

EXECUTIVE SUMMARY
Status Report of Current Regulatory and Legal Proceedings
as of January 4, 2023

The following activity, as more fully described in the attached litigation report, has occurred since the report dated November 30, 2022 ("last Report") was circulated. New matters/proceedings since the last Report are preceded by an asterisk '*'. Page numbers precede the matter description.

FERC Administrative Developments

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| * | Acting FERC Chairman Named | Jan 3 | President Biden names Willie Phillips as acting chairman of the FERC; Richard Glick departs from the FERC, leaving the FERC with 2 Democrat and 2 Republican Commissioners |
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I. Complaints/Section 206 Proceedings

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| * | 1 | RENEW Network Upgrades O&M Cost Allocation Complaint (EL23-16) | Dec 13 | RENEW files a complaint against ISO-NE and the PTOs seeking changes to Schedules 11 and 21 of the Tariff that would eliminate the direct assignment of Network Upