seek to reduce the TOs' return on equity ("Base ROE") for regional transmission service.

- **Base ROE Complaint I (EL11-66).** In the first Base ROE Complaint proceeding, the FERC concluded that the TOs' ROE had become unjust and unreasonable,²⁰ set the TOs' Base ROE at 10.57%

whether there exists any interim solution for the interconnection of the NECEC Project that would allow energization of the NECEC Project prior to the replacement of Seabrook's breaker.

²⁰ The TOs' 11.14% pre-existing Base ROE was established in *Opinion 489. Bangor Hydro-Elec. Co.*, Opinion No. 489, 117 FERC ¶ 61,129 (2006), *order on reh'g*, 122 FERC ¶ 61,265 (2008), *order granting clarif.*, 124 FERC ¶ 61,136 (2008), *aff'd sub nom.*, Conn. Dep't of Pub. Util. Control v. FERC, 593 F.3d 30 (D.C. Cir. 2010) ("*Opinion 489*").

(reduced from 11.14%), capped the TOS' total ROE (Base ROE plus transmission incentive adders) at 11.74%, and required implementation effective as of October 16, 2014 (the date of *Opinion 531-A*).²¹ However, the FERC's orders were challenged, and in *Emera Maine*,²² the U.S. Court of Appeals for the D.C. Circuit ("DC Circuit") vacated the FERC's prior orders, and remanded the case for further proceedings consistent with its order. The FERC's determinations in *Opinion 531* are thus no longer precedential, though the FERC remains free to re-adopt those determinations on remand as long as it provides a reasoned basis for doing so.

- **Base ROE Complaints II & III (EL13-33 and EL14-86) (consolidated).** The second (EL13-33)²³ and third (EL14-86)²⁴ ROE complaint proceedings were consolidated for purposes of hearing and decision, though the parties were permitted to litigate a separate ROE for each refund period. After hearings were completed, ALJ Sterner issued a 939-paragraph, 371-page *Initial Decision*, which lowered the base ROEs for the EL13-33 and EL14-86 refund periods from 11.14% to 9.59% and 10.90%, respectively.²⁵ The *Initial Decision* also lowered the ROE ceilings. Parties to these proceedings filed briefs on exception to the FERC, which has not yet issued an opinion on the ALJ's *Initial Decision*.
- **Base ROE Complaint IV (EL16-64).** The fourth and final ROE proceeding²⁶ also went to hearing before an Administrative Law Judge ("ALJ"), Judge Glazer, who issued his initial decision on March 27, 2017.²⁷ The *Base ROE IV Initial Decision* concluded that the currently-filed base ROE of 10.57%, which may reach a maximum ROE of 11.74% with incentive adders, was **not** unjust and unreasonable for the Complaint IV period, and hence was not unlawful under Section 206 of the

²¹ *Coakley Mass. Att'y Gen. v. Bangor Hydro-Elec. Co.*, 147 FERC ¶ 61,234 (2014) ("*Opinion 531*"), order on paper hearing, 149 FERC ¶ 61,032 (2014) ("*Opinion 531-A*"), order on reh'g, 150 FERC ¶ 61,165 (2015) ("*Opinion 531-B*").

²² *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*"). *Emera Maine* vacated the FERC's prior orders in the Base ROE Complaint I proceeding, and remanded the case for further proceedings consistent with its order. The Court agreed with both the TOs (that the FERC did not meet the Section 206 obligation to first find the existing rate unlawful before setting the new rate) and "Customers" (that the 10.57% ROE was not based on reasoned decision-making, and was a departure from past precedent of setting the ROE at the midpoint of the zone of reasonableness).

²³ The 2012 Base ROE Complaint, filed by Environment Northeast (now known as Acadia Center), Greater Boston Real Estate Board, National Consumer Law Center, and the NEPOOL Industrial Customer Coalition ("NICC", and together, the "2012 Complainants"), challenged the TOS' 11.14% ROE, and seeks a reduction of the Base ROE to 8.7%.

²⁴ The 2014 Base ROE Complaint, filed July 31, 2014 by the Massachusetts Attorney General, together with a group of State Advocates, Publicly Owned Entities, End Users, and End User Organizations (together, the "2014 ROE Complainants"), seeks 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 ROE 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.

²⁵ *Environment Northeast v. Bangor Hydro-Elec. Co. and Mass. Att'y Gen. v. Bangor Hydro-Elec. Co.*, 154 FERC ¶ 63,024 (Mar. 22, 2016) ("*2012/14 ROE Initial Decision*").

²⁶ The 4th ROE Complaint asked the FERC to reduce the TOS' current 10.57% return on equity ("Base ROE") to 8.93% and to determine that the upper end of the zone of reasonableness (which sets the incentives cap) is no higher than 11.24%. The FERC established hearing and settlement judge procedures (and set a refund effective date of April 29, 2016) for the 4th ROE Complaint on September 20, 2016. Settlement procedures did not lead to a settlement, were terminated, and hearings were held subsequently held December 11-15, 2017. The September 26, 2016 order was challenged on rehearing, but rehearing of that order was denied on January 16, 2018. *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 156 FERC ¶ 61,198 (Sep. 20, 2016) ("*Base ROE Complaint IV Order*"), reh'g denied, 162 FERC ¶ 61,035 (Jan. 18, 2018) (together, the "*Base ROE Complaint IV Orders*"). The *Base ROE Complaint IV Orders*, as described in Section XVI below, have been appealed to, and are pending before, the DC Circuit.

²⁷ *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 162 FERC ¶ 63,026 (Mar. 27, 2018) ("*Base ROE Complaint IV Initial Decision*").

FPA.²⁸ Parties in this proceeding filed briefs on exception to the FERC, which has not yet issued an opinion on the *Base ROE IV Initial Decision*.

October 16, 2018 Order Proposing Methodology for Addressing ROE Issues Remanded in *Emera Maine and Directing Briefs*. On October 16, 2018, the FERC, addressing the issues that were remanded in *Emera Maine*, proposed a new methodology for determining whether an existing ROE remains just and reasonable.²⁹ The FERC indicated its intention that the methodology be its policy going forward, including in the four currently pending New England proceedings (*see, however, Opinion 569-A*³⁰ (EL14-12; EL15-45) in Section XI below). The FERC established a paper hearing on how its proposed methodology should apply to the four pending ROE proceedings.³¹

At highest level, the new methodology will determine whether (1) an existing ROE is unjust and unreasonable under the first prong of FPA Section 206 and (2) if so, what the replacement ROE should be under the second prong of FPA Section 206. In determining whether an existing ROE is unjust and under the first prong of Section 206, the FERC stated that it will determine a “composite” zone of reasonableness based on the results of three models: the Discounted Cash Flow (“DCF”), Capital Asset Pricing Model (“CAPM”), and Expected Earnings models. Within that composite zone, a smaller, “presumptively reasonable” zone will be established. Absent additional evidence to the contrary, if the utility’s existing ROE falls within the presumptively reasonable zone, it is not unjust and unreasonable. Changes in capital market conditions since the existing ROE was established may be considered in assessing whether the ROE is unjust and unreasonable.

If the FERC finds an existing ROE unjust and unreasonable, it will then determine the new just and reasonable ROE using an averaging process. For a diverse group of average risk utilities, FERC will average four values: the midpoints of the DCF, CAPM and Expected Earnings models, and the results of the Risk Premium model. For a single utility of average risk, the FERC will average the medians rather than the midpoints. The FERC said that it would continue to use the same proxy group criteria it established in *Opinion 531* to run the ROE models, but it made a significant change to the manner in which it will apply the high-end outlier test.

The FERC provided preliminary analysis of how it would apply the proposed methodology in the Base ROE I Complaint, suggesting that it would affirm its holding that an 11.14% Base ROE is unjust and unreasonable. The FERC suggested that it would adopt a 10.41% Base ROE and cap any preexisting incentive-based total ROE at 13.08%.³² The new ROE would be effective as of the date of *Opinion 531-A*, or October 16, 2014. Accordingly, the issue to be addressed in the Base ROE Complaint II proceeding is whether the ROE established on remand in the first complaint proceeding remained just and reasonable based on financial data for the six-month period September 2013 through February 2014 addressed by the evidence presented by the participants in the second proceeding. Similarly, briefing in the third and fourth complaints will have to

²⁸ *Id.* at P 2.; Finding of Fact (B).

²⁹ *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (Oct. 18, 2018) (“*Order Directing Briefs*” or “*Coakley*”).

³⁰ *Ass’n of Buss. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569-A, 171 FERC ¶ 61,154 (2020) (“*Opinion 569-A*”). The refinements to the FERC’s ROE methodology included: (i) the use of the Risk Premium model instead of only relying on the DCF model and CAPM under both prongs of FPA Section 206; (ii) adjusting the relative weighting of long- and short-term growth rates, increasing the weight for the short-term growth rate to 80% and reducing to 20% the weight given to the long-term growth rate in the two-step DCF model; (iii) modifying the high-end outlier test to treat any proxy company as high-end outlier if its cost of equity estimated under the model in question is more than 200% of the median result of all the potential proxy group members in that model before any high- or low-end outlier test is applied, subject to a natural break analysis. This is a shift from the 150% threshold applied in *Opinion 569*; and (iv) calculating the zone of reasonableness in equal thirds, instead of using the quartile approach that was applied in *Opinion 569*.

³¹ *Id.* at P 19.

³² *Id.* at P 59.

address whether whatever ROE is in effect as a result of the immediately preceding complaint proceeding continues to be just and reasonable.

The FERC directed participants in the four proceedings to submit briefs regarding the proposed approaches to the FPA section 206 inquiry and how to apply them to the complaints (separate briefs for each proceeding). Additional financial data or evidence concerning economic conditions in any proceeding must relate to periods before the conclusion of the hearings in the relevant complaint proceeding. Following a FERC notice granting a request by the TOs and Customers³³ for an extension of time to submit briefs, the latest date for filing initial and reply briefs was extended to January 11 and March 8, 2019, respectively. On January 11, initial briefs were filed by EMCOS, Complainant-Aligned Parties, TOs, Edison Electric Institute (“EEI”), Louisiana PSC, Southern California Edison, and AEP. As part of their initial briefs, each of the Louisiana PSC, SEC and AEP also moved to intervene out-of-time. Those interventions were opposed by the TOs on January 24, 2019. The Louisiana PSC answered the TOs’ January 24 motion on February 12. Reply briefs were due March 8, 2019 and were submitted by the TOs, Complainant-Aligned Parties, EMCOS, and FERC Trial Staff.

TOs Request to Re-Open Record and file Supplemental Paper Hearing Brief. On December 26, 2019, the TOs filed a Supplemental Brief that addresses the consequences of the November 21 *MISO ROE Order*³⁴ and requested that the FERC re-open the record to permit that additional testimony on the impacts of the *MISO ROE Order*’s changes. On January 21, 2020, EMCOS and CAPs opposed the TOs’ request and brief.

These matters remain pending before the FERC. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com) or Joe Fagan (202-218-3901; jfagan@daypitney.com).

II. Rate, ICR, FCA, Cost Recovery Filings

- **Essential Power Newington CIP-IROL (Schedule 17) Section 205 Cost Recovery Filing (ER22-2469)**

On July 22, 2022, Essential Power Newington (“EP Newington”) requested FERC acceptance of its recovery, pursuant to its Schedule 17 Rate Schedule,³⁵ of **\$360,261** in Interconnection Reliability Operating Limits Critical Infrastructure Protection costs (“CIP-IROL Costs”) under Schedule 17 of the ISO-NE Tariff for the February 18, 2021 through June 30, 2022 period (“Cost Recovery Period”). Essential Power Newington reported that it completed Schedule 17’s pre-filing requirements (“Pre-Filing Review Process”), which included the active participation of NESCOE and one other interested party. A September 21, 2022 effective date for EP Newington’s CIP-IROL Cost Recovery was requested. Comments on this filing are due on or before August 12, 2022. Thus far, NESCOE has filed a doc-less intervention. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **GenConn Middletown CIP IROL (Schedule 17) Cost Recovery Schedule Filing (ER22-2367)**

On July 13, 2022, GenConn Energy requested FERC acceptance of a proposed rate schedule to allow GenConn Middletown to begin the recovery period for certain Interconnection Reliability Operating Limits Critical Infrastructure Protection costs (“CIP-IROL Costs”) under Schedule 17 of the ISO-NE Tariff. GenConn stated that the rate schedule will provide interested parties notice of GenConn Middletown’s intent to recover CIP-IROL Costs for each affiliated facility designated as an IROL-Critical Facility, and an order accepting the rate schedule will provide an effective date after which associated costs incurred can be recovered following completion of the process

³³ For purposes of the motion seeking clarification, “Customers” are CT PURA, MA AG and EMCOS.

³⁴ *Ass’n of Buss. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569, 169 FERC ¶ 61,129 (Nov. 21, 2019) (“*MISO ROE Order*”), *order on reh’g*, Opinion No. 569-A, 171 FERC ¶ 61,154 (May 21, 2020).

³⁵ See *Essential Power Newington, LLC*, Docket No. ER21-1171 (Mar. 31, 2021) (delegated letter order) (accepting Newington’s CIP-IROL Rate Schedule effective Feb. 18, 2021, starting the eligible Cost Recovery Period).

contemplated by Schedule 17 and a subsequent Section 205 filing identifying the specific costs to be recovered. A September 12, 2022 effective date was requested. Comments on this filing are due on or before August 3, 2022. Thus far, Eversource, CT PURA, National Grid, and NESCOE have filed doc-less interventions. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **FCA16 Results Filing (ER22-1417)**

On July 18, 2022, the FERC accepted for filing ISO-NE's results for the sixteenth FCA ("FCA16") held February 7, 2022 for the June 1, 2025-May 31, 2026 Capacity Commitment Period ("CCP").³⁶ The FCA16 Results were accepted effective July 19, 2022, as requested. In accepting the Results Filing, the FERC noted that "No party has provided evidence that ISO-NE failed to conduct [FCA16] in accordance with its Tariff, and therefore we accept ISO-NE's filing." The FERC found that the protests by No Coal No Gas, SEIA, and Pro Se Commenters raised issues focused on FCM design that were outside the scope of this proceeding and that the Killingly issue was made moot by the DC Circuit's May 10, 2022 decision dismissing NTE's petition for review.³⁷ Unless the *FCA16 Results Order* is challenged, with any challenges due on or before August 17, 2022, this proceeding will be concluded. 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).

- **Mystic COS Agreement Updates to Reflect Constellation Spin Transaction³⁸ (ER22-1192)**

On May 2, the FERC accepted and suspended in part Constellation Mystic Power, LLC's ("Mystic's") changes to its Amended and Restated Cost-of-Service Agreement ("COS Agreement") to reflect Mystic's current upstream ownership.³⁹ The changes were accepted effective as of Jun 1, 2022, but subject to refund. Specifically, the FERC accepted (i) Mystic's changes throughout the COS Agreement to replace the term "Exelon Generation Company, LLC" with "Constellation Energy Generation, LLC"; and (ii) the addition of language to the true-up methodology that provides that the values included in the true-up methodology exclude costs associated with the Spin Transaction. However, noting that Mystic's contested proposal on the issue of capital structure and cost of debt raises issues of material fact that cannot be resolved based on the record, the FERC accepted and suspended this portion of the COS Agreement for a nominal period, to become effective June 1, 2022, subject to refund and to the outcome of paper hearing procedures. The FERC also directed the appointment of a settlement judge and will hold the paper hearing in abeyance so as to provide the participants an opportunity for settlement discussions.⁴⁰

Settlement Judge Procedures. On May 10, Chief Judge Cintron designated Judge Steven Glazer as the Settlement Judge in this proceeding. Judge Glazer convened three settlement conferences -- on June 2, June 28, and July 14, 2022. In each of his two status reports (June 23 and July 26, 2022), Judge Glazer recommended that, "as the participants continue to engage in good faith efforts to reach settlement, that settlement procedures continue." In addition, in his July 26 report, Judge Glazer reported that, "the participants reached an agreement to settle their issues. The participants have moved to documenting the agreement in principle." On July 19, Deputy Chief ALJ Andrew Statten substituted ALJ Patricia M. French for Judge Glazer (who has now retired). Judge French will conduct the ongoing settlement judge procedures going forward.

³⁶ *ISO New England Inc.*, 180 FERC ¶ 61,036 (July 18, 2022) ("*FCA16 Results Order*").

³⁷ *Id.* at P 15.

³⁸ In the Spin Transaction, Constellation's and Mystic's corporate parent changed from Exelon Corporation to a newly-created holding company, Constellation Energy Corporation ("*Constellation Corporation*"). Mystic continues to be an indirect wholly-owned subsidiary of Constellation Energy Generation, LLC, which in turn is a direct, wholly-owned subsidiary of Constellation Corporation.

³⁹ *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,081 (May 2, 2022) ("*May 2, 2022 Order*").

⁴⁰ *Id.* at P 24.

If you have questions on any aspect of this proceeding, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Sebastian Lombardi (860-275-0663; slombardi@daypitney.com).

- **Mystic 8/9 Cost of Service Agreement (ER18-1639)**

As previously reported, each of the *July 17 Orders*⁴¹ and the *Mystic ROE Orders*,⁴² which addressed in part or in whole the COS Agreement⁴³ among Mystic, Constellation Energy Generation, LLC⁴⁴ (“Constellation”) and ISO-NE, have been appealed to, and consolidated before, the DC Circuit (see Section XVI below).

(-014) Revised ROE (Sixth) Compliance Filing. Still pending is Mystic’s December 20, 2021 filing in response to the requirements of the *Mystic ROE Allegheny Order*. The sixth compliance filing revised (i) the Cost of Common Equity figures from 9.33% to 9.19%, for both Mystic 8&9 and Everett Marine Terminal (“Everett”), and (ii) the stated Annual Fixed Revenue Requirements for both the 2022/23 and 2023/24 Capacity Commitment Periods. Comments on the sixth compliance filing were due on or before January 10, 2022; none were filed. The Sixth Compliance Filing remains pending before the FERC.

(-000) First CapEx Info. Filing. On September 15, 2021, Mystic submitted, as required by orders in this proceeding and Sections I.B.1.i. and II.6. of Schedule 3A of the COS Agreement (“Protocols”), its informational filing to provide support for the capital expenditures and related costs that Mystic projects will be collected as an expense between June 1, 2022 to December 31, 2022 (“First CapEx Projects Info. Filing”). Formal challenges to the September 15 filing were submitted by the Eastern New England Customer-Owned Systems (“ENECOS”) and NESCOE. Mystic responded to the formal challenges on November 17, 2021 asserting that the challenges should be rejected without further procedures. ENECOS and NESCOE replied to Mystic’s November 17 reply on December 2 and December 6, 2021, respectively.

On April 28, 2022, the FERC issued an order granting in part, and denying in part, ENECOS’ and NESCOE’s formal challenges, subject to refund, and established hearing and settlement judge procedures.⁴⁵ The FERC summarily denied NESCOE’s challenge regarding the update to the AFRR and ENECOS’ challenge with regard to the improper booking of items. Those items, and challenges to other underlying projected costs, may be challenged in connection with Mystic’s Second Informational Filing (where the informal challenge process begins on April 1, 2022 and the formal challenge process begins on September 15, 2022).⁴⁶ The FERC reiterated that all items except

⁴¹ The “July 17 Orders” are the *July 2018 Rehearing Order*, *Dec 2018 Rehearing Order* and the *July 17 Compliance Order*. *Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022 (July 13, 2018) (“*July 2018 Order*”), *clarif. granted in part and denied in part, reh’g denied*, 172 FERC ¶ 61,043 (July 17, 2020) (“*July 2018 Rehearing Order*”); *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 (Dec. 20, 2018) (“*Dec 2018 Order*”), *set aside in part, clarification granted in part and clarification denied in part*, 172 FERC ¶ 61,044 (July 17, 2020) (“*Dec 2018 Rehearing Order*”); *Constellation Mystic Power, LLC*, 172 FERC ¶ 61,045 (July 17, 2020) (“*July 17 Compliance Order*”) (order on compliance and directing further compliance).

⁴² *Constellation Mystic Power, LLC*, 176 FERC ¶ 61,019 (July 15, 2021) (“*Mystic ROE Order*”) (setting the base ROE for the Mystic COS Agreement at 9.33%); *Constellation Mystic Power, LLC*, 177 FERC ¶ 61,106 (Nov. 18, 2021) (“*Mystic ROE First Allegheny Order*”) (re-setting Mystic’s ROE to 9.19%); *Constellation Mystic Power, LLC*, 177 FERC ¶ 61,106 (Nov. 18, 2021) (“*Mystic ROE Second Allegheny Order*”), and together with the *Mystic ROE Order* and the *Mystic ROE Allegheny Order*, the “*Mystic ROE Orders*”) (modifying the discussion in, but sustaining the results of, the *Mystic ROE First Allegheny Order*).

⁴³ The COS Agreement, submitted on May 16, 2018, is between Mystic, Exelon Generation Company, LLC (“ExGen”) and ISO-NE. The COS Agreement is to provide cost-of-service compensation to Mystic for continued operation of Mystic 8 & 9, which ISO-NE has requested be retained to ensure fuel security for the New England region, for the period of June 1, 2022 to May 31, 2024. The COS Agreement provides for recovery of Mystic’s fixed and variable costs of operating Mystic 8 & 9 over the 2-year term of the Agreement, which is based on the pro forma cost-of-service agreement contained in Appendix I to Market Rule 1, modified and updated to address Mystic’s unique circumstances, including the value placed on continued sourcing of fuel from the Distrigas liquefied natural gas (“LNG”) facility.

⁴⁴ On Feb. 1, 2022, Exelon Generation Company, LLC was renamed and is now known as Constellation Energy Generation, LLC.

⁴⁵ *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,011 (Apr. 28, 2022) (“*Mystic First CapEx Info. Filing Order*”).

⁴⁶ *Id.* at PP 23-24.

return on equity and depreciation are subject to the true-up process described in Schedule 3A of the COS Agreement, not just projected capital expenditures. However, with respect to NESCOE's and ENECOS' allegations that Mystic failed to support all of its projected capital expenditures, the FERC found that the First CapEx Projects Info. Filing raised issues of material fact that could not be resolved based on the record and would be more appropriately addressed under hearing and settlement judge procedures.⁴⁷ Accordingly, the FERC set these matters for a trial-type evidentiary hearing. The FERC encouraged the parties to make every effort to settle their disputes before hearing procedures are commenced, and to that end, will hold the hearing in abeyance pending the appointment of a settlement judge and completion of settlement judge procedures.⁴⁸

(-015) First CapEx Info. Filing Settlement Judge Procedures. On May 4, Chief Judge Cintron designated Judge Andrea McBarnette as the Settlement Judge. A first settlement conference was convened on Wednesday June 15, 2022.

(-017) Request for Clarification or Rehearing of Mystic First CapEx Info. Filing Order Denied by Operation of Law. On May 27, 2022, Mystic requested that the FERC clarify that it did not determine that Mystic's already-litigated historical (pre-2018) rate base is subject to re-litigation as part of any "true-up" process under the Mystic Agreement. ENECOS answered that request on June 10, 2022. On June 27, 2022, the FERC issued a notice that Mystic's request can be deemed to have been denied by operation of law.⁴⁹

(-018) Informational Filing of Revision to Fuel Supply Agreement. On July 20, 2022, Mystic notified the FERC of a change to the Fuel Supply Agreement between Mystic and its affiliate, Constellation LNG, LLC. Mystic stated that the change clarifies that the Fixed O & M/Return on Investment Costs in the Fuel Supply Agreement are subject to update under Schedule 3A of the Mystic COS Agreement (a change ISO-NE agreed is consistent with the spirit of the Mystic COS Agreement). This filing was not noticed for public comment.

If you have questions on any aspect of this proceeding, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Margaret Czepiel (202-218-3906; mczepiel@daypitney.com).

- **Transmission Rate Annual (2022-23) Update/Informational Filing (ER09-1532; RT04-2)**

On July 29, 2022, the PTO AC submitted its annual filing identifying adjustments to Regional Transmission Service charges, Local Service charges, and Schedule 12C Costs under Section II of the Tariff for 2023. The filing reflected the charges to be assessed under annual transmission and settlement formula rates, reflecting actual 2021 cost data, plus forecasted revenue requirements associated with projected PTF, Local Service and Schedule 12C capital additions for 2022 and 2023, as well as the Annual True-up including associated interest. As prescribed in the Interim Protocols,⁵⁰ the formula rates that will be in effect for 2023 include a billing true up of seven months of 2021 (June-December). The PTO AC states that the annual updates results in a Pool "postage stamp" RNS Rate of \$140.94 /kW-year effective January 1, 2023, a decrease of \$1.84 /kW-year from the charges that went into effect on January 1, 2022. In addition, the filing includes updates to the revenue requirements for Scheduling, System Control and Dispatch Services (the Schedule 1 formula rate), which result in a Schedule 1 charge of \$1.75 kW-year (effective June 1, 2022 through May 31, 2023), a \$0.12/kW-year decrease from the Schedule 1 charge that last went into effect on June 1, 2022. This filing will not be noticed for public comment.

⁴⁷ *Id.* at P 26.

⁴⁸ *Id.* at P 27.

⁴⁹ *Constellation Mystic Power, LLC*, 179 FEC ¶ 62,179 (June 27, 2022) (notice that Mystic's request for clarification or rehearing of the *Mystic First CapEx Info. Filing Order* can be deemed denied by operation of law).

⁵⁰ The Interim Formula Rate Protocols ("Interim Protocols") became effective June 15, 2021, and will be replaced by permanent Formula Rate Protocols that will become effective June 15, 2023. See Settlement Agreement resolving all issues in Docket No. EL16-19 ("Settlement") approved by the FERC on Dec. 28, 2020, in *ISO New England et al.*, 173 FEC ¶ 61,270 (2020) ("Settlement Order").

The July 29 filing will be reviewed with the Transmission Committee at its August 16, 2022 summer meeting, with an subsequent August 22, 2022 technical session planned for Interested Parties to seek additional information and clarification. The July 29 filing triggered the commencement of the Information Exchange Period and a Review Period under the Interim Protocols. Interested Parties have until September 15, 2022 to submit information and document requests, and the PTOs are required to make a good faith effort to respond to all requests within 15 days, but by no later than October 15, 2022. During the Review Period, Interested Parties have until November 15, 2022 to submit Informal Challenges to the PTOs, and the PTOs are required to make a good faith effort to respond to any Informal Challenges no later than December 15, 2022. Interested Parties have until January 31, 2023 to file a Formal Challenge with the FERC. If there are questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

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

- **CSF Revisions (ER22-2546)**

On July 29, 2022, ISO-NE and NEPOOL jointly filed changes to Market Rule 1 to allow storage facilities incapable of consuming electricity from the grid to participate in the New England Markets as Continuous Storage Facilities ("CSF"). An October 1, 2022 effective date was requested. The CSF Revisions were supported by the Participants Committee at its June 21-23 Summer Meeting (Agenda Item No. 2A). Comments on the CSF Revisions are due on or before August 19, 2022. If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **Information Policy Cyber Security Incident Information Sharing Changes (ER22-2366)**

On July 15, 2022, ISO-NE and NEPOOL jointly filed changes to the Information Policy to allow ISO-NE to share confidential information with NERC and federal agencies with cyber security responsibilities, without prior notice to Market Participants and other furnishing entities, if a cyber-security event occurs ("Changes"). A September 12, 2022 effective date was requested. The Changes were supported by the Participants Committee at its June 21-23 Summer Meeting (Consent Agenda Item No. 4). Comments on the Changes are due on or before August 3, 2022. Thus far, doc-less interventions have been filed by Calpine, Eversource and National Grid. If you have any questions concerning this matter, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **New England's Order 2222 Compliance Filing (ER22-983)**

On February 2, 2022, ISO-NE, NEPOOL and the PTO AC ("Filing Parties") submitted Tariff revisions ("Order 2222 Changes") in response to the requirements of Order 2222. The Filing Parties stated that the Order 2222 Changes create a pathway for Distributed Energy Resource Aggregations ("DERAs") to participate in the New England Markets by: creating new, and modifying existing, market participation models for DERA use; establishing eligibility requirements for DERA participation (including size, location, information and data requirements); setting bidding parameters for DERAs; requiring metering and telemetry arrangements for DERAs and individual Distributed Energy Resources ("DERs"); and providing for coordination with distribution utilities and relevant electric retail regulatory authorities ("RERRAs") for DERA/DER registration, operations, and dispute resolution purposes.

Comments, following an extension of time granted by the FERC in response to a request by Advanced Energy Management Alliance ("AEMA"), were due on or before April 1, 2022. NEPOOL filed supplemental comments on March 28. Protests and comments were filed by: [AEE/PowerOptions/SEIA](#); [Environmental Organizations](#); ⁵¹ [MA AG](#); [Volutus](#); [AEMA](#) and [4 New England US Senators](#).⁵² Doc-less interventions were filed by:

⁵¹ Environmental Organizations are Acadia Center, Conservation Law Foundation ("CLF"), Environmental Defense Fund ("EDF"), Massachusetts Climate Action Network, Natural Resources Defense Council ("NRDC"), Sierra Club, and the Sustainable FERC Project.

⁵² Senators Markey (MA), Sanders (VT), Warren (MA), and Whitehouse (RI).

Avangrid (CMP/UI), Calpine, Centrica Business Solutions Optimize (out-of-time), Constellation, ENE, Enerwise, Eversource, FirstLight, MA AG, National Grid, NESCOE, NRG, MA DPU, MPUC (out-of-time), APPA, and EEI. ISO-NE (April 20) and National Grid/Avangrid/Eversource (April 19) filed answers to the protests and adverse comments. Since the last Report, [AEE/PowerOptions/SEIA](#) and [AEMA](#) answered the ISO-NE and National Grid/Avangrid/Eversource answers.

(-001) Deficiency Letter. On May 18, 2022, the FERC issued a 25-page deficiency letter directing ISO-NE to provide, on or before June 17, 2022, additional information and clarifications. ISO-NE filed its 39-page response to the deficiency letter on June 17, 2022. Comments in response to ISO-NE's deficiency letter response were due on or before July 8, 2022 and a joint protest was filed by AEE, AEMA, PowerOptions, and SEIA ("[Joint Protest](#)"). The Joint Protest, while supportive of certain responses (those regarding the exemption of DERs from the Small Generator Interconnection Procedures ("SGIP") prior to 2026, locational requirements for DER aggregation, and the role of host utilities in identifying potential conflicts with retail program participation), protested the adequacy of ISO-NE responses regarding proposed metering and telemetering requirements for behind-the-meter ("BTM") DERs. On July 25, 2022, ISO-NE answered the July 8 Joint Protest.

This matter is again pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com); Eric Runge (617-345-4735; ekrunge@daypitney.com); or Rosendo Garza (860-275-0660; rgarza@daypitney.com).

IV. OATT Amendments / TOAs / Coordination Agreements

- **Order 881 Compliance Filing: New England (ER22-2357)**

On July 12, 2022, ISO-NE, NEPOOL, the PTO AC, and CSC (the "Filing Parties") filed proposed revisions to the OATT in response to the requirements of *Order 881*⁵³ ("*Order 881 Compliance Changes*"). Specifically, the Filing Parties propose to add a new Attachment Q to the OATT, and to revise OATT Schedules 18 (MTF; MTF Service) and 21 (Local Service - Common). The *Order 881 Compliance Changes* (the Attachment Q and Schedule 18 changes) were supported by the Participants Committee at its June 21-23 Summer Meeting (Consent Agenda Item No. 2). An effective date of September 10, 2022 was requested, with changes to Attachment Q and Schedule 21 to become applicable by their own terms in July 2025. Comments on the *Order 881 Compliance Changes* are due on or before August 2, 2022. Eversource, Narragansett Electric Company ("Narragansett") and National Grid filed doc-less interventions. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Phase I/II HVDC-TF Order 881 Compliance Filing: HVDC TOA (ER22-2467) and Sched. 20-A Common Attachment M (ER22-2468)**

On July 22, 2022, following a requested 10-day extension of time granted by the FERC, a Phase I/II HVDC-TF *Order 881* compliance filing was submitted in two parts ((i) changes to the HVDC TOA and (ii) changes to Schedule 20-Common Attachment M) by: ISO-NE, the Asset Owners,⁵⁴ and the Schedule 20A Service Providers.⁵⁵ Specifically, the Filing proposed changes to the **HVDC TOA** (ER22-2467) to address the Order 881 requirements related to transmission ratings and rating procedures and to **Schedule 20A-Common** (ER22-2468) to ensure compliance with Order 881 with respect to transmission rating transparency and transmission

⁵³ *Managing Transmission Line Ratings*, Order No. 881, 177 FERC ¶ 61,179 (Dec. 16, 2021); *Managing Transmission Line Ratings*, Order No. 881-A, 179 FERC ¶ 61,125 (May 19, 2022) (together, "*Order 881*").

⁵⁴ The "Asset Owners" are, collectively, New England Hydro-Transmission Electric Company, New England Hydro-Transmission Corporation, New England Electric Transmission Corporation, and Vermont Electric Transmission Company ("VETCO").

⁵⁵ The "Schedule 20A Service Providers" are: Central Maine Power Co. ("CMP"); The Conn. Light and Power Co. and Public Service Co. of NH ("Eversource"); Green Mountain Power Cor. ("GMP"); New England Power Co. ("NEP"); NSTAR Electric Co.; The United Illuminating Co. ("UI"); Vermont Electric Cooperative, Inc. ("VEC"); and Versant Power.

service (together, the “Phase I/II HVDC-TF *Order 881* Compliance Filing”). Comments on the Phase I/II HVDC-TF *Order 881* Compliance Filing are due on or before August 12, 2022. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Process Modifications - DER Interconnection/Interconnection Study Coordination (ER22-2226)**

On June 29, 2022, ISO-NE and NEPOOL jointly filed changes to the Tariff to modify the process for interconnection of new distributed energy resources (“DERs”) and improve the coordination of interconnection studies (“DER Interconnection Revisions”). Specifically, the DER Interconnection Revisions (i) provide that all DERs will interconnect through the applicable state interconnection process; and (ii) with respect to the coordination of interconnection studies, establish the order in which interconnection requests are included in the Capacity Network Resource (“CNR”) Group Study, and include generation projects that are not participating in ISO-NE’s interconnection process, if they meet certain conditions, in the Base Case Data. An August 28, 2022 effective date was requested. The DER Interconnection Revisions were supported by the Participants Committee at its June 21-23 Summer Meeting (Consent Agenda Item No. 1). On July 20, 2022, comments supporting the changes were filed by [AEE](#), [ENGIE](#), [SEIA](#). Calpine, Borrego, Eversource, National Grid, NRG, MA DPU, and SEIA filed doc-less interventions. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Attachment F Corrections & Updates (ER22-2021)**

On August 1, 2022, the FERC accepted proposed revisions to Attachment F of the OATT filed by the PTO AC to (i) correct minor errors in certain worksheets of the “Formula Rate Template” contained in Appendices A and B; and (ii) update the name of Versant Power in Appendices A, B and D.⁵⁶ The PTO AC opined that the proposed corrections and updates do not have any impact on transmission rates and they do not alter the substance of the Formula Rate Template. The revisions were accepted effective as of August 2, 2022, as requested. Unless the August 1, 2022 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Order 676-J Compliance Filing Part I (CSC-Schedule 18-Attachment Z) (ER22-1168)**

On March 2, 2022, in response to the requirements of *Order 676-J*,⁵⁷ ISO-NE and Cross-Sound Cable Company (“CSC”) filed revisions to ISO-NE Tariff Schedule 18 Attachment Z to incorporate the new cybersecurity and PFV standards contained in the North American Energy Standards Board (“NAESB”) Wholesale Electric Quadrant (“WEQ”) Version 003.3 Standards (“Schedule 18 Order 676-J Part I Changes”).⁵⁸ An effective date as of the date of the FERC order accepting these changes was requested. Comments on this filing were due on or before March 23, 2022; none were filed. Doc-less interventions were filed by CSC and NEPOOL. There was no activity since the last Report and this matter remains pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

⁵⁶ *ISO New England Inc.*, Docket No. ER22-2021 (Aug. 1, 2022) (unpublished letter order).

⁵⁷ *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-J, 175 FERC ¶ 61,139 (May 20, 2021) (“*Order 676-J*”). *Order 676-J* revised FERC regulations to incorporate by reference the latest version (Version 003.3) of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by NAESB’s Wholesale Electric Quadrant. The WEQ Version 003.3 Standards include, in their entirety, the WEQ-023 Modeling Business Practice Standards contained in the WEQ Version 003.1 Standards, which address the technical issues affecting Available Transfer Capability (“ATC”) and Available Flowgate Capability (“AFC”) calculation for wholesale electric transmission services, with the addition of certain revisions and corrections. The FERC also revised its regulations to provide that transmission providers must avoid unduly discriminatory and preferential treatment in the calculation of ATC.

⁵⁸ Compliance filings for the rest of the WEQ Version 003.3 Standards (Schedule 24 Order 676-J Part II Changes) were due 12 months after implementation of the WEQ Version 003.2 Standards, or no earlier than Oct. 27, 2022.

- **Order 676-J Compliance Filing Part I (TOs-Schedule 20/21-Common) (ER22-1161)**

Also on March 2, 2022, in response to the requirements of *Order 676-J*, the PTO AC, ISO-NE, and the Schedule 20A Service Providers (“S20SPs”) (collectively, the “TOs”) filed revisions to ISO-NE Tariff Schedules 20A-Common and 21-Common to incorporate the new cybersecurity and PFV standards contained in NAESB WEQ Version 003.3 Standards (“Schedule 20/21-Common Order 676-J Part I Changes”).⁵⁸ An effective date as of the date the FERC may determine was requested. Comments on this filing are due on or before March 23, 2022; none were filed. Doc-less interventions were filed by NEPOOL and Eversource. There was no activity since the last Report and this matter remains pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Order 676-J Compliance Filing Part I (ISO-NE-Schedule 24) (ER22-1150)**

Again on March 2, 2022, in response to the requirements of *Order 676-J*, ISO-NE filed revisions to ISO-NE Tariff Schedule 24 (Incorporation by Reference of NAESB Standards) to incorporate the new cybersecurity and PFV standards contained in NAESB WEQ Version 003.3 Standards (“Schedule 24 Order 676-J Part I Changes”).⁵⁸ An effective date no earlier than June 2, 2022 was requested. The Transmission Committee recommended that the Participants Committee support the Schedule 24 Order 676-J Part I Changes at its March 23 meeting, and the Participants Committee supported the changes at the April 7 meeting (Consent Agenda Item # 1). Comments on this filing were due on or before March 23, 2022; none were filed. NEPOOL, Eversource, MA DPU, and National Grid submitted doc-less interventions. There was no activity since the last Report and this matter remains pending before the FERC. If you have any questions concerning this matter, 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 & Agreements

- **Schedule 20A (Phase I/II HVDC-TF Service Agreement) Reassignment Agreements: CMP & UI/Brookfield/HQUS (ER22-2433/32/31)**

On July 19, 2022, Avangrid Networks, on behalf of CMP and UI, submitted three Phase I/II HVDC-TF service agreements (“Schedule 20A TSAs”) to transfer the transmission service rights and obligations that Brookfield Renewable Trading and Marketing LP (“BRTM” or the “Reseller”) currently holds under existing Schedule 20A TSAs (one with CMP; two with UI) to H.Q. Energy Services (U.S.) Inc. (“HQUS” or the “Assignee”). The Schedule 20A TSAs were filed and docketed as follows: CMP-BRTM 85 MW TSA (ER22-2433); UI-BRTM 32 MW TSA (ER22-2432); and UI-BRTM 1 MW TSA (ER22-2431). An effective date that is the first day of the month that is at least five business days following the date of a FERC order accepting the Schedule 20 TSAs was requested. Comments on this filing are due on or before August 2, 2022. Thus far, both BRTM and HQUS have intervened and submitted joint comments supporting the Reassignment Agreements. If there are questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Schedule 20A (Phase I/II HVDC-TF Service Agreement) Reassignment Agreement: NEP/Brookfield/HQUS (ER22-2398)**

On July 18, 2022, New England Power (“NEP”) filed a Phase I/II HVDC-TF service agreements (“Schedule 20A TSAs”) to transfer the transmission service rights and obligations that BRTM currently holds under an existing Schedule 20A TSA (TSA-NEP-96) to HQUS. An effective date that is the first day of the month that is at least five business days following the date of a FERC order accepting the Schedule 20 TSA was requested. Comments on this filing were due on or before August 1, 2022. On July 28, 2022, BRTM and HQUS jointly filed comments supporting the Agreement. This matter is pending before the FERC. If there are questions on this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Schedule 21-NEP: Revised RI LSAs Compliance Filing (ER22-1918)**

On May 20, 2022, NEP submitted a compliance filing following FERC action on Local Service Agreement (“LSA”) filings in ER22-707 (Narragansett LSA) and ER22-927 (BIPCO LSA) to: (i) reflect all changes to the LSAs accepted by the FERC in either docket and (ii) provide executed versions of the conformed LSAs. Comments on the Revised RI LSAs compliance filing were due on or before June 10, 2022; none were filed. On July 14, 2022, the FERC accepted Revised RI LSA TSA-NEP-86 (the LSA among NEP, Narragansett and ISO-NE), effective January 1, 2022.⁵⁹ If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Schedule 21-NEP: 2nd Revised Narragansett LSA (ER22-707)**

As previously reported, the FERC accepted on February 18, 2022 a LSA among New England Power, Narragansett and ISO-NE.⁶⁰ As previously reported, the LSA reflects the construction of the new Iron Mine Hill Road Substation and related transmission modifications, and the assessment to Narragansett of a Direct Assignment Facilities Charge (“DAF Charge”) associated with the facilities. The Iron Mine Hill Road Substation, a new 115 kV/34.5 kV substation (including modifications necessary to loop Narragansett’s existing 115 kV H17 transmission line through the new substation) will connect to a new 34.5 kV distribution feeder, which will serve as the point of interconnection for several distributed generation projects being developed by Green Development, LLC (“Green Development”), located in North Smithfield, Rhode Island. The LSA was accepted effective as of January 1, 2022, as requested. The FERC was not persuaded by Green Development’s arguments that the revised Narragansett LSA was unjust and unreasonable and should be rejected.⁶¹

Request for Rehearing Denied by Operation of Law. On March 18, 2022, Green Development requested rehearing of the *2nd Rev Narragansett LSA Order*. On April 18, 2022, the FERC issued a “Notice of Denial of Rehearings by Operation of Law and Providing for Further Consideration”.⁶² The Notice confirmed that the 60-day period during which a petition for review of the *2nd Rev Narragansett LSA Order* could be filed with an appropriate federal court was triggered when the FERC did not act on Green Development’s request for rehearing of the *2nd Rev Narragansett LSA Order*. The Notice also indicated that the FERC would address, as is its right, the rehearing requests in a future order, and may modify or set aside its orders, in whole or in part, “in such manner as it shall deem proper,” (which it did on June 16, 2022, see immediately below).

2nd Rev Narragansett LSA Allegheny Order. On June 16, 2022, pursuant to section 313(a) of the FPA, the FERC issued an order that modified the discussion, but reached the same result as, in the *2nd Rev Narragansett LSA Order*.⁶³ On June 15, 2022, Green Development petitioned the DC Circuit for review of the *2nd Rev Narragansett LSA Order*. On July 19, 2022 Green Development also petitioned the DC Circuit for review of the *2nd Rev Narragansett LSA Allegheny Order*. Developments in those proceedings (now consolidated) will be reported in Section XVI below.

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

⁵⁹ *ISO New England Inc.*, Docket No. ER22-1918 (July 14, 2022) (unpublished letter order).

⁶⁰ *ISO New England Inc. and New England Power Co. d/b/a National Grid*, 178 FERC ¶ 61,115 (Feb. 18, 2022) (“*2nd Rev Narragansett LSA Order*”).

⁶¹ *Id.* at P 55.

⁶² *ISO New England Inc. and New England Power Co. d/b/a National Grid*, 179 FERC ¶ 62,035 (Apr. 18, 2022) (notice of denial of rehearing by operation of law and providing for further consideration).

⁶³ *ISO New England Inc. and New England Power Co. d/b/a National Grid*, 179 FERC ¶ 61,186 (June 16, 2022) (“*2nd Rev Narragansett LSA Allegheny Order*”).

- **Schedule 21-VP: 2021 Annual Update Settlement Agreement (ER20-2119-001)**

On March 25, 2022, Versant Power submitted a joint offer of settlement between itself and the MPUC to resolve all issues raised by the MPUC in response to Versant's 2021 annual charges update filed, as previously reported, on June 15, 2021, and as amended on June 20, 2021 and July 8, 2021 (the "Versant 2021 Annual Update Settlement Agreement"). Under Part V of Attachment P-EM to Schedule 21-VP, "Interested Parties shall have the opportunity to conduct discovery seeking any information relevant to implementation of the [Attachment P-EM] Rate Formula. . . ." and follow a dispute resolution procedure set forth there. In accordance with those provisions, the MPUC identified certain disputes with the 2021 Annual Update, all of which are resolved by the Versant 2021 Annual Update Settlement Agreement. Comments on the Versant 2021 Annual Update Settlement Agreement were due on or before April 14, 2022; none were filed. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Schedule 21-VP: 2020 Annual Update Settlement Agreement (ER15-1434-005)**

On November 19, 2021, Versant Power submitted a joint offer of settlement between itself and the MPUC to resolve all issues raised by the MPUC in response to Versant's 2020 annual charges update filed, as previously reported, on June 15, 2020 (the "Versant 2020 Annual Update Settlement Agreement"). Under Part V of Attachment P-EM to Schedule 21-VP, "Interested Parties shall have the opportunity to conduct discovery seeking any information relevant to implementation of the [Attachment P-EM] Rate Formula. . . ." and follow a dispute resolution procedure set forth there. In accordance with those provisions, the MPUC identified certain disputes with the 2020 Annual Update, all of which are resolved by the Versant 2020 Annual Update Settlement Agreement. Comments on the Versant 2020 Annual Update Settlement Agreement were due on or before December 9, 2021; reply comments, December 19, 2021; none were filed. There was no activity since the last Report and this matter remains pending before the FERC. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

VII. NEPOOL Agreement/Participants Agreement Amendments

No Activity to Report

VIII. Regional Reports

- **Opinion 531-A Local Refund Report: FG&E (EL11-66)**

Fitchburg Gas & Electric's ("FG&E") June 29, 2015 refund report for its customers taking local service during *Opinion 531-A's* refund period remains pending. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Opinions 531-A/531-B Regional Refund Reports (EL11-66)**

The TOs' November 2, 2015 refund report documenting resettlements of regional transmission charges by ISO-NE in compliance with *Opinions No. 531-A*⁶⁴ and *531-B*⁶⁵ also remains pending. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

⁶⁴ *Martha Coakley, Mass. Att'y Gen.*, 149 FERC ¶ 61,032 (Oct. 16, 2014) ("*Opinion 531-A*").

⁶⁵ *Martha Coakley, Mass. Att'y Gen.*, Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) ("*Opinion 531-B*").

- **Opinions 531-A/531-B Local Refund Reports (EL11-66)**

The *Opinions 531-A and 531-B* refund reports filed by the following TOs for their customers taking local service during the refund period also remain pending before the FERC:

- | | | |
|-----------------------|-----------------|-----------------------|
| ◆ Central Maine Power | ◆ National Grid | ◆ United Illuminating |
| ◆ Emera Maine | ◆ NHT | ◆ VTransco |
| ◆ Eversource | ◆ NSTAR | |

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

- **Capital Projects Report - 2022 Q1 (ER22-1880)**

On July 11, 2022, the FERC accepted ISO-NE's Capital Projects Report and Unamortized Cost Schedule covering the first quarter ("Q1") of calendar year 2022 (the "Report").⁶⁶ ISO-NE filed the Report under section 205 of the FPA pursuant to Section IV.B.6.2 of the Tariff. Report highlights included the following new projects: (i) Packet Broker Infrastructure Replacement Project (\$839,600); (ii) Amazon Web Services Cloud Foundation (\$829,100); (iii) Integrated Market Simulator Phase II (\$495,000); and (iv) FCM Non-Commercial Capacity Trading FA (\$290,000). Significant changes for Chartered Projects (2022 budget impact in parentheses) were: (i) FCM Cost Allocation & Accelerated Billing (\$185,000 increase); (ii) FCM Tracking System Infrastructure Conversion Part III (\$398,200 decrease); (iii) Solar DNE Dispatch Phase I (\$386,100 decrease); (iv) nGEM Hardware Phase II (\$1.15 million decrease); and (v) TranSMART Technical Architecture Update (\$135,500 decrease). The 2022 Q1 Report was accepted effective April 1, 2022 as requested. Unless the July 11 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbval@daypitney.com).

- **LFTR Implementation: 55th Quarterly Status Report (ER07-476; RM06-08)**

ISO-NE filed the 55th of its quarterly status reports regarding LFTR implementation on July 15, 2022. ISO-NE reported that it implemented monthly reconfiguration auctions (accepted in ER12-2122) beginning with the month of October 2019. ISO-NE further reported that, while it will continue to evaluate its as-filed LFTR design and financial assurance issues, including an ongoing evaluation of the FTR market and risk associated with FTRs and LFTRs, it is currently focused on higher priority market-design initiatives. ISO-NE concluded its report by describing the 18-month implementation that would be required once the LFTR financial assurance issues are resolved. These status reports are not noticed for public comment.

- **Voltus Petition for a FERC Technical Conference on Order 2222 (RM18-9)**

On December 22, 2022, Voltus, Inc. ("Voltus") requested that the FERC convene a technical conference regarding *Order 2222*-related issues sometime in the months of February or March, 2022. Specifically, Voltus requested the technical conference to allow for a collective discussion of key issues arising from the ISO/RTO *Order 2222* compliance proposals, including certain regional variability, roles of industry participants, narrowing perceived knowledge gaps, and subsequent FERC guidance, all of which Voltus asserts supports the request for a technical conference. On January 7, 2022, the FERC issued a notice of Voltus' request, inviting comments on Voltus' request on or before February 7, 2022. Comments supporting Voltus' request were filed by: [AEE](#), [AEMA](#), [APPA/NRECA](#), [EEI](#), [ISO-RTO Council](#), [MISO](#), [SPP](#), [Sunrun](#), [Ameren](#), [Camus Energy](#), [Energy Web Foundation](#), [Integrity Energy Partners](#), [Environmental Law and Policy Center](#), [Fermata LLC](#), [Google](#), [Leapfrog Power](#), [Nuvve Holding](#), [Tesla](#), [U Delaware EV Research and Development Group](#), and [Utilidata](#). Voltus' request remains pending before the FERC.

⁶⁶ ISO New England Inc., Docket No. ER22-1880 (July 11, 2022) (unpublished letter order).

- **IMM 2021 Annual Markets Report (ZZ22-4)**

On May 26, 2022, the IMM filed its 2021 Annual Markets Report, which covers the 2021 calendar year period.⁶⁷ The report addresses the development, operation, and performance of the New England Markets and presents an assessment of each market based on market data, performance criteria, and independent studies, providing the information required under Section 17.2.4 of Appendix A to Market Rule 1. On the basis of its review of market outcomes and related information, the IMM concluded, as it has for many years in a row, that the New England Market operated competitively in 2021. The IMM reported that Day-Ahead and Real-Time Energy prices reflected changes in underlying primary fuel prices, electricity demand and the region's supply mix. No major reliability issues occurred in 2021, and there were no periods in the Energy Market when a shortage of energy and reserves resulted in very high energy prices or reserve scarcity pricing. The IMM reported that gas and energy prices rebounded from the record low levels seen in 2020. Electricity demand increased year-over-year due to colder weather and increased economic activity. The IMM forecasts that weather-normalized demand will begin to increase from 2022 because of the diminishing impacts of energy efficiency and solar generation and the growth in electrification of transportation and heating. Wholesale costs were at their highest level since 2018 and considerably higher than 2020, driven by higher energy costs. For the eighth consecutive year, the forward capacity auction procured surplus capacity. Other highlights included:

- ▶ 2021 total wholesale costs (\$11.2 billion) were \$3.1 billion higher than 2020, driven by higher energy costs; with the exception of capacity costs, each component of the wholesale cost of electricity increased in 2021.
- ▶ 2021 Energy costs totaled \$6.1 billion, up 97% from 2020 (Day-Ahead LMPs averaged \$45.92/MWh; Real-Time LMPs, \$44.84/MW).
- ▶ Capacity costs (\$2.2 billion) decreased 16%. New entry and limited resource retirements have continued to maintain a system surplus of 4-5% above the capacity requirement, applying downward pressure on prices.
- ▶ Transmission and reliability costs in 2021 were \$2.7 billion, \$357 million (15%) more than 2020 costs. The primary driver was a 12% increase in infrastructure improvements costs.

In light of its review, the IMM, in Section 1.6 (pp. 29-33) of the Report, made a number of recommendations for Market Rule changes and identified areas for additional analysis in 2022. These recommendations will be discussed in more detail at the Participants Committee's August 4 meeting.

IX. Membership Filings

- **August 2022 Membership Filing (ER22-2568)**

On July 29, 2022, NEPOOL requested that the FERC accept (i) the following Applicant's membership in NEPOOL: Concurrent, LLC (Provisional Member); Leapfrog Power (Provisional Member); Old Middleboro Road Solar [Related Person to Agilitas Companies (AR Sector, DG Sub-Sector)]; and Accelerate Renewables [Related Person to ECP Companies (Supplier Sector)]; and (ii) the termination of the Participant status of Chris Anthony; Indeck Energy-Alexandria; Standard Normal; and Borrego Solar Systems. Comments on this filing are due on or before August 22, 2022.

⁶⁷ Please note that Annual Markets Reports filings are not noticed for public comment by the FERC.

- **July 2022 Membership Filing (ER22-2260)**

On June 29, 2022, NEPOOL requested that the FERC accept (i) the termination of the Participant status of Liberty Power Holdings; and (ii) the name change of Astral (f/k/a/ Able Grid) Infrastructure Holdings, LLC. No comments on the filing were submitted. This matter is pending before the FERC.

- **June 2022 Membership Filing (ER22-1991)**

On May 31, 2022, as corrected on July 5, 2022, NEPOOL requested that the FERC accept (i) the following Applicant's membership in NEPOOL: Ebsen LLC and Umber LLC (both in the Supplier Sector); (ii) the termination of the Participant status of Dantzig Energy; Pilot Power Group; and Twin Eagle Resource Management; and (iii) the name change of LS Power Grid Northeast, LLC (f/k/a New England Energy Connection, LLC). No comments on the filing or on the correction were filed. This matter is pending before the FERC.

- **May 2022 Membership Filing (ER22-1738)**

On June 24, 2022, the FERC accepted (i) the following Applicant's membership in NEPOOL: Altop Energy Trading LLC (Supplier Sector); Indra Power Business CT LLC [Related Person to Palmco Power MA, LLC (Supplier Sector)]; Indra Power Business MA LLC [Related Person to Palmco Power MA, LLC (Supplier Sector)]; Leicester Street Solar, LLC [Related Person to Agilitas Companies (AR Sector, DG Sub-Sector)]; and Nexamp Markets, LLC [Related Person to Boston Energy Trading and Marketing (Supplier Sector)]; and (ii) the name change of the following Participant: Salem Harbor Power Development LP (f/k/a Footprint Power Salem Harbor Development LP). The June 24 order was not challenged and is final and unappealable. Reporting on this matter is concluded.

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).

- **CIP Standards Development: Informational Filings on Virtualization and Cloud Computing Services Projects (RD20-2)**

As previously reported, NERC is required to file on an informational basis quarterly status updates regarding the development of new or modified Reliability Standards pertaining to virtualization and cloud computing services. NERC submitted its most recent informational filing regarding one active CIP standard development project (Project 2016-02 – Modifications to CIP Standards ("Project 2016-02")) on June 15, 2022.⁶⁸ Project 2016-02 focuses on modifications to the CIP Reliability Standards to incorporate applicable protections for virtualized environments. A revised schedule for Project 2016-02 calls for final balloting of revised standards in October 2022, NERC Board of Trustees Adoption in November 2022 and filing of the revised standards with the FERC in December 2022.

- **NPCC Bylaws Changes (RR22-2)**

On July 8, 2022, the FERC conditionally approved changes to the NPCC Bylaws (the "Bylaws") filed by NERC and NPCC designed to, among other things: (1) to improve corporate governance; (2) to ensure consistency with the Not-for-Profit Corporation Law of the State of New York ("N-PCL"), pursuant to which NPCC is organized; and (3) to remove extraneous provisions from the Bylaws, create efficiencies, and reflect changes at NPCC since 2012 (when the last changes to the Bylaws were filed).⁶⁹ In accepting the Bylaws Changes, the FERC directed NERC/NPCC to submit in a compliance filing, due on or before September 6, 2022, changes that (i) provide members being terminated for failure to comply with bylaw provisions related to qualifications, obligations, and conditions of membership (a) notice within a reasonable time period of the NPCC Board's membership

⁶⁸ The other project which had been addressed in prior updates, Project 2019-02, has concluded, and the FERC approved in RD21-6 the Reliability Standards revised as part of that project (CIP-004-7 and CIP-011-3) on Dec. 7, 2021.

⁶⁹ *N. Am. Elec. Rel. Corp.*, 180 FERC ¶ 61,016 (July 8, 2022).

termination decision and the reason(s) for the action and (b) the option to appeal the membership termination in accordance with the due process requirement in FPA Section 215; and (ii) specifically describe the method of providing public notice of member meetings. The FERC found Public Citizen's protest⁷⁰ beyond the scope of the proceeding. The Bylaws changes were accepted effective as of the date of the order, or July 8, 2022, as requested. On July 29, 2022, NERC/NPCC requested a 30-day extension of time to submit the required compliance filing in order to accommodate procedural steps they are required complete before the compliance filing is due.

- **Rules of Procedure Changes (CMEP Risk-Based Approach Enhancements) (RR21-10)**

As previously reported, on May 19, 2022, the FERC approved in part, and denied in part, NERC's proposed revisions to its Rules of Procedure ("ROP") proposed in NERC's September 29, 2021 filing.⁷¹ Specifically, the FERC approved the proposed revisions to the NERC ROP for the Personnel Certification and Credential Maintenance Program in ROP section 600, the Training and Education Program in ROP section 900, and Confidential Information in ROP section 1500. The FERC approved CMEP-related ROP sections 401, 404, 407-409; Appendix 2 (other than the definition of "Self-Logging"); and Appendix 4C sections 5.0, 6.0, 7.0, 8.0, 9.0, and Attachment 1. The FERC rejected certain of the proposed revisions to ROP sections 402, 403, 405, and 406, Appendix 2, and Appendix 4C (concerned that, taken together, those revisions could adversely impact the nature and extent of the ERO's and the FERC's oversight of reliability compliance and enforcement activities). Accordingly, the FERC directed that NERC submit a 60-day compliance filing (on or before July 18, 2022) reinstating language in its ROP. On July 18, 2022, NERC submitted a compliance filing in response to the requirements of the May 19, 2022 order. Comments on that compliance filing are due on or before August 8, 2022.

- **Rules of Procedure Changes (Reliability Standards Development Revisions) (RR21-8)**

On August 18, 2021, NERC filed for approval revisions to sections 300 (Reliability Standards Development), Appendix 3B (Procedure for Election of Members of the Standards Committee) and Appendix 3D (Development of Registered Ballot Body Criteria) of the NERC Rules of Procedure ("ROP"), which are designed to update language, staff titles, and processes; remove unnecessary or duplicative obligations; and clarify roles and responsibilities related to the development of Reliability Standards (the "Reliability Standards Development ROP Revisions"). Comments on this filing were due on or before September 8, 2021; none were filed.

Deficiency Letter, Response & Amendment. On February 24, 2022, the FERC issued a deficiency letter, directing NERC to provide, on or before March 28, 2022, additional information and clarifications. On March 18, NERC provided an amended petition for approval, including revisions to Section 305.3.3 (Review of Segment Criteria) to provide that the qualification guidelines and rules for joining Registered Ballot Body Segments shall be reviewed periodically, instead of every three years. Comments on NERC's amended petition were due on or before April 8, 2022. On April 8, 2022, Public Citizen filed comments (relating to "the absence of balanced stakeholder representation in aspects of NERC's governance"). On April 26, 2022, NERC responded to Public Citizen's comments. This matter is pending before the FERC.

⁷⁰ In its protest, Public Citizen argued that the FERC should require a change to the composition of NPCC's Board of Directors, suggesting that NPCC be compelled to ensure that, of NPCC's eight board sectors and 15 voting members, "household consumer advocates" have two voting seats in Sector 7 (Sub-Regional Reliability Councils, Customers, Other Regional Entities and Interested Entities), and that regulators, reliability coordinators, and end-users compose at least half of the voting seats of the board.

⁷¹ *N. Am. Elec. Rel. Corp.*, 179 FERC ¶ 61,129 (May 19, 2022). In its Sep. 29, 2021 filing, NERC proposed changes to sections 400 (Compliance Monitoring and Enforcement) and 1500 (Confidential Information), Appendix 2 (Definitions) and Appendix 4C (Compliance Monitoring and Enforcement Program) of NERC's ROP. The changes were proposed to further enhance the risk-based approach to the Compliance Monitoring and Enforcement Program ("CMEP") whereby registered entities and the ERO Enterprise focus on the greatest risks to the reliability and security of the Bulk Power System ("BPS").

XI. Misc. - of Regional Interest

- **203 Application: Centrica / CPower (EC22-90)**

On July 12, 2022, Centrica Business Solutions Optimize (“Centrica”) requested authorization for the sale of 100% of the equity interests in Centrica to Enerwise Global Technologies, LLC d/b/a CPower (“CPower”).⁷² Upon consummation, Centrica and CPower will become Related Persons and members of the AR Sector’s RG Sub-Sector.⁷³ Comments on the 203 application are due on or before August 3, 2022. Thus far, doc-less interventions have been filed by PJM’s IMM and Public Citizen. If you have any questions, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **203 Application: Clearway / TotalEnergies (EC22-84)**

On July 1, 2022, Clearway requested authorization for, among other things, TotalEnergies Renewables USA, LLC’s (“TotalEnergies”) acquisition of a 50% percent indirect interest in the Clearway Group. Comments on the 203 application were due on or before July 22, 2022; none were filed. The PJM IMM and PJM (out-of-time) doc-lessly intervened. This matter is pending before the FERC. If you have any questions, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **203 Application: Waterside Power / KKR (EC22-79)**

On June 22, 2022, Generation Group Seat Member Waterside Power, among others,⁷⁴ requested authorization for the sale of 100% of the equity interests in Applicants to Cretaceous Bidco Limited (“Buyer”), a special purpose vehicle indirectly owned by funds, investment vehicles and/or separately managed accounts advised and/or managed by one or more subsidiaries of KKR & Co. Inc. (“KKR & Co.” and, together with its subsidiaries, (“KKR”). Comments on the 203 application were due on or before July 13, 2022; none were filed. Public Citizen filed a doc-less intervention. The application is pending before the FERC. If you have any questions, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **203 Application: Stonepeak / JERA Americas (EC22-71)**

On June 1, 2022, Stonepeak⁷⁵ requested authorization for the sale of 100% of the interests in Canal Power Holdings LLC to a wholly-owned affiliate of JERA Americas Inc. (“JERA Americas”).⁷⁶ Comments on the 203 application were due on or before June 22, 2022 and were filed by the MA AG (which encouraged the FERC to take the time necessary to comprehensively review the Application based on potential regional and SENE Capacity Zone competition and rate impacts) and Public Citizen (which raised four issues: (i) the potential threat to competition and rates that could be caused by the concentration of power generation ownership by JERA in ISO-NE and NYISO; (ii) the need for additional information to assess impacts on competition and rates as well as potential divestiture requirements to mitigate any threats to competition and rates; (iii) a desire for public disclosure of the purchase price; and (iv) what threats to rates might result from the Related Person relationships to be created and reflected in the NEPOOL stakeholder process). On July 1, 2022, Stonepeak answered the comments and protest. This matter is pending before the FERC. If you have any questions, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

⁷² JERA Americas Related Persons include Provisional Member Cricket Valley Energy Center, LLC.

⁷³ CPower is a member of the AR Sector’s RG Sub-Sector with its Related Persons Jericho Power and LS Power Grid Northeast, LLC.

⁷⁴ In addition to Waterside Power, “Applicants” are: Lea Power Partners, LLC; Badger Creek Limited; Chalk Cliff Limited; Double C Generation Limited Partnership; High Sierra Limited; Kern Front Limited; McKittrick Limited; Bear Mountain Limited; Live Oak Limited; and WGP Redwood Holdings, LLC.

⁷⁵ “Stonepeak” includes Canal Power Holdings LLC (“Seller”), and its indirect wholly-owned, public utility subsidiaries, Canal Generating LLC (“Canal Generating”), Canal 3 Generating LLC (“Canal 3”), Bucksport Generation LLC (“Bucksport”), and Stonepeak Kestrel Energy Marketing LLC (“Stonepeak Marketing”).

⁷⁶ JERA Americas Related Persons include Provisional Member Cricket Valley Energy Center, LLC.

- **Versant Power MPD OATT Order 881 Compliance Filing (ER22-2358)**

On July 12, 2022, in response to the requirements of *Order 881*, Versant Power filed a proposed new Attachment T to the Versant Power Open Access Transmission Tariff for the Maine Public District (“MPD OATT”). Attachment T, Versant reported, incorporates all the contents of the *pro forma* OATT’s new Attachment M. An effective date of July 12, 2025 was requested in an errata filing submitted on August 1, 2022. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **VTransco Shared Structure Participation Agreements (ER22-2189)**

On June 24, 2022, VTransco filed two Shared Structure Participation Agreements (“ShPA”) between VTransco and GMP - the first ShPA relates to the Duxbury 115 kV transmission line (the “Duxbury ShPA”); the second ShPA relates to the Bennington 115 kV transmission line (“Bennington ShPA”). The ShPAs calculate and allocate costs not recovered through the Tariff. The Duxbury ShPA provides for Shared Use Rent;⁷⁷ the Bennington ShPA does not. VTransco requested an effective date of January 1, 2022 for both ShPAs. Comments on this filing were due on or before July 15, 2022; none were filed. 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).

- **IAs: NEP / Narragansett (ER22-2039/2038)**

On June 6, 2022, New England Power (ER22-2038) and Narragansett (ER22-2039) each filed a wires-to-wires interconnection agreement (“IA”) to govern the interconnection of the two companies’ transmission systems. A May 25, 2022 effective date was requested for both of the IA filings. Comments on these IA filings are due on or before June 27, 2022; none were filed. These filings are pending before the FERC. If you have any questions concerning these filings, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **LGIA: CL&P / EIP Investment (New Britain, CT Fuel Cell) (ER22-1862)**

On July 11, 2022, the FERC accepted the non-conforming LGIA between CL&P and EIP Investment (“EIP”) governing the interconnection of EIP’s 20 MW fuel cell project through Interconnection Facilities that include facilities owned and used by The Farmington River Power Company to serve the Stanley Black & Decker manufacturer campus in New Britain, Connecticut.⁷⁸ The LGIA is non-conforming in that it contains limited deviations from the *pro forma* LGIA in Schedule 22 of the ISO-NE OATT that are necessary to reflect unique characteristics of the proposed interconnection, including that the Interconnection Facilities include elements that are not for Interconnection Customer’s sole use. The LGIA was accepted effective as of April 12, 2022, as requested. Unless the July 11 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **IA 2nd Amendment: CMP/Sappi (ER22-1612)**

On June 10, 2022, the FERC accepted a second amendment to the interconnection agreement (“IA”) between CMP and Sappi North America, Inc. (“Sappi”).⁷⁹ The Second Amendment, part of a larger transaction in which Sappi will transfer its hydroelectric facilities to Presumpscot Hydro LLC (“Presumpscot Hydro”) and will transfer its membership interests in Presumpscot Hydro to an unrelated third-party buyer (“Proposed Transaction”), provides that, for a period of up to two years and 180 days from the closing of the Proposed Transaction, the Presumpscot Hydro facilities may remain interconnected to Sappi’s facilities in their current configuration (during which time Presumpscot Hydro will pursue its own physically separate interconnection to the CMP grid. The Second Amended IA was accepted subject to CMP making a compliance filing reflecting the closing date of the Proposed Transaction and filing the executed Second Amended Agreement within 30

⁷⁷ The amount to be paid by GMP for its use of the non-PTF Shared Use Facilities on the Duxbury transmission line.

⁷⁸ *ISO New England Inc., and The Conn. Light and Power Co.*, Docket No. ER22-1862 (July 11, 2022) (unpublished letter order).

⁷⁹ *Central Maine Power Co.*, Docket No. ER22-1612 (June 10, 2022) (unpublished letter order).

days of the closing date of the Proposed Transaction. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Maine Power Link Application for Negotiated Rate Authority (ER22-1290)**

On June 22, 2022, the FERC denied⁸⁰ the application by Maine Power Link, LLC (“MPL”) for authority to charge negotiated rates associated with transmission capacity rights on its proposed Northern Maine Line transmission project (the “Project”).⁸¹ An applicant for negotiated rate authority must satisfy each of the FERC’s four factors established in *Chinook*.⁸² In this case, the FERC found that MPL did not meet its burden under the first *Chinook* factor (a showing that the rates to be charged will be just and reasonable). To make this showing, an applicant must show that it has assumed the full market risk of its project (by sufficiently demonstrating that it has no ability to shift risk or pass any costs onto parties or neighboring utilities that are not participating in the project). The FERC found that MPL failed to make that demonstration.⁸³ Because it did not meet the FERC’s first *Chinook* factor, the FERC did not decide whether MPL’s application met the second, third, or fourth *Chinook* factors.⁸⁴ The FERC stated that its action did not prejudice any terms, rates, and conditions of any TSAs associated with the Northern Maine RFP to be subsequently filed with the FERC. The June 22, 2022 order was not challenged as is final and unappealable. Reporting on this proceeding has concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Versant Power MPD OATT Order 676-J Compliance Filing Part I (ER22-1142)**

As previously reported, Versant Power filed revisions to Section 4 of the Versant OATT for the Maine Public District (“MPD OATT”) to incorporate the new cybersecurity and PFV standards contained in NAESB WEQ Version 003.3 Standards in response to the requirements of *Order 676-J*, (“Versant MPD OATT Order 676-J Part I Changes”).⁵⁸ A placeholder effective date was submitted. Comments on this filing were due on or before March 23, 2022; none were filed. This matter remains pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **Versant Power MPD OATT Order 676-I Compliance Filing (ER21-2498)**

On March 7, 2022, the FERC conditionally accepted Versant Power’s proposed revisions to Section 4 of the Versant Power Open Access Transmission Tariff for Maine Public District (the “MPD OATT”) to incorporate by reference certain of the revisions required by *Order 676-I*, including waiver of certain of those standards that are not applicable to MPD and/or the MPD OATT.⁸⁵ In accepting the filing, the FERC directed Versant to revise the MPD OATT to include a citation to the FEC order originally granting the waiver requests to be continued by the *Versant Order 676-I Compliance Filing Order I*. Versant submitted that compliance filing on April 1, 2022. The FERC accepted that compliance filing on June 29, 2022,⁸⁶ effective May 1, 2022, as requested. This matter is now concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

⁸⁰ *Maine Power Link, LLC*, 179 FERC ¶ 61,215 (June 2, 2022) (“MPL Order”).

⁸¹ The Project, if selected by the Maine Public Utility Commission (“MPUC”) in its request for proposals (“RFP”) for renewable energy generation and transmission projects (“Northern Maine RFP”), would be a transmission line to connect renewable energy generation projects in northern Maine to the New England transmission system in southern Maine.

⁸² See *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134 (2009) (“*Chinook*”). The four factors are: (1) just and reasonable rates; (2) absence of undue discrimination; (3) absence of undue preference towards of concerns regarding affiliates; and (4) regional reliability and operational efficacy.

⁸³ *MPL Order* at P 33.

⁸⁴ *Id.* at P 35.

⁸⁵ *Versant Power*, 178 FERC ¶ 61,159 (Mar. 7, 2022) (“*Versant Order 676-I Compliance Filing Order I*”).

⁸⁶ *Versant Power*, Docket No. ER21-2498-002 (June 29, 2022) (unpublished letter order).

- **Orders 864/864-A (Public Util. Trans. ADIT Rate Changes): New England Compliance Filings (various)**

In accordance with *Order 864*⁸⁷ and *Order 864-A*,⁸⁸ and extensions of time granted, New England's transmission-owning public utilities submitted their *Order 864* compliance filings, with specific dockets and filing dates identified in the following table. The FERC has addressed a number of the compliance filings, with some yet to be acted on, and others submitting further compliance filings (generally to reflect a January 27, 2020 effective date). The *Order 864* compliance proceedings that remain open are as follows:

Docket(s)	Transmission Provider	Date of Last Filing	Date Accepted
ER21-1130 ER20-2572	New England TOs (RNS)	Feb 18, 2022	Pending
ER20-2429	CMP (LNS)	May 6, 2022	Pending
ER21-1702	CMP (Schedule 1 Appendix A Implem. Rule)	Feb 28, 2022	Pending
ER21-1654	CL&P (LNS)	Feb 28, 2022	Pending
ER21-1295	Eversource (CL&P, PSNH, NSTAR) (LNS; Schedule 21-ES)	Feb 23, 2022	Pending
ER21-1154	FG&E (LNS)	Feb 23, 2022	Pending
ER21-1694	Green Mountain Power	Feb 18, 2022	Pending
ER21-1241	NEP (LNS)	Feb 28, 2022	Pending
ER20-2551	NEP (Schedule 21-NEP and TSA-NEP-22 Compliance Revisions)	Jul 18, 2022	Pending
ER20-2219	NEP (Tariff No. 1)	Jul 19, 2022	Pending
ER20-2553	NEP (MECO/Nantucket LSA)	Jul 18, 2022	Pending
ER21-1293	NSTAR (LNS)	Feb 23, 2022	Pending
ER22-1850	UI	May 10, 2022	Pending
ER21-1709	VTransco (LNS)	Feb 22, 2022	Pending
ER20-2133 -001, -002	Versant Power	Nov 22, 2021	Conditionally, Feb 28, 2022

Since the last Report, *Order 864*-related activity included:

- ♦ **ER20-2553-001 (NEP – MECO/Nantucket LSA).** On July 18, 2022, NEP amended its July 30, 2020 *Order 864* compliance filing with further amendments to its LSA with Nantucket Electric Company.
- ♦ **ER20-2551-001 (NEP – Schedule 21-NEP and TSA-NEP-22).** On July 18, 2020, NEP amended its July 30, 2022 *Order 864* compliance filing with further amendments to Schedule 21-NEP and TSA-NEP-22.
- ♦ **ER20-2219-001 (NEP – Tariff No. 1).** On July 19, 2022, NEP amended its June 29, 2020 *Order 864* compliance filing with further amendments to its Tariff No. 1, Schedule III-B.

⁸⁷ *Public Util. Trans. Rate Changes to Address Accumulated Deferred Income Taxes*, Order No. 864, 169 FERC ¶ 61,139 (Nov. 21, 2019), *reh'g denied and clarification granted in part*, 171 FERC ¶ 61,033 (Apr. 16, 2020) ("*Order 864*"). *Order 864* requires all public utility transmission providers with transmission rates under an OATT, a transmission owner tariff, or a rate schedule to revise those rates to account for changes caused by the 2017 Tax Cuts and Jobs Act ("2017 Tax Law"). Specifically, for transmission formula rates, *Order 864* requires public utilities (i) to deduct excess Accumulated Deferred Income Taxes ("ADIT") from or add deficient ADIT to their rate bases and adjust their income tax allowances by amortized excess or deficient ADIT; and (ii) to incorporate a new permanent worksheet into their transmission formula rates that will annually track ADIT information ("ADIT Worksheet"). The **ADIT Worksheet** must contain the following five specific categories of information: (i) how any ADIT accounts were re-measured and the excess or deficient ADIT contained therein ("**Category 1 Information**"); (ii) is the accounting for any excess or deficient amounts in Accounts 254 (Other Regulatory Liabilities) and 182.3 (Other Regulatory Assets) ("**Category 2 Information**"); (iii) whether the excess or deficient ADIT is protected (and thus subject to the Tax Cuts and Jobs Act's normalization requirements) or unprotected ("**Category 3 Information**"); (iv) the accounts to which the excess or deficient ADIT are amortized ("**Category 4 Information**"); and (v) the amortization period of the excess or deficient ADIT being returned or recovered through the rates ("**Category 5 Information**"). In addition, the FERC stated that it expects public utilities to identify each specific source of the excess and deficient ADIT, classify the excess or deficient ADIT as protected or unprotected, and list the proposed amortization period associated with each classification or source.

⁸⁸ *Public Util. Trans. Rate Changes to Address Accumulated Deferred Income Taxes*, 171 FERC ¶ 61,033, Order No. 864-A (Apr. 16, 2020) ("*Order 864-A*").

XII. Misc. - Administrative & Rulemaking Proceedings

- **New England Gas-Electric Forum (AD22-9)**

On May 19, 2022, the FERC announced that it will hold a forum, on September 8, 2022 in Burlington, VT, to discuss and achieve a greater understanding among stakeholders in defining the electric and natural gas system challenges in the New England Region. On July 21, the FERC issued a supplemental notice of the forum, announcing that the forum will be held at the DoubleTree by Hilton, Burlington, VT. Those interested in participating in person were strongly encouraged to register [here](#) at their earliest convenience (due to space constraints, seating for the forum will be limited). There is no fee for attendance. Those unable to attend in person will be able to watch via a free webcast.

- **NOI: Dynamic Line Ratings (AD22-5)**

On February 17, 2022, the FERC issued a notice of inquiry (“NOI”)⁸⁹ seeking comments on (i) whether and how the required use of dynamic line ratings (“DLR”) is needed to ensure just and reasonable wholesale rates; (ii) whether the lack of DLR requirements renders current wholesale rates unjust and unreasonable; (iii) potential criteria for DLR requirements; (iv) the benefits, costs, and challenges of implementing DLRs; (v) the nature of potential DLR requirements; and (vi) potential timeframes for implementing DLR requirements. This NOI represents the first step in the FERC’s effort to gather more information about the costs and benefits, and potentially mandating the use, of DLRs. A more [detailed summary](#) was provided to the Transmission Committee and is posted on the Transmission Committee’s [webpage](#).

Initial comments were due **April 25, 2022** and filed by: [ISO-NE](#); [DC Energy](#); [Eversource](#); [Clean Energy Parties](#); [Potomac Economics](#); [CT DEEP](#); [NERC](#); [US DOE](#); [CAISO](#); [MISO](#); [NYISO](#); [Org of MISO States](#); [PJM](#), [SPP](#); [SPP MMU](#); [AEP](#); [Alliant](#); [APPA](#); [APS](#); [AZ PUC](#); [Clean Energy Entities](#); [Dayton Power](#); [EEI](#); [ELCON](#); [Entergy](#); [IN Util. Reg. Comm.](#); [ITC](#); [LA DPW](#); [MISO TOs](#); [NRECA](#); [NYISO TOs](#); [PPL](#); [R Street Institute](#); [Southern Co.](#); [TAPS](#); [Tri-State](#); [Electricity Canada](#); [Electric Grid Monitoring](#); [Line Vision](#); [Idaho Power](#).

Reply comments were due on or before **May 25, 2022**⁹⁰ and were filed by: [AEP](#), [Clean Energy Entities](#),⁹¹ [EEI](#), [Joint Consumer Advocates](#), [MISO TOs](#), and the [R Street Institute](#). This matter is pending before the FERC.

- **Improving Generating Units Winter Readiness (AD22-4)**

On April 27-28, 2022, the FERC convened a joint technical conference with NERC and its Regional Entities to discuss how to improve the winter-readiness of generating units, including best practices, lessons learned and increased use of the NERC Guidelines, as recommended in the Joint February 2021 Cold Weather Outages Report.⁹² Panels included discussion of (i) cold weather preparedness plans; (ii) planning, engineering and technologies for cold weather preparedness; (iii) implementing cold weather preparedness plans for reliable operations; and (iv) communications, coordination, training, and education for cold weather operations. Speaker materials have been posted in eLibrary.

- **Joint Federal-State Task Force on Electric Transmission (AD21-15)**

On June 17, 2021, the FERC established a Joint Federal-State Task Force on Electric Transmission (“Transmission Task Force”).⁹³ The Transmission Task Force is comprised of all FERC Commissioners as well as

⁸⁹ *Implementation of Dynamic Line Ratings*, 178 FERC ¶ 61,110 (Feb. 17, 2022) (“*Dynamic Line Ratings NOI*”).

⁹⁰ The *Dynamic Line Ratings NOI* was published in the Fed. Reg. on Feb. 24, 2022 (Vol. 87, No. 37) pp. 10,349-10,354.

⁹¹ The “Clean Energy Entities” are the Working for Advanced Transmission Technologies Coalition (“WATT”), ACPA, AEE, and SEIA.

⁹² See *The February 2021 Cold Weather Outages in Texas and the South Central United States - FERC, NERC and Regional Entity Staff Report* at pp 18, 192 (Nov. 16, 2021), <https://www.ferc.gov/news-events/news/final-report-february-2021-freeze-underscores-winterization-recommendations>.

⁹³ *Joint Federal-State Task Force on Electric Transmission*, 175 FERC ¶ 61,224 (June 18, 2021).

representatives from 10 state commissions (two from each NARUC region). State commission representatives will serve one-year terms from the date of appointment by FERC and in no event will serve on the Task Force for more than three consecutive terms. The Transmission Task Force will convene multiple formal meetings annually, with FERC issuing orders fixing the time and place and agenda for each meeting, and the meetings will be open to the public for listening and observing and on the record. The Transmission Task Force will focus on “topics related to efficiently and fairly planning and paying for transmission, including transmission to facilitate generator interconnection, that provides benefits from a federal and state perspective.”⁹⁴ New England is represented by Commissioners Riley Allen (VT PUC) and Matt Nelson (Chair, MA DPU), each of whom will be serving a second term during the September 1, 2022 – August 31, 2023 term.⁹⁵

Public Meetings.

♦ **July 20, 2022.** A fourth meeting was held in San Diego, CA, on July 20, 2022. Discussion addressed (i) interregional transmission planning & transmission project development; and (ii) the FERC’s *Transmission NOPR*.

♦ **May 6, 2022.** A third meeting was held virtually on May 16, 2022. Discussion addressed (i) the generator interconnection queue processes and current backlog; and (ii) cost allocation for generator interconnection-related network upgrades, including participant funding. A transcript of this meeting was posted in eLibrary on May 18, 2022. The FERC invited post-meeting comments addressing issues raised during and in the agenda for the May 6 meeting. Those comments were due on June 1, 2022 and were filed by: [AEP](#), [Ameren](#), [Clean Energy Coalition](#), [EEL](#), [Invenergy Transmission](#), [MISO](#), [Old Dominion Electric Cooperative](#), [Omaha Power District](#), [PJM](#), and [Xcel Energy](#).

♦ **Feb 16, 2022.** A second meeting was held February 16, 2022 in Washington, DC. The agenda included a discussion, for purposes of transmission planning and cost allocation, specific categories and types of transmission benefits that transmission providers should consider and cost allocation principles, methodologies, and decision processes. A transcript of this meeting is posted in eLibrary. Post-meeting comments addressing issues raised during the February 16 meeting and identified in the agenda issued February 2, 2022 were due on or before April 1, 2022 and were filed by AZ PSC, NJ PBU, NARUC, ND PSC, OH PUC Office of the Federal Energy Advocate, VA State Corp. Comm., Americans for a Clean Energy Grid, ITC, PJM, and Sunflower Electric.

♦ **Nov 10, 2021.** The first Joint Federal-State Task Force meeting, which focused on incorporating state perspectives into regional transmission planning, was convened on November 10, 2021. A transcript of this meeting is posted in eLibrary. Comments on the issues discussed at the first meeting were filed by: [AEP](#), [LA PSC](#), [MI PSC](#), [PJM](#), and [Public Citizen](#).

• **Modernizing Electricity Market Design - Resource Adequacy (AD21-10)**

ISO/RTO Reports. On April 21, 2022, the FERC issued an order⁹⁶ directing each independent system operator (“ISO”) and regional transmission organization (“RTO”), including ISO-NE, to submit on or before **October 17, 2022** a report that describes: (1) current system needs given changing resource mixes and load profiles; (2) how it expects its system needs to change over the next five and 10 years; (3) whether and how it plans to reform its energy and ancillary services (“EAS”) markets to meet expected system needs over the next five and 10 years;

⁹⁴ Topics that the Task Force may consider include: (i) identifying barriers that inhibit planning and development of optimal transmission necessary to achieve federal and state policy goals, as well as potential solutions to those barriers; (ii) exploring potential bases for one or more states to use FERC-jurisdictional transmission planning processes to advance their policy goals, including multi-state goals; (iii) exploring opportunities for states to voluntarily coordinate in order to identify, plan, and develop regional transmission solutions; (iv) reviewing FERC rules and regulations regarding planning and cost allocation of transmission projects and potentially identifying recommendations for reforms; (v) examining barriers to the efficient and expeditious interconnection of new resources through the FERC-jurisdictional interconnection processes, as well as potential solutions to those barriers; and (vi) discussing mechanisms to ensure that transmission investment is cost effective, including approaches to enhance transparency and improve oversight of transmission investment including, potentially, through enhanced federal-state coordination.

⁹⁵ See Order on Nominations, *Joint Federal-State Task Force on Electric Transmission*, 180 FERC ¶ 61,030 (July 15, 2022).

⁹⁶ *Modernizing Wholesale Electricity Market Design*, 179 FERC ¶ 61,029 (Apr. 21, 2022) (“Order Directing Reports”).

and (4) information about any other reforms, including capacity market reforms and any other resource adequacy reforms that would help it meet changes in system needs. Public comments in response to the RTO/ISO reports may be submitted within 60 days following the filing of the reports. The FERC will review the reports and comments to determine whether further action is appropriate.

2021 Technical Conferences. The *Order Directing Reports* follows a series of staff-led technical conferences, convened in 2021 and summarized in previous Reports, addressing ISO/RTO resource adequacy⁹⁷ and energy and ancillary services markets.⁹⁸

- **Increasing Market and Planning Efficiency Through Improved Software Tech Conf (Jun 21-23, 2022) (AD10-12)**

On June 21-23, 2022, the FERC held its 13th annual technical conference addressing increasing Real-Time and Day-Ahead market efficiency through improved software. In a second supplemental notice issued on July 14, 2022, the FERC posted final agenda for the technical conference and speakers' summaries of their presentations with minor corrections to the agenda published on May 27, 2022. Panelist materials were posted to eLibrary on July 1, 2022. One set of comments was filed on or before the July 29 comments deadline.

- **NOPR: Duty of Candor (RM22-20)**

On July 28, 2022, the FERC issued a NOPR⁹⁹ proposing to add a new section to its regulations to require that any entity communicating with the FERC or other specified organizations (e.g. ISO/RTOs, FERC-approved market monitors, NERC and its Regional Entities, or transmission providers) related to a matter subject to FERC jurisdiction submit accurate and factual information and not submit false or misleading information, or omit material information. An entity would be shielded from violation of the new regulation if it has exercised due diligence to prevent such occurrences. The FERC's current regulations prohibit, in defined circumstances, inaccurate communications to the FERC and other organizations upon which the FERC relies to carry out its statutory obligations. However, because those requirements cover only certain communications and impose a patchwork of different standards of care for such communications, the FERC believes that a broadly applicable duty of candor will improve its ability to effectively oversee jurisdictional markets. It further indicated that its proposed due 'diligence standard' and other limitations are intended to minimize the additional burdens to industry that come with the new requirement. Initial comments are due **[60 days after the date of publication in the Federal Register]**.¹⁰⁰

⁹⁷ The FERC held two staff-led technical conferences addressing resource adequacy, one on Mar. 23, 2021 (with post-conference comments focused on PJM-specific issues) and the other on May 25, 2021 (focused on the wholesale markets administered by ISO-NE). Following the Mar. 23 conference, more than 45 sets of initial comments were filed, including by: [AEE](#), [Calpine](#), [Cogentrix](#), [Dominion](#), [Exelon](#), [FirstLight](#), [LS Power](#), [NESCOE](#), [NEPGA](#), [NRG](#), [PSEG](#), [Shell](#), [Vistra](#), [CT DEEP](#), [EEI](#), [EPSA](#), and [NRECA/APPA](#). Reply comments were filed by the [American Clean Power Association](#) ("ACPA"), [AEP](#), [EPSA](#), [Exelon](#), [Joint Consumer Advocates](#), [LS Power](#), [Old Dominion Electric Cooperative](#) ("ODEC"), [PJM Power Providers](#) ("P3"), [Public Interest Organizations](#) ("PIOs"), and the [Retail Electric Supply Association](#) ("RESA"). Following the May 25 conference, comments were filed by: [AEE](#), [Calpine](#), [CT Parties](#), [Dominion](#), [Eversource](#), [MMWEC](#), [NESCOE](#), [NEPGA](#), [NextEra](#), [NRG](#), [Public Interest Orgs](#), [Vistra](#), [AEMA](#), [EPSA](#), [RENEW](#).

⁹⁸ The FERC held two staff-led technical conferences addressing ISO/RTO EAS markets, one on Sept. 14, 2021; the second on Oct. 12, 2021. Transcripts of both technical conferences are posted in eLibrary. In advance of the EAS technical conferences, FERC staff issued on Sept. 7, 2021 a White Paper entitled "[Energy and Ancillary Services Market Reforms to Address Changing System Needs](#)" summarizing recent EAS markets reforms as well as reforms then under consideration. Initial comments on the topics discussed during the EAS technical conferences were filed by: [ISO-NE](#), [Appian Way Energy Partners](#), [Constellation](#), [Dominion](#), [Envir. Defense Fund](#), [FirstLight](#), [LS Power](#), [CAISO](#), [MISO](#), [NYISO](#), [PJM](#), [SPP MMU](#), [ACPA](#), [Clean Energy Organizations](#), [EEI](#), [Energy Trading Institute](#), [EPRI](#), [EPSA](#), [Middle River Power](#), [National Hydropower Assoc.](#), [NYSERDA](#), [PJM Providers Group](#), and [Public Citizen](#). Reply comments were filed by [EPRI](#), [NERC and its Regional Entities](#) and [Vistra](#).

⁹⁹ *Duty of Candor*, 180 FERC ¶ 61,052 (July 28, 2022) ("*Duty of Candor NOPR*").

¹⁰⁰ The *Duty of Candor NOPR* has not yet published in the *Fed. Reg.*

- **NOPR: Extreme Weather Vulnerability Assessments (RM22-16; AD21-13)**

On June 16, 2022, as corrected on July 12, 2022, the FERC issued a notice¹⁰¹ proposing to require transmission providers to submit one-time informational reports describing their current or planned policies and processes for conducting extreme weather vulnerability assessments¹⁰² (how they establish a scope for their extreme weather vulnerability assessments, develop inputs, identify vulnerabilities and determine exposure to extreme weather hazards, estimate the costs of impacts, and develop mitigation measures to address extreme weather risks). Initial comments are due August 30, 2022.¹⁰³

- **NOPR: Interconnection Reforms (RM22-14)**

On June 16, 2022, the FERC issued a notice of proposed rulemaking (“NOPR”),¹⁰⁴ more than 400 pages long, that proposes reforms to the *pro forma* Large Generator Interconnection Procedures (“LGIP”), *pro forma* Small Generator Interconnection Procedures (“SGIP”), *pro forma* Large Generator Interconnection Agreement (“LGIA”), and *pro forma* Small Generator Interconnection Agreement (“SGIA”) to address interconnection queue backlogs, improve certainty, and prevent undue discrimination for new technologies. Initial comments and reply comments are due October 13, 2022 and November 14, 2022, respectively.¹⁰⁵

The proposed reforms fall into three main categories: (1) reforms to implement a first-ready, first-served cluster study process; (2) reforms to increase the speed of interconnection queue processing; and (3) reforms to incorporate technological advancements to the interconnection process. Within each of these categories, the FERC proposes a wide array of reforms, and requests comment.

To implement the **first-ready, first-served cluster study process**, the FERC proposes to:

- ◆ Require transmission providers offer an alternative option for an informational interconnection study that would not require a project enter the interconnection queue;
- ◆ Make cluster studies the required interconnection study method under the *pro forma* LGIP;
- ◆ Allocate the shared costs of the cluster studies so that 90% of the applicable study costs are allocated to interconnection customers on a pro rate basis based on the requested MWs included in the applicable cluster, and 10% of the applicable study costs are allocated to interconnection customers on a per capita basis based on the number of interconnection requests in the applicable cluster;
- ◆ Require transmission providers to allocate network upgrade costs to interconnection customers within a cluster using a proportional impact method, in which the transmission provider will determine the degree to which each generating facility in the cluster contributes to the need for a specific network upgrade;
- ◆ Allow interconnection customers in an earlier-in-time cluster to share the costs of network upgrades with interconnection customers who will significantly benefit from those upgrades but would not share the cost of the network upgrades solely by virtue of being in a later cluster;
- ◆ Increase study deposits based on the size of the generating facility from \$35,000 to \$250,000;

¹⁰¹ *One-Time Informational Reports on Extreme Weather Vulnerability Assessments; Climate Change, Extreme Weather, and Elec. Sys. Rel.*, 179 FERC ¶ 61,196 (June 16, 2022) (“*Extreme Weather Vulnerability Assessments NOPR*”).

¹⁰² “Extreme weather vulnerability assessments” are proposed to be defined as “analyses that identify where and under what conditions jurisdictional transmission assets and operations are at risk from the impacts of extreme weather events, how those risks will manifest themselves, and what the consequences will be for system operations”.

¹⁰³ The *Extreme Weather Vulnerability Assessments NOPR* was published in the *Fed. Reg.* on July 1, 2022 (Vol. 87, No. 126) pp. 39,414-39,426.

¹⁰⁴ *Improvements to Generator Interconnection Procedures and Agreements*, 179 FERC ¶ 61,194 (June 16, 2022) (“*Interconnection Reforms NOPR*”).

¹⁰⁵ The *Interconnection Reforms NOPR* was published in the *Fed. Reg.* on July 5, 2022 (Vol. 87, No. 127) pp. 39,934-40,032.

- ♦ Require more stringent site control requirements, and proposes to require an interconnection customer to demonstrate 100% site control for a proposed generating facility when they submit the interconnection request;¹⁰⁶
- ♦ Implement a commercial readiness framework whereby interconnection customers must show demonstrable milestones towards commercial readiness in order to enter the cluster, such as an executed term sheet, reasonable evidence the project was selected in a resource plan, or a provisional LGIA;¹⁰⁷
- ♦ Impose withdrawal penalties when the interconnection customer withdraws from the interconnection queue.¹⁰⁸

To **increase the speed of the interconnection queue process**, the FERC proposes to:

- ♦ Eliminate the “reasonable efforts” standard for transmission providers completing interconnection studies and instead impose firm study deadlines and establish penalties that would apply when transmission providers fail to meet these deadlines. The penalty imposed would be \$500 per day that the study is late and would be distributed to interconnection customers on a pro rata basis;
- ♦ Add an entirely *pro forma* affected system study process to address the current lack of uniformity in the study of affected systems, which results in late-stage withdrawals, re-studies and increased costs to remaining interconnection customers;
- ♦ Establish two new *pro forma* agreements, a *pro forma* Affected System Study Agreement (new Appendix 15) and a *pro forma* Affected Systems Facilities Construction Agreement (new Appendix 16);
- ♦ Implement an optional resource solicitation study that can be performed by entities required to conduct a resource plan or solicitation. Under this proposed study process, a resource planning agency (such as a state agency or load-serving entity implementing a state mandate) would facilitate a study to group together interconnection requests associated with the qualifying resource solicitation process, and the resources vying for selection in a qualifying state resource solicitation process would be studied together for the purposes of informational interconnection studies.

Finally, as **technological advances to the interconnection process**, the FERC proposes to:

- ♦ Require transmission providers to allow more than one resource to co-locate on a shared site behind a single point of interconnection and share a single interconnection request;
- ♦ Change the way in which transmission providers assess an addition of a generating facility to an interconnection request, requiring that transmission providers evaluate a proposed addition as long as the addition does not change the requested interconnection service level;
- ♦ Enable customers with unused interconnection capacity share that surplus capacity with other resources as long as the original interconnection customer executes an LGIA or requests filing of an unexecuted LGIA;

¹⁰⁶ The FERC proposes to limit the option to provide a financial deposit in lieu of site control and would only allow this option when regulatory limitations prohibit the interconnection customer from obtaining site control. In such instances, the interconnection customer would submit a deposit of \$10,000 per MW, subject to a floor of \$500,000 and a ceiling of \$2 million.

¹⁰⁷ *Id.* at P 128.

¹⁰⁸ The proposed withdrawal penalty will increase as the interconnection customer moves through the interconnection queue and proposes a chart demonstrating the possible penalties at P 144.

- ♦ Require transmission providers, at the request of the interconnection customer to use operating assumptions for interconnection studies that reflect the proposed operation of an electric storage resource or co-located storage resource; and
- ♦ Require transmission providers to evaluate grid-enhancing solutions and file an annual informational report on their use of grid-enhancing technologies.

The FERC proposes to require compliance within 180 days of a final rule in this proceeding. Compliance would require transmission providers to file updates to their *pro forma* LGIA, LGIP, SGIA and SGIP, as applicable. If you have any questions concerning the *Interconnection Reforms NOPR*, please contact Margaret Czepiel (202-218-3906; mczepiel@daypitney.com) or Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **NOPR: ISO/RTO Credit Information Sharing (RM22-13)**

On July 28, 2022, the FERC issued a NOPR¹⁰⁹ proposing to revise its regulations to permit ISO/RTOs to share among themselves¹¹⁰ credit-related information regarding market participants.¹¹¹ The FERC believes that the proposed credit information sharing could improve ISO/RTOs' ability to accurately assess market participants' credit exposure and risks and enable ISO/RTOs to respond to credit events more quickly and effectively (minimizing the overall credit-related risks, including risks of unexpected defaults by market participants, in organized wholesale electric markets). The FERC proposal would not permit the information sharing to be conditioned on the specific consent of the market participant, would permit the receiving ISO/RTO to use market participant credit-related information received from another ISO/RTO to the same extent and for the same purposes that the receiving ISO/RTO may use credit-related information collected from its own market participants, and would not change the existing discretion an ISO/RTO has to act on credit-related information, regardless of the source of that information. The FERC seeks comment on whether ISO/RTOs' credit-related information sharing discretion should be limited in any specific ways or to any specific circumstances. Initial comments are due **[60 days after the date of publication in the Federal Register]**; reply comments **[90 days after the date of publication in the Federal Register]**.¹¹²

- **NOPR: Transmission System Planning Performance Requirements for Extreme Weather (RM22-10)**

On June 16, 2022, the FERC issued a notice¹¹³ proposing to require that NERC modify Reliability Standard TPL-001-5.1 (Transmission System Planning Performance Requirements) within one year of the effective date of a final rule in this proceeding to address reliability concerns pertaining to transmission system planning for extreme heat and cold weather events that impact the reliable operations of the Bulk-Power System. Specifically, the FERC proposed modifications to TPL-001-5.1 to require: (i) development of benchmark planning cases; (ii) planning for extreme heat and cold events using steady state and transient stability analyses expanded to cover a range of

¹⁰⁹ *Credit-Related Information Sharing in Organized Wholesale Electric Markets*, 180 FERC ¶ 61,048 (July 28, 2022) ("*ISO/RTO Credit-Related Info Sharing NOPR*").

¹¹⁰ The *ISO/RTO Credit-Related Info Sharing NOPR* does propose credit-related information sharing with markets that are not Commission-jurisdictional (i.e. ERCOT, AESO, IESO or commodities and derivative markets that are subject to the jurisdiction of other regulators, including the Commodity Futures Trading Commission).

¹¹¹ Revisions would be to 18 CFR § 35.47(h). The changes would "[p]ermit the sharing of market participant credit-related information with, and receipt of market participant credit-related information from, other organized wholesale electric markets for the purpose of credit risk management and mitigation, provided such market participant credit-related information is treated upon receipt as confidential under the terms for the confidential treatment of market participant information set forth in the tariff or other governing document of the receiving organized wholesale electric market; and permit the receiving organized wholesale electric market to use market participant credit-related information received from another organized wholesale electric market to the same extent and for the same purposes that the receiving organized wholesale electric market may use credit-related information collected from its own market participants.

¹¹² The *ISO/RTO Credit-Related Info Sharing NOPR* has not yet published in the *Fed. Reg.*

¹¹³ *Transmission System Planning Performance Requirements for Extreme Weather*, 179 FERC ¶ 61,195 (June 16, 2022) ("*Extreme Weather Transmission System Planning NOPR*").

extreme weather scenarios; and (iii) corrective action plans that include mitigation for any instances where performance requirements for extreme heat and cold events are not met. Initial comments are due August 26, 2022.¹¹⁴

- **NOI: Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses (RM22-5)**

On December 16, 2021, the FERC issued a notice of inquiry¹¹⁵ seeking comments on (i) the rate recovery, reporting, and accounting treatment of industry association dues and certain civic, political, and related expenses; (ii) the ratemaking implications of potential accounting and reporting changes; (iii) whether additional transparency or guidance is needed with respect to defining donations for charitable, social, or community welfare purposes; and (iv) a framework for guidance should the FERC determine action is necessary to further define the recoverability of industry association dues charged to utilities and/or utilities' expenses from civic, political, and related activities. Initial comments were due February 22, 2022 and were filed by [AGA](#), [APPA](#), [EEI](#), [EPRI](#), [Harvard Electricity Law Institute](#), [INGA](#), [Joint RTO Commenters](#),¹¹⁶ [MA AG](#), [National Grid](#), [NEI](#), [Nexamp](#), [NRECA](#), [Public Citizen](#), [Public Interest Organizations](#), [Ratepayers](#), [Sunova](#), and [UCS](#). Reply comments were due on or before March 23, 2022 and were filed by, among others: [DTE](#), [MA AG](#), [NECOS](#), [AGA](#), [EEI](#), [INGA](#), [Joint Consumer Advocates](#), and [WIRES](#). Since the last Report, [Joint RTO Commenters](#) replied to NECOS' discussion and characterization of the Initial Joint RTO Comments and a question of First Amendment constitutional law. This matter is pending before the FERC.

- **NOPR: Internal Network Security Monitoring for High and Medium Impact BES Cyber Systems (RM22-3)**

On January 20, 2022, the FERC issued a NOPR¹¹⁷ proposing to direct NERC to develop and submit for FERC approval new or modified Reliability Standards that require internal network security monitoring ("INSM")¹¹⁸ within a trusted Critical Infrastructure Protection networked environment for high and medium impact Bulk Electric System ("BES") Cyber Systems. The FERC stated that "including INSM requirements in the CIP Reliability Standards would ensure that responsible entities maintain visibility over communications between networked devices within a trust zone (i.e., within an ESP), not simply monitor communications at the network perimeter access point(s), i.e., at the boundary of an ESP as required by the current CIP requirements. In the event of a compromised ESP, improving visibility within a network would increase the probability of early detection of malicious activities and would allow for quicker mitigation and recovery from an attack."¹¹⁹

Comments on the *Internal Network Security Monitoring NOPR* were due on or before March 28, 2022.¹²⁰ Comments were filed by: the IRC, NERC, EEI, EPSA, TAPS, Bonneville Power Admin., Consumers Energy, Cynalytica, CA Department of Water Resources, Electricity Canada, Entergy, Idaho Power, Juniper Networks, ITC, Microsoft,

¹¹⁴ The *Extreme Weather Transmission System Planning NOPR* was published in the *Fed. Reg.* on June 27, 2022 (Vol. 87, No. 122) pp. 38,021-38,044.

¹¹⁵ *Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses*, 177 FERC ¶ 61,180 (Dec. 16, 2021) ("*Dues & Expenses NOI*").

¹¹⁶ "Joint RTO Commenters" are PJM Interconnection, L.L.C. ("PJM"), California Independent System Operator Corp. ("CAISO"), Midcontinent Independent System Operator, Inc. ("MISO"), and Southwest Power Pool ("SPP").

¹¹⁷ *Internal Network Security Monitoring for High and Medium Impact Bulk Electric System Cyber Systems*, 178 FERC ¶ 61,038 (Jan. 20, 2022) ("*Internal Network Security Monitoring NOPR*").

¹¹⁸ INSM is a subset of network security monitoring that is applied within a "trust zone," such as an Electronic Security Perimeter ("ESP"), and is designed to address situations where vendors or individuals with authorized access are considered secure and trustworthy but could still introduce a cybersecurity risk to a high or medium impact BES Cyber System.

¹¹⁹ *Id.* at P 2.

¹²⁰ The *Internal Network Security Monitoring NOPR* was published in the *Fed. Reg.* on Jan. 27, 2022 (Vol. 87, No. 18) pp. 4,173-4,180.

North American Generator Forum, Nozomi Networks, Operational Technology Cybersecurity Coalition, the US Bureau of Reclamation, and T. Conway. This matter is pending before the FERC.

- **NOI: Reactive Power Capability Compensation (RM22-2)**

On November 18, 2021, the FERC issued a notice of inquiry¹²¹ seeking comments on reactive power capability compensation and market design. Specifically, the FERC seeks comments on whether (i) the AEP Methodology remains a just and reasonable approach to determining reactive power revenue requirements in all circumstances; (ii) other potential alternative methodologies not based on the costs of the particular resource(s) at issue in a given proceeding should be considered or better used to develop reactive power capability revenue requirements; and (iii) resources interconnected to a distribution system and participating in wholesale markets are technically capable of providing reactive power to the transmission system in such a way that they should be eligible for reactive power capability compensation through transmission rates. Initial comments were due February 21; Reply Comments, March 23, 2022. Initial comments were filed by over 35 parties. Reply comments were filed by: Ameren, Clean Energy Coalition, DE Shaw, EDF, EEI, EPSA, Joint Customers,¹²² MISO TOs, PJM IMM, PSEG, Vistra, and N. Bhushan. This matter is pending before the FERC.

- **Transmission NOPR (RM21-17)**

Following its ANOPR process,¹²³ the FERC issued on April 21, 2022 a NOPR¹²⁴ that would require public utility transmission providers to:

- (i) conduct long-term regional transmission planning on a sufficiently forward-looking basis to meet transmission needs driven by changes in the resource mix and demand;
- (ii) more fully consider dynamic line ratings and advanced power flow control devices in regional transmission planning processes;
- (iii) seek the agreement of relevant state entities within the transmission planning region regarding the cost allocation method or methods that will apply to transmission facilities selected in the regional transmission plan for purposes of cost allocation through long-term regional transmission planning;
- (iv) adopt enhanced transparency requirements for local transmission planning processes and improve coordination between regional and local transmission planning with the aim of identifying potential opportunities to “right-size” replacement transmission facilities; and

¹²¹ *Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses*, 177 FERC ¶ 61,180 (Dec. 16, 2021) (“*Dues & Expenses NOI*”).

¹²² “Joint Customers” are Old Dominion Electric Cooperative (“ODEC”), Northern Virginia Electric Cooperative, Inc. (“NOVEC”), and Dominion Energy Services, Inc. on behalf of Virginia Electric and Power Company d/b/a Dominion Energy Virginia (“Dominion”).

¹²³ *See Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 176 FERC ¶ 61,024 (July 15, 2021) (“*Transmission Planning & Allocation/Generation Interconnection ANOPR*”). The FERC convened a tech. conf. on Nov. 15, 2021, to examine in detail the issues and potential reforms described in the ANOPR. Speaker materials and a transcript of the tech. conf. are posted in FERC’s eLibrary. Pre-technical conference comments were submitted by over 175 parties, including by: [NEPOOL](#), [ISO-NE](#), [AEE](#), [Anbaric](#), [Avangrid](#), [BP](#), [CPV](#), [Dominion](#), [EDF](#), [EDP](#), [Enel](#), [EPSA](#), [Eversource](#), [Exelon](#), [LS Power](#), [MA AG](#), [MMWEC](#), [National Grid](#), [NECOS](#), [NESCOE](#), [NextEra](#), [NRDC](#), [Orsted](#), [Shell](#), [UCS](#), [VELCO](#), [Vistra](#), [Potomac Economics](#), [ACORE](#), [ACPA/ESA](#), [APPA](#), [EEI](#), [ELCON](#), [Industrial Customer Orgs](#), [LPPC](#), [MA DOER](#), [NARUC](#), [NASUCA](#), [NASEO](#), [NERC](#), [NRECA](#), [SEIA](#), [State Agencies](#), [TAPS](#), [WIRES](#), [Harvard Electric Law Initiative](#), [NYU Institute for Policy Integrity](#), [New England for Offshore Wind Coalition](#), and the [R Street Institute](#). ANOPR reply comments and post-technical conference comments were filed by over 100 parties, including: by: [CT AG](#), [Acadia Center/CLF](#), [CT AG](#), [Dominion](#), [Enel](#), [Eversource](#), [LS Power](#), [MA AG](#), [MMWEC](#), [NESCOE](#), [NextEra](#), [Shell](#), [UCS](#), [Vistra](#), [ACPA/ESA](#), [AEE](#), [APPA](#), [EEI](#), [ELCON](#), [Environmental and Renewable Energy Advocates](#), [EPSA](#), [Harvard ELI](#), [NRECA](#), [Potomac Economics](#), and [SEIA](#). Supplemental reply comments were filed by [WIRES](#), and a group of [former military leaders and former Department of Defense officials](#), and [ACPA/AEE/SEIA](#).

¹²⁴ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 179 FERC ¶ 61,028 (Apr. 21, 2022) (“*Transmission NOPR*”).

- (v) revise their existing interregional transmission coordination procedures to reflect the long-term regional transmission planning reforms proposed in this NOPR.

In addition, the *Transmission NOPR* would not permit public utility transmission providers to take advantage of the construction-work-in-progress (“CWIP”) incentive for regional transmission facilities selected for purposes of cost allocation through long-term regional transmission planning and would permit the exercise of federal rights of first refusal (“ROFR”) for transmission facilities selected in a regional transmission plan for purposes of cost allocation, conditioned on the incumbent transmission provider with the federal ROFR for such regional transmission facilities establishing joint ownership of the transmission facilities. While the ANOPR sought comment on reforms related to cost allocation for interconnection-related network upgrades, interconnection queue processes, interregional transmission coordination and planning, and oversight of transmission planning and costs, the *Transmission NOPR* does not propose broad or comprehensive reforms directly related to these topics. The FERC indicated that it would continue to review the record developed to date and expects to address possible inadequacies through subsequent proceedings that propose reforms, as warranted, related to these topics.

A number of the elements of the *Transmission NOPR*, if adopted as part of a final rule, would result in some significant changes to how the region’s transmission needs are identified, solutions are evaluated and selected, and costs recovered and allocated. A more fulsome high-level summary from NEPOOL Counsel of the *Transmission NOPR* was distributed to, and was reviewed with, the Transmission Committee, which will recommend whether NEPOOL should submit comments on the *Transmission NOPR*.

Comment Dates Extended. Following a number of requests for extensions of time, comments on the *Transmission NOPR* are due **August 17, 2022**; reply comment **September 19, 2022**. Thus far, the [Clean Energy Coalition](#) and [Large Public Power Council](#), [Microgrid Resources Coalition](#), the [Smart Electric Power Alliance](#), and [Tabors Caramanis](#) have submitted comments. On July 27, 2022, the Georgia Public Service Commission (“GA PUC”) asked for an additional 30 days of time to submit comments and reply comments. That request is pending before the FERC.

If you have any questions concerning the *Transmission NOPR*, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com) or Margaret Czepiel (202-218-3906; mczepiel@daypitney.com).

- **NOI: Removing the DR Opt-Out in ISO/RTO Markets (RM21-14)**

On March 18, 2021, the FERC issued a NOI¹²⁵ seeking comments on whether to revise its Demand Response (“DR”) Opt-Out regulations established in *Orders 719 and 719-A*. Those regulations require an ISO/RTO not to accept bids from an aggregator of retail customers (“ARC”) that aggregates DR of the customers of utilities that distributed more than 4 million MWh in the previous fiscal year, where the relevant electric retail regulatory authority prohibits such customers’ DR to be bid into ISO/RTO markets by an ARC. The FERC now seek information to help it examine the potential costs/burdens and benefits, both quantitative and qualitative, of removing the DR Opt-Out, as well as other changes relating to DR since the FERC issued *Orders 719 and 719-A*. The FERC is not seeking comment on the Small Utility Opt-In. Comments on the NOI, following an extension, were due on or before July 23, 2021 and were filed by nearly 30 parties, including by [AEE](#), [Voltus](#), [AEMA](#), [APPA/NRECA](#), [EEI](#), and [NARUC](#). Reply comments were due on or before August 23, 2021, and were filed by [AEP](#), [Armada Power](#), [Entergy](#), [Southern Pioneer Electric](#), [Voltus](#), State Commissions from [LA/MS](#), [MI](#), [MO](#), [NC](#), [APPA/NRECA](#), Assoc. of Bus. Advocating Tariff Equity (“[ABATE](#)”), and [PIOs](#). On March 28, 2022, the Mississippi PSC moved to lodge its Protest and Response filed in a recent Complaint proceeding initiated and subsequently withdrawn by Voltus (EL21-12), to ensure its pleading is a part of the record of this proceeding. On March 29, 2022, the U.S. House Sustainable Energy and Environment Coalition (“SEEC”) Power Sector Task Force urged the FERC to proceed to a NOPR that would eliminate the demand response Opt-Out. Since the last Report, [Voltus](#) again submitted comments in support of eliminating the DR Opt-Out, with responses to those comments filed by the [Mississippi PSC](#) and [R.](#)

¹²⁵ *Participation of Aggregators of Retail Demand Response Customers in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 174 FERC ¶ 61,198 (March 18, 2021) (“DR Aggregator NOI”).

[Borlick](#) (further supplemented on August 1, 2022 by the submission of a copy of the Supreme Court's decision in *FERC v. EPSA*, 577 U.S. 260 (2016)) This matter remains pending before the FERC.

- **NOPR: Accounting and Reporting Treatment of Certain Renewable Energy Assets (RM21-11)**

On July 28, 2022, the FERC issued a NOPR¹²⁶ proposing reforms to the accounting and reporting treatment of certain renewable energy assets. Specifically, the FERC proposes changes to the Uniform System of Accounts ("USofA") and relevant FERC forms to: (i) include new accounts for wind, solar, and other non-hydro renewable assets; (ii) create a new functional class for energy storage accounts; (iii) codify the accounting treatment of renewable energy credits; and (iv) create new accounts within existing functions for hardware, software, and communication equipment. The FERC also seeks comment on whether the Chief Accountant should issue guidance on the accounting for hydrogen. Comments on the *Renewable Energy Assets USofA and Reporting NOPR* are due **[45 days after the date of publication in the Federal Register]**.¹²⁷

- **NOPR: Cybersecurity Incentives (RM21-3)**

On December 17, 2020, the FERC issued a NOPR¹²⁸ proposing to establish rules for incentive-based rate treatment for voluntary cybersecurity investments by a public utility for or in connection with the transmission or sale of electric energy subject to FERC jurisdiction, and rates or practices affecting or pertaining to such rates for the purpose of ensuring the reliability of the BPS.

Comments on the *Cyber security Incentives NOPR* were due on or before April 6, 2021. Comments were filed by: [NECPUC](#), [APPA](#), [EEI](#), [EPSA](#), [LPPC](#), [NERC](#), [NRECA](#), [TAPS](#), [Accenture](#), [aDolus Inc. et al.](#),¹²⁹ [Alliant](#), [Anterix](#), [Bureau of Reclamation](#), [CA Dept of Water Resources State Water Project/CPUC](#), [George Cotter](#), [FRS](#), [Hitachi ABB Power Grids](#), [IECA](#), [ITC](#), [Joint Consumer Advocates](#), [MI PUC](#), [Org of MISO States](#), [MISO TOs](#), [PJM TOs](#), and [Public Citizen](#). Reply comments were due May 6, 2021¹³⁰ and were filed by [APPA/TAPS](#), [EEI](#), [SEIA](#), California Public Utilities Commission and California Department of Water Resources ("CA PUC/DWR"), and the Office of the Ohio Federal Energy Advocate ("Ohio FEA"). This matter remains pending before the FERC.

- **Order 881: Managing Transmission Line Ratings (RM20-16)**

On December 16, 2021, the FERC issued its final rule, *Order 881*, on Managing Transmission Line Ratings.¹³¹ In *Order 881*, the FERC reforms both the *pro forma* OATT and its regulations to improve the accuracy and transparency of transmission line ratings. Specifically, *Order 881* requires:

- (vi) transmission providers to implement ambient-adjusted ratings on the transmission lines over which they provide transmission service;
- (vii) ISO/RTOs to establish and implement the systems and procedures necessary to allow transmission owners to electronically update transmission line ratings at least hourly;
- (viii) transmission owners to share transmission line ratings and transmission line rating methodologies with their respective transmission provider(s) and, in ISO/RTOs, with their respective market monitor(s); and

¹²⁶ *Accounting and Reporting Treatment of Certain Renewable Energy Assets*, 180 FERC ¶ 61,050 (July 28, 2022) ("*Renewable Energy Assets USofA and Reporting NOPR*").

¹²⁷ The *Renewable Energy Assets USofA and Reporting NOPR* has not yet published in the *Fed. Reg.*

¹²⁸ *Cybersecurity Incentives*, 173 FERC ¶ 61,240 (Dec. 17, 2020) ("*Cybersecurity Incentives NOPR*").

¹²⁹ These joint comments were filed by aDolus Inc., Fortress Information Security, GMO GlobalSign Inc., Ion Channel, ReFirm Labs and Reliable Energy Analytics LLC.

¹³⁰ The *Cybersecurity Incentives NOPR* was published in the *Fed. Reg.* on Feb. 5, 2021 (Vol. 86, No. 23) pp. 8,309-8,325.

¹³¹ *Managing Transmission Line Ratings*, Order No. 881, 177 FERC ¶ 61,179 (Dec. 16, 2021) ("*Order 881*").

- (ix) transmission providers to maintain a database of transmission owners' transmission line ratings and transmission line rating methodologies on the transmission provider's Open Access Same-Time Information System ("OASIS") site or other password-protected website.

Order 881 became effective March 14, 2022.¹³²

Requests for rehearing and/or clarification. Requests for rehearing and/or clarification of *Order 881* were filed by ATC, EEI, ITC Holdings, MISO IMM, and the MISO TOs on January 18, 2022, but may be deemed denied by operation of law. On February 18, 2022, the FERC issued a "Notice of Denial of Rehearings by Operation of Law and Providing for Further Consideration".¹³³ The Notice confirmed that the 60-day period during which a petition for review of *Order 881* can be filed with an appropriate federal court was triggered when the FERC did not act on the requests for rehearing of *Order 881*. The Notice also indicated that the FERC would address, as is its right, the rehearing requests in a future order, and may modify or set aside its orders, in whole or in part, "in such manner as it shall deem proper."

The FERC issued that order on May 19, 2022 ("*Order 881-A*"),¹³⁴ modifying the discussion in *Order 881*, granting clarification in part, and continuing to reach the same result as in *Order 881*. Specifically, the FERC:

- (i) continued to find that requiring transmission providers to apply the ambient-adjusted ratings ("AAR")¹³⁵ requirements set forth in pro forma OATT Attachment M to all transmission lines on which they provide transmission service, subject to certain exceptions, is just and reasonable;
- (ii) clarified two aspects of the AAR requirements related to transmission providers' transmission protection relay settings ((1) if a transmission provider establishes higher transmission line ratings, it will have to evaluate or reevaluate its applicable protection systems for that facility and (2) in a majority of situations the relay setting should exceed AAR values);
- (iii) continued to require the use of AARs for a 10-day forward period;
- (iv) declined to clarify or grant rehearing on the issue of a transmission line rating "floor", which it declined to require in *Order 881*;
- (v) did not change its position with respect to the five-degree requirement,¹³⁶ the daytime/nighttime ratings requirement,¹³⁷ the seasonal line ratings annual update requirement, data storage and sharing requirements, or the proposed implementation schedule (AAR implementation on congested transmission lines within one year from the date of the compliance filing and, for all other transmission lines, implementation within two years from the date of the compliance filing);
- (vi) clarified that transmission providers have the discretion to post the required data to their OASIS site or an alternative password-protected website so long as users are able to access the data in a

¹³² *Order 881* was published in the Fed. Reg. on Jan. 13, 2022 (Vol. 87, No. 9) pp. 2,244-2,307.

¹³³ *Managing Transmission Line Ratings*, 178 FERC ¶ 62,104 (Feb. 18, 2022) ("*Order 881 Notice of Denial of Rehearings by Operation of Law*").

¹³⁴ *Managing Transmission Line Ratings*, 179 FERC ¶ 61,125 (May 19, 2022) ("*Order 881-A*").

¹³⁵ An ambient-adjusted rating is defined as a transmission line rating that: (1) applies to a time period of not greater than one hour; (2) reflects an up-to-date forecast of ambient air temperature across the time period to which the rating applies; (3) reflects the absence of solar heating during nighttime periods where the local sunrise/sunset times used to determine daytime and nighttime periods are updated at least monthly, if not more frequently; and (4) is calculated at least each hour, if not more frequently. See 18 CFR 35.28(b)(12) (2021); Pro Forma OATT attach. M, AAR Definition.

¹³⁶ The requirement that transmission providers implement AARs that update at least with every 5°F increment of temperature change, in order to meet the pro forma OATT Attachment M requirement that an AAR reflect an up-to-date forecast of ambient air temperature.

¹³⁷ The requirement that transmission providers incorporate solar heating into AARs by implementing separate AARs for daytime and nighttime periods, and to update the sunrise and sunset times used to calculate their AARs at least monthly, if not more frequently.

manner that is comparable to if it were posted to OASIS and subject to OASIS access requirements; and

- (vii) clarified that *Order 881* did not revise the FERC's existing CEII requirements (and that transmission line ratings and methodologies do not constitute CEII).

As reported in Section IV above, New England's (and the Schedule 21 Providers') *Order 881* compliance filings have been filed. Reporting on this rulemaking proceeding will conclude with this Report.

- **NOPR: Electric Transmission Incentives Policy (RM20-10)**

Supplemental NOPR. In light of comments already received in this proceeding,¹³⁸ the FERC issued on April 15, 2021 a *Supplemental NOPR*¹³⁹ to propose and seek comment on a revised incentive for transmitting and electric utilities that join Transmission Organizations ("Transmission Organization Incentive"). The Incentive would be reduced from 100 to 50 basis points and would be available only for three years. The FERC sought comment on whether voluntary participation should be a requirement, and if so, how "voluntary" should be determined. In addition, the FERC now proposes to require each utility that has received a Transmission Organization Incentive for three or more years to submit a compliance filing revising its tariff to remove the incentive from its transmission tariff. The *Supplemental NOPR* did not address the other proposals contained in the *March NOPR*.¹⁴⁰ A more detailed summary of the NOPR was distributed to the Transmission Committee and discussed at the TC's March 25, 2020 meeting.

Comments on the *Supplemental NOPR* were due on or before June 25, 2021. Over 60 sets of comments were filed, including by the New England TOs, MMWEC/NHEC/CMMEC, NECOS, NESCOE, Potomac Economics, and CT PURA. Reply comments were due on or before July 26, 2021, with 28 sets of comments received, including by the [New England TOs](#), [NECOS](#), [NESCOE](#), [CT PURA/CT DEEP/MA AG](#), [CT AG](#), and [Public Interest Groups](#).¹⁴¹ Reply

¹³⁸ Over 80 sets of comments on the *March NOPR* were filed on or before the July 1, 2020 comment date, including comments by: Avangrid, EDF Renewables, EMCOS, Eversource, Exelon, LS Power, MMWEC/NHEC/CMEEC, National Grid, NESOCE, NextEra, UCS, CT PURA, and Potomac Economics. Reply comments were filed by AEP, ITC Holding, the N. California Transmission Agency, and WIRES.

¹³⁹ *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, 175 FERC ¶ 61,035 (Apr. 15, 2021) ("*Supplemental NOPR*").

¹⁴⁰ As previously reported, the *March NOPR* proposed revisions to the FERCs existing transmission incentives policy and corresponding regulations, including the following:

- ◆ A shift from risks and challenges to a **consumers' benefits test** that focuses on ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.
- ◆ **ROEs incentive for Economic Benefits.** A 50-basis-point adder for transmission projects that meet an economic benefit-to-cost ratio in the top 75th percentile of transmission projects examined over a sample period and an additional 50-basis-point adder for transmission projects that demonstrate *ex post* cost savings that fall in the 90th percentile of transmission projects studied over the same sample period, as measured at the end of construction.
- ◆ **ROE for Reliability Benefits.** A 50-basis-point adder for transmission projects that can demonstrate potential reliability benefits by providing quantitative analysis, where possible, as well as qualitative analysis.
- ◆ **Abandoned Plant Incentive.** 100 percent of prudently incurred costs of transmission facilities selected in a regional transmission planning process that are cancelled or abandoned due to factors that are beyond the control of the applicant. Recovery from the date that the project is selected in the regional transmission planning process.
- ◆ **Eliminate Transco Incentives.**
- ◆ **Transmission Organization Incentive.** A 50-basis-point increase for transmitting utilities that turn over their wholesale facilities to a Transmission Organization and *only for the first three years after transferring operational control of its facilities*. The FERC seeks comment as to whether participation must be voluntary to receive the incentive, and if so, how the CFERC should determine whether the decision to join is voluntary.
- ◆ **Transmission Technologies Incentives.** Eligible for both a stand-alone, 100-basis-point ROE incentive on the costs of the specified transmission technology project and specialized regulatory asset treatment. Pilot programs presumptively eligible (though rebuttable).
- ◆ **250-Basis-Point Cap.** Total ROE incentives capped at 250 basis points in place of current "zone of reasonableness" limit.
- ◆ **Updated Date Reporting Processes.** Information to be obtained on a project-by-project basis, information collection expanded, updated reporting process.

¹⁴¹ "Public Interest Groups" are NRDC, Sierra Club, Sustainable FERC Project, and Western Grid Group.

comments were also posted from New England State Parties,¹⁴² Alliant/Consumers/DTE, AEP, Pacific Gas & Electric, Joint Consumer Advocates, and the American Clean Power Association (“ACPA”).

September 10, 2021 Workshop. The FERC convened a workshop on September 10, 2021¹⁴³ to discuss certain performance-based ratemaking approaches, particularly shared savings, that may foster deployment of transmission technologies. The notice states that the workshop will explore: the maturity of the modeling approaches for various transmission technologies; the data needed to study the benefits/costs of such technologies; issues pertaining to access to or confidentiality of this data; the time horizons that should be considered for such studies; and other issues related to verifying forecasted benefits. The workshop also discussed whether and how to account for circumstances in which benefits do not materialize as anticipated and may explore other performance-based ratemaking approaches for transmission technologies seeking incentives under FPA section 219, particularly market-based incentives. The FERC issued an agenda for the workshop, which included the final workshop program and expected speakers, on August 23, 2021. The FERC supplemented that notice on September 9, 2021. On October 13, 2021, the FERC posted a transcript of the workshop in eLibrary.

Notice Inviting Post-Workshop Comments. On October 18, 2021, the FERC issued a notice inviting those interested to file post-workshop comments to address the issues raised during the workshop concerning incentives and shared savings. Comments were due on or before January 14, 2022 and were filed by APPA, CAISO, Clean Energy Parties,¹⁴⁴ EDF Renewables, EEI, the Industrial Energy Consumers of America (“IECA”), National Grid, PJM IMM, TAPS.

These matters are pending before the FERC. If you have any questions concerning these matters, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

XIII. FERC Enforcement Proceedings

Electric-Related Enforcement Actions

- **Salem Harbor (IN18-8)**

On June 27, 2022, the FERC approved a Stipulation and Consent Agreement with Salem Harbor Power Development LP (“Salem Harbor”)¹⁴⁵ that resolved OE’s Part 1b investigation into Salem Harbor’s receipt of capacity payments from ISO-NE for its New Salem Harbor Generating Station project (“Project”) during the 2017-18 Capacity Commitment Period, a period during which the Project had neither been built nor commenced commercial operation. OE determined, among other things, that Salem Harbor failed to provide “complete updated version[s] of [its] critical path schedule (“CPS”) as required by sections III.13.3.2 and III.13.3.2.1 of the ISO-NE Tariff, that narratives Salem Harbor submitted to ISO-NE made false claims regarding the Project’s schedule trajectory and omitted numerous important and relevant details regarding the status of the Project and its construction-related delays, and that its CPS submission violated Salem Harbor’s Duty of Candor under the FERC’s Market Behavior Rules.¹⁴⁶ Under the Settlement, in which Salem Harbor neither admits nor denies the alleged violations, and subject to limitations of the Bankruptcy Code and in accordance with the treatment afforded to Allowed General Unsecured Claims pursuant to a plan to be approved by the

¹⁴² “New England State Parties” are CT PURA, CT DEEP and the MA AG.

¹⁴³ Notice of Workshop, *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, Docket Nos. RM20-10 and AD19-19 (Apr. 15, 2021).

¹⁴⁴ The “Clean Energy Parties” are: Working for Advanced Transmission Technologies (“WATT Coalition”), ACPA, AEE, American Council on Renewable Energy (“ACORE”), Natural Resources Defense Council (“NRDC”), and the Sustainable FERC Project.

¹⁴⁵ *Salem Harbor Power Development LP*, 179 FERC ¶ 61,228 (June 27, 2022) (“*Salem Harbor Order*”).

¹⁴⁶ 18 CFR § 35.41(b) (2022).

Bankruptcy Court in Salem Harbor's ongoing Chapter 11 Cases, Salem Harbor must **disgorge \$26.7 million**,¹⁴⁷ and **pay a \$17.1 million civil penalty** to the United States Treasury.¹⁴⁸ If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **sPower Development Company (IN22-5)**

On June 24, 2022, the FERC approved a Stipulation and Consent Agreement with sPower Development Company, LLC ("sPower Devco")¹⁴⁹ that resolved OE's investigation into whether sPower Devco violated section 36.2A of the PJM Tariff by submitting inaccurate information to PJM during the interconnection process. Specifically, OE determined that sPower Devco submitted two interconnection study agreements that inaccurately stated that sPower Devco had site control over property for the proposed interconnection of a solar project. Under the Settlement, in which sPower Devco neither admits nor denies the alleged violations, sPower Devco must **pay a \$24,000 civil penalty** to the United States Treasury. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **PacifiCorp (IN21-6)**

On April 15, 2021, in the FERC's first-ever Show Cause Order addressing alleged violations of NERC Reliability Standards,¹⁵⁰ the FERC directed PacifiCorp to show cause why it should not be found to have violated FPA section 215(b)(1) and section 39.2 of the FERC's regulations by failing to comply with Reliability Standard FAC 009-1 (Establish and Communicate Facility Ratings), Requirement R1, and the successor Reliability Standard FAC-008-3 (Facility Ratings), Requirement R6 (collectively, "FAC-009-1 R1"), which requires a transmission owner to establish and have facility ratings that are consistent with its Facility Ratings Methodology ("FRM"). An Enforcement investigation found that clearance measurements on a majority of PacifiCorp's transmission lines were incorrect under the National Electric Safety Code, which were used to calculate PacifiCorp's facility ratings, thus making PacifiCorp's facility ratings inconsistent with its FRM. Enforcement alleges that PacifiCorp was aware of incorrect clearances on its system since at least 2007 when FAC-009-1 R1 became mandatory, but failed to identify and remedy them in a timely manner, and PacifiCorp's violations began on August 31, 2009, when it implemented its FRM policy, and at least some of the violations continued until August 2017 when PacifiCorp completed remediation of all of its incorrect clearances to make them consistent with its FRM. Enforcement also pointed to the role of the violations in the Wood Hollow, Utah wildfire that lasted from June 23 to July 1, 2012. In light of these alleged violations, the FERC directed PacifiCorp to show cause why it should not be assessed civil penalties in the amount of **\$42 million**.

On July 16, 2021, PacifiCorp answered the PacifiCorp Show Cause Order, denying the alleged violations of FAC-009. Enforcement filed its reply on September 14, 2021. This matter remains pending before the FERC. (Should the FERC choose to pursue a civil penalty against PacifiCorp for the alleged violations, PacifiCorp has already exercised its right to adjudicate these allegations in federal district court.) If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

¹⁴⁷ ISO-NE was directed to distribute the disgorgement *pro rata* to network load, subject to the limitations of the Bankruptcy Code and the order of the Bankruptcy Court.

¹⁴⁸ In recommending the remedies, OE considered the roles that multiple individuals and entities played in ISO-NE not submitting a demand bid on Salem Harbor's behalf into ARA3. Neither the Agreement nor the *Salem Harbor Order* asserted violations by any individual or any entity other than Salem Harbor. However, the FERC reserves its right to make a determination as to the facts or issues of law that might give rise to any violation by any other individual or entity. *Salem Harbor Order* at P 58.

¹⁴⁹ *sPower Development Co., LLC*, 179 FERC ¶ 61,220 (June 24, 2022).

¹⁵⁰ *PacifiCorp*, 175 FERC ¶ 61,039 (Apr. 15, 2021) ("*PacifiCorp Show Cause Order*").

Natural Gas-Related Enforcement Actions

- **M3/Utica East/UEOM (IN22-6)**

On June 24, 2022, the FERC approved a Stipulation and Consent Agreement with M3 Ohio Gathering LLC (“M3”) and Utica East Ohio Midstream LLC (“Utica East”) and UEOM NGL Pipelines LLC (“UEOM”) that resolved OE’s investigation into whether M3 and Utica East violated Part I, Section 20(1) of the Interstate Commerce Act and 18 C.F.R. § 357.2(a) when they failed to submit Utica East’s FERC Form No. 6 and FERC Form No. 6-Q (collectively, FERC Form No. 6s)¹⁵¹ over a six-year period from 2013 to 2019.¹⁵² Under the Settlement, in which no party admits or denies the alleged violations, M3 must **pay a civil penalty of \$30,000** to the United States Treasury and Utica East and UEOM agree to certify and submit all of the outstanding FERC Form No. 6s through the FERC’s eForms portal. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Rover Pipeline, LLC and Energy Transfer Partners, L.P. (CPCN Show Cause Order) (IN19-4)**

On January 20, 2022, the FERC issued an order establishing a hearing to determine whether Rover Pipeline, LLC (“Rover”) and its parent company Energy Transfer Partners, L.P. (“ETP” and collectively with Rover, “Respondents”) violated section 157.5 of the FERC’s regulations and to ascertain certain facts relevant for any application of the FERC’s Penalty Guidelines.¹⁵³

As previously reported, on March 18, 2021, the FERC issued a show cause order¹⁵⁴ in which it directed Rover Pipeline, LLC (“Rover”) and Energy Transfer Partners, L.P. (“ETP” and together with Rover, “Respondents”) to show cause why they should not be found to have violated Section 157.5 of the FERC’s regulations by misleading the FERC in its Application for Certificate of Public Convenience and Necessity (“CPCN”) under NGA section 7(c).¹⁵⁵ The FERC directed Respondents to show cause why they should not be assessed civil penalties in the amount of **\$20.16 million**. On April 5, 2021, the FERC extended by 60 days, to June 18, 2021, the deadline for Respondents’ answer. On June 18, 2021, Rover and ETP answered the *Rover/ETP Show CPCN Cause Order*, asserting that the FERC should dismiss this matter and decline to initiate an enforcement action. On July 21, 2021, Enforcement Staff answered Rover/ETP’s answer, stating the evidence supports a finding that Rover violated the FERC’s Regulations and should be assessed the civil penalty identified in the *Rover/ETP Show Cause Order*. Rover answered the July 21 answer on September 15.

Hearings. As previously reported, ALJ Joel DeJesus will be the presiding judge for hearings in this matter. On March 8, 2022, Chief Judge Cintron issued an order extending the procedural time standards for this proceeding. Based on that order, the deadlines for the commencement of the hearing is now March 6, 2023 and

¹⁵¹ FERC regulations require each natural gas pipeline carrier whose annual jurisdictional operating revenues exceed \$500,000 to file FERC Form No. 6 and those pipelines that are exempt from filing the entire form to file select pages of the form.

¹⁵² *M3 Ohio Gathering LLC and Utica East Ohio Midstream LLC and UEOM NGL Pipelines LLC*, 179 FERC ¶ 61,221 (June 24, 2022).

¹⁵³ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 178 FERC ¶ 61,028 (Jan. 20, 2022) (“*Rover/ETP Hearings Order*”).

¹⁵⁴ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 174 FERC ¶ 61,208 (Mar. 18, 2021) (“*Rover/ETP CPCN Show Cause Order*”).

¹⁵⁵ Specifically, Rover stated that it was “committed to a solution that results in no adverse effects” to the Stoneman House, an 1843 farmstead located near Rover’s largest proposed compressor station. In truth, the OE Staff Report alleges, Rover was simultaneously planning to purchase the house with the intent to demolish it, if necessary, to complete its pipeline. The OE Staff Report alleges that Rover purchased the house in May 2015 and demolished the house in May 2016. The OE Staff Report further finds that despite taking these actions during the year and a half that Rover’s application was pending before the FERC, Rover did not notify the FERC that it purchased the Stoneman House, intended to destroy the Stoneman House, and did destroy the Stoneman House. The OE Staff Report therefore concludes that Rover violated section 157.5’s requirement for full, complete and forthright applications, through its misrepresentations and omissions, when it decided not to tell FERC that it had purchased the house and was considering demolishing it, and when Rover demolished it in May 2016 without notifying FERC.

the deadline to issue the initial decision is now June 20, 2023. A virtual prehearing conference was also held on March 8, a transcript of which is posted in eLibrary.

- **Rover and ETP (Tuscarawas River HDD Show Cause Order) (IN17-4)**

On December 16, 2021, the FERC issued a show cause order¹⁵⁶ in which it directed Rover and ETP (together, “Respondents”) to show cause why they should not be found to have violated NGA section 7(e), FERC Regulations (18 C.F.R. § 157.20); and the FERC’s Certificate Order,¹⁵⁷ by: (i) intentionally including diesel fuel and other toxic substances and unapproved additives in the drilling mud during its horizontal directional drilling (“HDD”) operations under the Tuscarawas River in Stark County, Ohio, in connection with the Rover Pipeline Project;¹⁵⁸ (ii) failing to adequately monitor the right-of-way at the site of the Tuscarawas River HDD operation; and (iii) improperly disposing of inadvertently released drilling mud that was contaminated with diesel fuel and hydraulic oil. The FERC directed Respondents to show why they should not be assessed civil penalties in the amount of **\$40 million**.

On March 21, 2022, Respondents answered and denied the allegations in the *Rover/ETP CPCN Show Cause Order*. On April 20, 2022, OE Staff answered Respondents’ March 21 answer. On May 13, Respondents submitted a surreply, reinforcing their position that “there is no factual or legal basis to hold either [Respondent] liable for the intentional wrongdoing of others that is alleged in the Staff Report.” Also since the last Report, the FERC denied Respondents’ request for rehearing of the FERC’s January 21, 2022 designation notice.¹⁵⁹ This matter is pending before the FERC.

- **BP (IN13-15)**

On December 17, 2020, the FERC issued *Opinion 549-A*,¹⁶⁰ a 159-page decision addressing arguments raised on rehearing requested of *Opinion 549*.¹⁶¹ *Opinion 549-A* modifies the discussion in *Opinion 549*, but reaches the same the result (ultimately requiring BP to pay a **\$20.16 million civil penalty (roughly \$24.4 million with accrued interest) and disgorge \$207,169**). Of note, *Opinion 549-A* denied BP’s motion to dismiss this enforcement action as time barred (by the five-year statute of limitations set forth in 28 U.S.C. § 2462), finding BP waived any statute of limitations defense by failing to raise it earlier in this proceeding.¹⁶² *Opinion 549-A* revised Ordering Paragraph (C) to direct the disgorged profits to non-profits that disburse the Low Income Home Energy Assistance Program of Texas funds, rather than to the Texas Department of Housing.¹⁶³

On December 29, 2020, BP filed a notice that it intends to appeal *Opinion 549-A* to the Fifth Circuit Court of Appeals and paid the civil penalty amount on December 28, 2020, under protest and with full reservation of

¹⁵⁶ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 177 FERC ¶ 61,182 (Dec. 16, 2021) (“*Rover/ETP Tuscarawas River HDD Show Cause Order*”).

¹⁵⁷ *Rover Pipeline LLC*, 158 FERC ¶ 61,109 (2017), *order on clarification & reh’g*, 161 FERC ¶ 61,244 (2017), *Petition for Rev., Rover Pipeline LLC v. FERC*, No. 18-1032 (D.C. Cir. Jan. 29, 2018) (“*Certificate or Certificate Order*”).

¹⁵⁸ The Rover Pipeline Project is an approximately 711 mile long interstate natural gas pipeline designed to transport gas from the Marcellus and Utica shale supply areas through West Virginia, Pennsylvania, Ohio, and Michigan to outlets in the Midwest and elsewhere.

¹⁵⁹ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 179 FERC ¶ 61,090 (May 11, 2022) (“*Designation Notice Rehearing Order*”). The “*Designation Notice*” provided updated notice of designation of the staff of the FERC’s Office of Enforcement (“OE”) as non-decisional in deliberations by the FERC in this docket, with the exception of certain staff named in that notice.

¹⁶⁰ *BP America Inc. et al.*, Opinion No. 549-A, 173 FERC ¶ 61,239 (Dec. 17, 2020) (“*BP Penalties Allegheny Order*”).

¹⁶¹ *BP America Inc.*, Opinion No. 549, 156 FERC ¶ 61,031 (July 11, 2016) (“*BP Penalties Order*”) (affirming Judge Cintron’s Aug. 13, 2015 Initial Decision finding that BP America Inc., BP Corporation North America Inc., BP America Production Company, and BP Energy Company (collectively, “BP”) violated Section 1c.1 of the FERC’s regulations (“*Anti-Manipulation Rule*”) and NGA Section 4A (*BP America Inc. et al.*, 152 FERC ¶ 63,016 (Aug. 13, 2015) (“*BP Initial Decision*”))).

¹⁶² *BP Penalties Allegheny Order* at P 1.

¹⁶³ *Id.* at P 319.

rights pending the outcome of judicial review of that Opinion. On January 19, BP filed a notice that it disgorged \$250,295 (\$207,169 principal plus interest), divided equally (\$83,431.67) among the following 3 entities identified in the “2016 Comprehensive Energy Assistance Program Subrecipient List”: Dallas County Dept. of Health and Human Services (serving Dallas); El Paso Community Action, Project Bravo (Serving El Paso); and Panhandle Community Services (serving Armstrong and numerous other counties), again under protest and with full reservation of rights pending the outcome of judicial review of *Opinion 549/549-A*.

- **Total Gas & Power North America, Inc. et al. (IN12-17)**

On April 28, 2016, the FERC issued a show cause order¹⁶⁴ in which it directed Total Gas & Power North America, Inc. (“TGPNA”) and its West Desk traders and supervisors, Therese Tran f/k/a Nguyen (“Tran”) and Aaron Hall (collectively, “Respondents”) to show cause why Respondents should not be found to have violated NGA Section 4A and the FERC’s Anti-Manipulation Rule through a scheme to manipulate the price of natural gas at four locations in the southwest United States between June 2009 and June 2012.¹⁶⁵

The FERC also directed TGPNA to show cause why it should not be required to disgorge unjust profits of **\$9.18 million**, plus interest; TGPNA, Tran and Hall to show cause why they should not be assessed civil penalties (TGPNA - **\$213.6 million**; Hall - **\$1 million** (jointly and severally with TGPNA); and Tran - **\$2 million** (jointly and severally with TGPNA)). In addition, the FERC directed TGPNA’s parent company, Total, S.A. (“Total”), and TGPNA’s affiliate, Total Gas & Power, Ltd. (“TGPL”), to show cause why they should not be held liable for TGPNA’s, Hall’s, and Tran’s conduct, and be held jointly and severally liable for their disgorgement and civil penalties based on Total’s and TGPL’s significant control and authority over TGPNA’s daily operations. Respondents filed their answer on July 12, 2016. OE Staff replied to Respondents’ answer on September 23, 2016. Respondents answered OE’s September 23 answer on January 17, 2017, and OE Staff responded to that answer on January 27, 2017.

Hearing Procedures. On July 15, 2021, the FERC issued an order establishing hearing procedures to determine whether Respondents violated the FERC’s Anti-Manipulation Rule, and to ascertain certain facts relevant for any application of the FERC’s Penalty Guidelines.¹⁶⁶ On July 27, Chief Judge Cintron designated Judge Suzanne Krolikowski as the Presiding ALJ and established an extended Track III Schedule¹⁶⁷ for the proceeding. Judge Krolikowski scheduled and convened on August 26, 2021 a prehearing conference. Judge Krolikowski issued an order confirming her rulings from the August 26 prehearing conference and establishing a procedural schedule that calls for, among other dates, pre-hearing briefs by July 25, 2022, hearings (estimated to take 2-3 weeks) to begin on August 15, 2022, and an initial decision on January 9, 2023. In light of the settlement judge procedures undertaken, Chief Judge Cintron extended the hearing commencement and initial decision deadlines to September 26, 2022, and February 20, 2023, respectively.

Respondents requested reconsideration or in the alternative permission to file an interlocutory appeal of Judge Krolikowski’s March 24 order confirming his bench rulings (“Reconsideration Motion”). OE Staff opposed the Motion. On April 25, finding Respondents had not raised any new arguments that would merit reconsideration of his prior rulings, nor had Respondents identified any “exceptional circumstances” requiring

¹⁶⁴ *Total Gas & Power North America, Inc.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) (“TGPNA Show Cause Order”).

¹⁶⁵ The allegations giving rise to the Total Show Cause Order were laid out in a September 21, 2015 FERC Staff Notice of Alleged Violations which summarized OE’s case against the Respondents. Staff determined that the Respondents violated NGA section 4A and the Commission’s Anti-Manipulation Rule by devising and executing a scheme to manipulate the price of natural gas in the southwest United States between June 2009 and June 2012. Specifically, Staff alleged that the scheme involved making largely uneconomic trades for physical natural gas during bid-week designed to move indexed market prices in a way that benefited the company’s related positions. Staff alleged that the West Desk implemented the bid-week scheme on at least 38 occasions during the period of interest, and that Tran and Hall each implemented the scheme and supervised and directed other traders in implementing the scheme.

¹⁶⁶ *Total Gas & Power North America, Inc. et al.*, 176 FERC ¶ 61,026 (July 15, 2021).

¹⁶⁷ The hearing in this proceeding will be convened within 55 weeks (Aug. 15, 2022) and the initial decision issued within 76 weeks (January 9, 2023) of the issuance of the Chief Judge’s order.

interlocutory appeal, Judge Krolkowski denied Respondents' Reconsideration Motion. Respondents May 2, 2022 interlocutory appeal was denied on May 9, 2022.¹⁶⁸

Since the last Report, highlights from the procedural activity in this proceeding have included the submission of revised testimony and exhibits, Enforcement's opposition to Respondents' motion to dismiss or stay the proceedings, and the Chief Judge's denial of a motion for appointment of special discovery judge. Commencement of the hearing and the date for the issuance of an initial decision remain November 15, 2022 and April 27, 2023, respectively.

XIV. Natural Gas Proceedings

For further information on any of the natural gas proceedings, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com).

New England Pipeline Proceedings

The following New England pipeline projects are currently under construction or before the FERC:

- **Iroquois ExC Project (CP20-48)**
 - 125,000 Dth/d of incremental firm transportation service to ConEd and KeySpan by building and operating new natural gas compression and cooling facilities at the sites of four existing Iroquois compressor stations in Connecticut (Brookfield and Milford) and New York (Athens and Dover).
 - Three-year construction project; service request by November 1, 2023.
 - On March 25, 2022, after procedural developments summarized in previous Reports, the FERC issued to Iroquois a certificate of public convenience and necessity, authorizing it to construct and operate the proposed facilities.¹⁶⁹ The certificate was conditioned on: (i) Iroquois' completion of construction of the proposed facilities and making them available for service within **three years** of the date of the; (ii) Iroquois' compliance with all applicable FERC regulations under the NGA; (iii) Iroquois' compliance with the environmental conditions listed in the appendix to the order; and (iv) Iroquois' filing written statements affirming that it has executed firm service agreements for volumes and service terms equivalent to those in its precedent agreements, prior to commencing construction. The March 25, 2022 order also approved, as modified, Iroquois' proposed incremental recourse rate and incremental fuel retention percentages as the initial rates for transportation on the Enhancement by Compression Project.
 - On April 18, 2022, Iroquois accepted the certificate issued in the *Iroquois Certificate Order*.
 - On June 17, 2022, in accordance with the *Iroquois Certificate Order*, Iroquois submitted its Implementation Plan, documenting how it will comply with the FERC's Certificate conditions.
 - The Project is targeted for a 4th quarter, 2023 in-service date.

Non-New England Pipeline Proceedings

The following pipeline projects could affect ongoing pipeline proceedings in New England and elsewhere:

- **Northern Access Project (CP15-115)**
 - The New York State Department of Environmental Conservation ("NY DEC") and the Sierra Club requested rehearing of the *Northern Access Certificate Rehearing Order* on August 14 and September 5, 2018, respectively. On August 29, National Fuel Gas Supply Corporation and Empire Pipeline ("Applicants") answered the NY DEC's August 14 rehearing request and request for stay. On April 2,

¹⁶⁸ Notice of Determination by the Chairman, *Total Gas & Power North America, Inc. et al.*, Docket No. IN12-17 (May 9, 2022).

¹⁶⁹ *Iroquois Gas Transmission Sys., L.P.*, 178 FERC ¶ 61,200 (2022) (*Iroquois Certificate Order*).

2019, the FERC denied the NY DEC and Sierra Club requests for rehearing.¹⁷⁰ Those orders have been challenged on appeal to the US Court of Appeals for the Second Circuit (19-1610).

- ▶ As previously reported, the August 6, 2018 *Northern Access Certificate Rehearing Order* dismissed or denied the requests for rehearing of the *Northern Access Certificate Order*.¹⁷¹ Further, in an interesting twist, the FERC found that a December 5, 2017 “Renewed Motion for Expedited Action” filed by National Fuel Gas Supply Corporation and Empire Pipeline, Inc. (the “Companies”), in which the Companies asserted a separate basis for their claim that the NY DEC waived its authority under section 401 of the Clean Water Act (“CWA”) to issue or deny a water quality certification for the Northern Access Project, served as a motion requesting a waiver determination by the FERC,¹⁷² and proceeded to find that the NY DEC was obligated to act on the application within one year, failed to do so, and so waived its authority under section 401 of the CWA.
- ▶ The FERC authorized the Companies to construct and operate pipeline, compression, and ancillary facilities in McKean County, Pennsylvania, and Allegany, Cattaraugus, Erie, and Niagara Counties, New York (“Northern Access Project”) in an order issued February 3, 2017.¹⁷³ The Allegheny Defense Project and Sierra Club (collectively, “Allegheny”) requested rehearing of the *Northern Access Certificate Order*.
- ▶ Despite the FERC’s *Northern Access Certificate Order*, the project remained halted pending the outcome of National Fuel’s fight with the NY DEC’s April denial of a Clean Water Act permit. NY DEC found National Fuel’s application for a water quality certification under Section 401 of the Clean Water Act, as well as for stream and wetlands disturbance permits, failed to comply with water regulations aimed at protecting wetlands and wildlife and that the pipeline failed to explore construction alternatives. National Fuel appealed the NY DEC’s decision to the 2nd Circuit on the grounds that the denial was improper.¹⁷⁴ On February 2, 2019, the 2nd Circuit vacated the decision of the NY DEC and remanded the case with instructions for the NY DEC to more clearly articulate its basis for the denial and how that basis is connected to information in the existing administrative record. The matter is again before the NY DEC.
- ▶ On November 26, 2018, the Applicants filed a request at FERC for a 3-year extension of time, until February 3, 2022, to complete construction and to place the certificated facilities into service. The Applicants cited the fact that they “do not anticipate commencement of Project construction until early 2021 due to New York’s continued legal actions and to time lines required for procurement of necessary pipe and compressor facility materials.” The extension request was granted on January 31, 2019.
- ▶ On August 8, 2019, the NY DEC again denied Applicants request for a Water Quality Certification, and as directed by the Second Circuit,¹⁷⁵ provided a “more clearly articulate[d] basis for denial.”
- ▶ On August 27, 2019, Applicants requested an additional order finding on additional grounds that the NY DEC waived its authority over the Northern Access 2016 Project under Section 401 of the CWA,

¹⁷⁰ *Nat’l Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 167 FERC ¶ 61,007 (Apr. 2, 2019).

¹⁷¹ *Nat’l Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 164 FERC ¶ 61,084 (Aug. 6, 2018) (“*Northern Access Rehearing & Waiver Determination Order*”), *reh’g denied*, 167 FERC ¶ 61,007 (Apr. 2, 2019).

¹⁷² The DC Circuit has indicated that project applicants who believe that a state certifying agency has waived its authority under CWA section 401 to act on an application for a water quality certification must present evidence of waiver to the FERC. *Millennium Pipeline Co., L.L.C. v. Seggos*, 860 F.3d 696, 701 (D.C. Cir. 2017).

¹⁷³ *Nat’l Fuel Gas Supply Corp.*, 158 FERC ¶ 61,145 (2017) (“*Northern Access Certificate Order*”), *reh’g denied*, 164 FERC ¶ 61,084 (Aug 6, 2018) (“*Northern Access Certificate Rehearing Order*”).

¹⁷⁴ *Nat’l Fuel Gas Supply Corp. v. NYSDEC et al.* (2d Cir., Case No. 17-1164).

¹⁷⁵ Summary Order, *Nat’l Fuel Gas Supply Corp. v. N.Y. State Dep’t of Env’tl. Conservation*, Case 17-1164 (2d. Cir., issued Feb. 5, 2019).

even if the NY DEC and Sierra Club prevail in their currently pending court petitions challenging the basis for the Commission's Waiver Order.¹⁷⁶

- ▶ On October 16, 2020, Applicants requested, due to ongoing legal and regulatory delays, an additional 2-year extension of time, until December 1, 2024, to complete construction of the Project and enter service. More than 50 sets of comments on the requested extension were filed and on December 1, 2020, the FERC dismissed, without prejudice, Applicants' request for an extension of time,¹⁷⁷ finding the request premature. The FERC reiterated its encouragement that pipeline applicants requesting extensions "file their requests no more than 120 days before the deadline to complete construction", so that the FERC has the relevant information available to determine whether good cause exists to grant an extension of time and whether the FERC's prior findings remain valid.¹⁷⁸
- ▶ On January 28, 2022, Applicants again requested an additional extension of time, this time until December 31, 2024, to complete construction of the Project and enter service. Comments on that request were due on or before February 16, 2022. Many individual comments and protests were received.
- ▶ On June 29, 2022, the FERC granted Applicants' request for an additional extension of time. Applicants now have until December 31, 2024 to construct and place the Project into service.¹⁷⁹ A request for rehearing of the *Northern Access Project Add'l Extension Order* has been filed and is pending before the FERC.

XV. State Proceedings & Federal Legislative Proceedings

- **New England States' Vision Statement**

In October 2020, the six New England states released their "[Vision Statement](#)", outlining their vision for "a clean, affordable, and reliable 21st century regional electric grid" and committing to engage in a collaborative and open process, supported by NESCOE, intended to advance the principles discussed in the Vision Statement. As part of that effort, the following series of online technical forums to discuss the issues presented in the Vision Statement were held:

Jan 13, 2021	Wholesale Market Reform
Jan 25, 2021	Wholesale Market Reform
Feb 2, 2021	Transmission Planning
Feb 25, 2021	Governance Reform
Mar 18, 2021	Equity and Environmental Justice

Written comments on the topics and discussions addressed in the on the equity and environmental justice topics and discussions were, following an extension, due by May 13, 2021. Comments submitted are posted on [NewEnglandEnergyVision.com](https://newenglandenergyvision.com). Recordings of the technical forums, as well as draft notices, agendas, and additional information on these sessions, are also available on the New England States' Vision Statement website (<https://newenglandenergyvision.com/>).

¹⁷⁶ See *Sierra Club v. FERC*, No. 19-01618 (2d Cir. filed May 30, 2019); *NYSDEC v. FERC*, No. 19-1610 (2d. Cir., filed May 28, 2019) (consolidated).

¹⁷⁷ *National Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 173 FERC ¶ 61,197 (Dec. 1, 2020).

¹⁷⁸ *Id.* at P 10.

¹⁷⁹ *National Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 179 FERC ¶ 61,226 (June 29, 2022) ("*Northern Access Project Add'l Extension Order*").

Report to the Governors. On June 29, 2021, the NESCOE Managers published their Progress Report to the New England Governors Regarding “Advancing the New England Energy Vision”. The Report was further discussed at the August 5, 2021 Participants Committee meeting. View Report [here](#).

ISO-NE Board Response. On September 23, 2021, the ISO-NE Board responded to the New England States’ Vision Statement and Advancing the Vision Report. A copy of that response was included with the materials for the October 7, 2021 Participants Committee meeting and is posted on the ISO-NE website [here](#).

XVI. 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 (“DC 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).

- **2nd Revised Narragansett LSA Orders (22-1161, 22-1108) (consolidated)**

Underlying FERC Proceeding: ER22-707¹⁸⁰

Petitioner: Green Development

Status: Initial Submissions Submitted and Additional Initial Submissions Scheduled

On June 15, 2022, Green Development petitioned the DC Circuit for review of the FERC’s 2nd Revised Narragansett LSA Orders.¹⁸¹ On June 17, 2022, the Court directed Green Development to file, and Green Development filed, a Docketing Statement, Statement of Issues, any Procedural Motions, and the underlying decisions from which the appeal arises. The FERC filed the Certified Index to the Record on July 28, 2022.

Since the last Report, Green Development petitioned the DC Circuit for review of the 2nd Rev Narragansett LSA Allegheny Order¹⁸² (docketed as case 22-1161). The Court, on its own motion, consolidated the new case with case 22-1108 and directed Green Development to file by August 15, 2022, for its appeal in 22-1161, a Docketing Statement Form and a Statement of Issues to be Raised.

¹⁸⁰ *ISO New England Inc. and New England Power Co. d/b/a National Grid*, 178 FERC ¶ 61,115 (Feb. 18, 2022) (“2nd Rev Narragansett LSA Order”). *ISO New England Inc. and New England Power Co. d/b/a National Grid*, 179 FERC ¶ 62,035 (Apr. 18, 2022) (notice of denial of rehearing by operation of law and providing for further consideration). Together, these orders referred to as the “2nd Revised Narragansett LSA Orders”.

¹⁸¹ The 2nd Revised Narragansett LSA is a Local Service Agreement (“LSA”) among New England Power, Narragansett and ISO-NE. The LSA reflects the construction of the new Iron Mine Hill Road Substation and related transmission modifications, and the assessment to Narragansett of a Direct Assignment Facilities Charge (“DAF Charge”) associated with the facilities. The Iron Mine Hill Road Substation, a new 115 kV/34.5 kV substation (including modifications necessary to loop Narragansett’s existing 115 kV H17 transmission line through the new substation) will connect to a new 34.5 kV distribution feeder, which will serve as the point of interconnection for several distributed generation projects being developed by Green Development, LLC (“Green Development”), located in North Smithfield, Rhode Island.

¹⁸² *ISO New England Inc. and New England Power Co. d/b/a National Grid*, 179 FERC ¶ 61,186 (June 16, 2022) (“2nd Rev Narragansett LSA Allegheny Order”)

- **Mystic ROE (21-1198; 21-1222, 21-1223, 21-1224, 22-1001, 22-1008, 22-1026) (consolidated)**
Underlying FERC Proceeding: EL18-1639-010, -011,¹⁸³ -013¹⁸⁴
Petitioners: Mystic, CT Parties,¹⁸⁵ MA AG, ENECOS
Status: Being Held in Abeyance (until 30 days after DC Circuit disposition of *MISO Transmission Owners v. FERC*, No. 16-1325)

As previously reported, this case was initiated when, on October 8, 2021, Mystic petitioned the DC Circuit Court of Appeals for review of the FERC's orders setting the base ROE for the Mystic COS Agreement at 9.33%. The *Mystic ROE Order* and subsequent FERC orders addressing the Mystic ROE issues have all also been appealed by various parties and consolidated under 21-1198. Docketing Statements and Statements of Issues to be Raised, and the Underlying Decision from which the various appeals arise have been filed as new dockets have been opened and then consolidated with 21-1198. As previously reported, the Certified Index to the Record was due, and filed by the FERC, on February 22, 2022. On March 10, 2022, MMWEC and NHEC filed a notice of intent to participate in support of FERC in Case Nos. 21-1198, 22-1008, and 22-1026 and in support of Petitioners in the remaining consolidated cases, and filed a statement of issues. On March 17, 2022, CT Parties moved to intervene, and those interventions were granted on May 4, 2022.

Since the last Report, on July 8, 2022, Connecticut Parties and ENECOS jointly moved to hold these proceedings in abeyance until 30 days after the DC Circuit issues an opinion in *MISO Transmission Owners v. FERC*, 16-1325 ("*MISO TOs*") (see below). They requested abeyance on the basis that the consolidated petitions in this proceeding and *MISO TOs* both involve challenges to the FERC's ROE methodology (the FERC set the ROE used in calculating Constellation's rates using the methodology challenged in *MISO TOs*). Constellation opposed the abeyance request. On July 27, 2022, the Court granted the abeyance request, directing the Parties to file motions to govern future proceedings within 30 days of the court's disposition of *MISO TOs*.

- **Mystic 8/9 Cost of Service Agreement (20-1343; 20-1361, 20-1362; 20-1365, 20-1368; 21-1067; 21-1070)(consolidated)**
Underlying FERC Proceeding: EL18-1639¹⁸⁶
Petitioners: Mystic (20-1343), NESCOE (20-1361, 21-1067), MA AG (20-1362), CT Parties (20-1365, 20-1368, 21-1070)
Status: Oral Argument Held May 5, 2022; Awaiting Decision

Mystic, NESCOE, MA AG, and CT Parties have separately petitioned the DC Circuit Court of Appeals for review of the FERC's orders addressing the COS Agreement among Mystic, Constellation and ISO-NE.¹⁸⁷ The cases have been consolidated into Case No. 20-1343. On February 17 and 24, 2021, the Court consolidated with 20-1343 the most recent appeals in cases 21-1067 (NESCOE) and 21-1070 (CT Parties), respectively. On March 25, 2021, the Court issued an order returning this case to its active docket. On March 26, 2021, the Court granted the interventions by MMWEC/NHEC, NESCOE, and ENECOS. Briefing was completed on February 24, 2022. Oral argument was held on May 5, 2022 before Judges Srinivasan, Henderson and Rao.

¹⁸³ *Constellation Mystic Power, LLC*, 176 FERC ¶ 61,019 (July 15, 2021) ("*Mystic ROE Order*"); *Constellation Mystic Power, LLC*, 176 FERC ¶ 62,127 (Sep. 13, 2021) ("*September 13 Notice*") (Notice of Denial By Operation of Law of Rehearings of Mystic ROE Order).

¹⁸⁴ *Constellation Mystic Power, LLC*, 178 FERC ¶ 61,116 (Feb. 18, 2022) ("*Mystic ROE Second Allegheny Order*"); *Constellation Mystic Power, LLC*, 178 FERC ¶ 62,028 (Jan. 18, 2022) ("*January 18 Notice*") (Notice of Denial By Operation of Law of Rehearings of Mystic ROE Second Allegheny Order).

¹⁸⁵ In this appeal, "CT Parties" are the Connecticut Public Utilities Regulatory Authority ("CT PURA"), Connecticut Department of Energy and Environmental Protection ("CT DEEP"), and the Connecticut Office of Consumer Counsel ("CT OCC").

¹⁸⁶ *July 2018 Order; July 2018 Rehearing Order; Dec 2018 Order; Dec 2018 Rehearing Order; Jul 17 Compliance Order*.

¹⁸⁷ The COS Agreement is to provide compensation for the continued operation of the Mystic 8 & 9 units from June 1, 2022 through May 31, 2024.

Since oral argument, on a related jurisdictional matter, the FERC moved for leave to issue its *May 2, 2022 Order* (described in Section II, ER22-1192 above). The FPA otherwise prevents the FERC, while an appeal is pending, from altering its findings or orders. In the *May 2, 2022 Order*, the FERC agreed with Mystic that, in light of changed circumstances (the spin transaction pursuant to which Exelon Corporation is no longer a Mystic Affiliate), it would be inappropriate to continue basing Mystic's capital structure on that of Exelon and set that part of the filing for hearing.¹⁸⁸ Accordingly, to the extent the *May 2, 2022 Order* constitutes a modification or vacatur of the capital structure ruling in the initial orders in this proceeding, the FERC sought leave to nonetheless issue the order. The FERC's motion was granted on June 10, 2022. This case remains pending before Judges Srinivasan, Henderson and Rao.

- **CASPR (20-1333, 21-1031) (consolidated)****
Underlying FERC Proceeding: ER18-619¹⁸⁹
Petitioners: Sierra Club, NRDC, RENEW Northeast, and CLF
Status: Being Held in Abeyance (until March 1, 2024)

As previously reported, the Sierra Club, NRDC, RENEW Northeast, and CLF petitioned the DC Circuit Court of Appeals on August 31, 2020 for review of the FERC's order accepting ISO-NE's CASPR revisions and the FERC's subsequent *CASPR Allegheny Order*. Appearances, docketing statements, a statement of issues to be raised, and a statement of intent to utilize deferred joint appendix were filed. A motion by the FERC to dismiss the case was dismissed as moot by the Court, referred to the merits panel (Judges Pillard, Katsas and Walker), and is to be addressed by the parties in their briefs.

Petitioners have moved to hold this matter in abeyance three times. The Court has granted each request. The most recent request was submitted on July 22, 2022 (third abeyance request) and moved the Court to hold this matter in abeyance until March 1, 2024, the date on which the elimination of MOPR is to be implemented, with motions to govern due 30 days thereafter. The Court granted the third abeyance request on July 25, 2022.

- **Opinion 531-A Compliance Filing Undo (20-1329)**
Underlying FERC Proceeding: ER15-414¹⁹⁰
Petitioners: TOs' (CMP et al.)
Status: Being Held in Abeyance

On August 28, 2020, the TOs¹⁹¹ petitioned the DC Circuit Court of Appeals for review of the FERC's October 6, 2017 order rejecting the TOs' filing that sought to reinstate their transmission rates to those in place prior to the FERC's orders later vacated by the DC Circuit's *Emera Maine*¹⁹² decision. On September 22, 2020, the FERC submitted an unopposed motion to hold this proceeding in abeyance for four months to allow for the Commission to "a future order on petitioners' request for rehearing of the order challenged in this appeal, and the rate proceeding in which the challenged order was issued remains ongoing before the Commission." On October 2, 2020, the Court granted the FERC's motion, and directed the parties to file motions to govern future proceedings in this case by February 2, 2021. On January 25, 2021, the FERC requested that the Court continue to hold this petition for review in abeyance for an additional three months, with parties to file motions to govern future proceedings at the end of that period. The FERC requested continued abeyance because of its intention to issue a future order on petitioners' request for rehearing of the order challenged in this appeal, and the rate proceeding in which the challenged order was issued remains ongoing before the FERC. Petitioners consented to the requested abeyance. On February 11, 2021, the Court issued an order that that this case remain in abeyance

¹⁸⁸ See *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,081, PP 24-25 (May 2, 2022).

¹⁸⁹ *ISO New England Inc.*, 162 FERC ¶ 61,205 (Mar. 9, 2018) ("*CASPR Order*").

¹⁹⁰ *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) ("*Order Rejecting Filing*").

¹⁹¹ The "TOs" are CMP; Eversource Energy Service Co., on behalf of its affiliates CL&P, NSTAR and PSNH; National Grid; New Hampshire Transmission; UI; Unitil and Fitchburg; VTransco; and Versant Power.

¹⁹² *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*").

pending further order of the court. On April 21, 2021, the FERC filed an unopposed motion for continued abeyance of this case *because* the Commission intends to issue a future order on Petitioners' request for rehearing of the challenged Order Rejecting Compliance Filing, and because the remand proceeding in which the challenged order was issued remains ongoing.

On May 4, 2021, the Court ordered that this case remain in abeyance pending further order of the Court, directing the FERC to file a status report by September 1, 2021 and at 120-day intervals thereafter. The parties were directed to file motions to govern future proceedings in this case within 30 days of the completion of agency proceedings. The FERC's last status report, indicating that the proceedings before the Commission remain ongoing and that this appeal should continue to remain in abeyance, was filed on April 14, 2022. The next status report is due on or before August 12, 2022.

- **ISO-NE's Inventoried Energy Program ("IEP") Proposal (19-1224***; 19-1247; 19-1252; 19-1253)(consolidated); Underlying FERC Proceeding: ER19-1428¹⁹³**
Petitioners: ENECOS (Belmont et al.) (19-1224); MA AG (19-1247); NH PUC/NH OCA (19-1252); Sierra Club/UCS (19-1253)
Status: Court Issues Decision Leaving Intact the IEP Except for the Inclusion of Nuclear, Biomass, Coal and Hydroelectric Generators.

On June 17, 2022, the DC Circuit issued a decision¹⁹⁴ leaving intact the FERC's June 2020 *IEP Remand Order*¹⁹⁵ **except** for the inclusion of nuclear, biomass, coal, and hydroelectric generators in ISO-NE's IEP, the inclusion of which the Court found arbitrary and capricious (because those resources were unlikely to change their behavior in response to the IEP payments). Because the Court believed "there is not substantial doubt that FERC would have adopted IEP if it had not included these resources in the first place [and] IEP can function sensibly without them", the Court found that it had the authority to sever this portion from the overall program and therefore vacated that portion of IEP from the remainder of the IEP. The Court upheld the remainder of the IEP and remanded the matter to the FERC for further proceedings consistent with its opinion.

Other Federal Court Activity of Interest

- **Order 872 (20-72788,* 21-70113; 20-73375, 21-70113) (consol.) (9th Cir.)**
Underlying FERC Proceeding: RM19-15¹⁹⁶
Petitioners: SEIA et al.
Status: Oral Argument Held March 8, 2022; Awaiting Decision

On September 17, 2020, SEIA petitioned the 9th Circuit Court of Appeals for review of *Order 872*.¹⁹⁷ Briefing is complete and oral argument was held March 8, 2022 before Judges Nguyen, Miller and Bumatay. This matter is pending before the Court.

¹⁹³ 162 FERC ¶ 61,127 (Feb. 15, 2018) ("*Order 841*"); 167 FERC ¶ 61,154 (May 16, 2019) ("*Order 841-A*").

¹⁹⁴ *Belmont Mun. Light Dept., et al., v. FERC*, 2022 WL 2182810 (June 17, 2022).

¹⁹⁵ *ISO New England Inc.*, 171 FERC ¶ 61,235 (June 18, 2020) ("*IEP Remand Order*").

¹⁹⁶ *Transcontinental Gas Pipe Line Co., LLC*, 159 FERC ¶ 61,181 (Feb. 3, 2017); *Transcontinental Gas Pipe Line Co., LLC*, 161 FERC ¶ 61,250 (Dec. 6, 2017).

¹⁹⁷ *Order 872* approved pricing and eligibility revisions to the FERC's long-standing regulations implementing sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), including: state flexibility in setting QF rates; a decrease (to 5 MW) to the threshold for a rebuttable presumption of access to nondiscriminatory, competitive markets; updates to the "One-Mile Rule"; clarifications to when a QF establishes its entitlement to a purchase obligation; and provision for certification challenges.

- **Opinion 569/569-A: FERC's Base ROE Methodology (16-1325, 20-1182, 20-1240, 20-1241, 20-1248, 20-1251, 20-1267, 20-1513) (consol.)**
Underlying FERC Proceeding: EL14-12; EL15-45¹⁹⁸
Petitioners: MISO TOs, Transource Energy, Dec 23 Petitioners et al.
Status: Oral Argument Held Nov 18, 2021; Awaiting Decision

The MISO TOs, Transource and "Dec 23 Petitioners",¹⁹⁹ among others, have appealed *Opinion 569/569-A*. The MISO TOs' case has been consolidated with previous appeals that had been held in abeyance, with the lead case number assigned as 16-1325. Following completion of briefing, oral argument was held on November 18, 2021 before Judges Srinivasan, Katsas and Walker. This matter is pending before the Court.

- **Algonquin Atlantic Bridge Project Briefing Order (21-1115*, 21-1138, 21-1153, 21-1155, 22-1146, 22-1147) (consol.)**
Underlying FERC Proceeding: CP16-9-012²⁰⁰
Petitioners: LS Power, Algonquin, INGA
Status: First Circuit Cases transferred to DC Circuit and consolidated here (22-1146/47); Parties Propose to Sever 22-1146/47 and Hold Remaining Cases in Abeyance Pending Disposition of 22-1146/47

On May 3, 2021, Algonquin petitioned the DC Circuit Court of Appeals for review of the *Briefing Order* and the *April 19 Notice of Denial of Rehearings by Operation of Law*. Appearances, docketing statements and a statement of issues were due and filed June 4, 2021. Also on June 4, 2021, the FERC filed an unopposed motion to hold this proceeding in temporary abeyance, until August 2, 2021, including the filing of the certified index to the record, because "the May 3 petition for review no longer reflects the [FERC]'s latest determination in this matter." The Court granted the first abeyance motion. On November 15, 2021, the Court granted a third abeyance motion by the FERC, directing the parties to file motions to govern future proceedings by January 31, 2022. On January 31, 2022, Algonquin and INGA asked the Court to extend the abeyance by an additional 120 days (to May 31, 2022). On February 15, 2022, the Court issued an order extending the abeyance and directing the Petitioners to file motions to govern future proceedings by May 31, 2022. On May 31, 2022, Petitioners asked the Court to continue to hold this proceeding in abeyance pending the First Circuit's disposition of Algonquin's pending motions to transfer that Court's cases 20-1458 and 22-1201 (which also challenge the FERC's authorization of the "Atlantic Bridge Project").

On June 30, the First Circuit transferred cases 20-1458 and 22-1201 to the DC Circuit. The DC Circuit docketed those cases as 22-1146 and 22-1147, consolidated them with its cases challenging the Atlantic Bridge Project orders (with 21-1115 remaining the lead case), and directed the parties to file a proposed briefing schedule. On July 19, the parties filed a proposal that cases 22-1146 and 22-1147 be severed, proposed a revised briefing format and schedule for those cases, and asked the Court to continue to hold the remaining cases in abeyance (asserting that abeyance may avoid the need for briefing and adjudication of the issues that Algonquin and INGAA would press). The Court has not yet ruled on the parties' motion.

¹⁹⁸ *Transcontinental Gas Pipe Line Co., LLC*, 159 FERC ¶ 62,181 (Feb. 3, 2017); *Transcontinental Gas Pipe Line Co., LLC*, 161 FERC ¶ 61,250 (Dec. 6, 2017).

¹⁹⁹ "Dec 23 Petitioners" are: Assoc. of Bus. Advocating Tariff Equity; Coalition of MISO Transmission Customers: IL Industrial Energy Consumers; IN Industrial Energy Consumers, Inc.; MN Large Industrial Group; WI Industrial Energy Group; AMP; Cooperative Energy; Hoosier Energy Rural Elec. Coop.; MS Public Service Comm.; MO Pub. Svcs. Comm.; MO Joint Mun. Electric Utility Comm.; Org. of MISO States, Inc.; Southwestern Elec. Coop., Inc.; and Wabash Valley Power Assoc.

²⁰⁰ *Briefing Order*; *April 19 Notice of Denial of Rehearings by Operation of Law*.

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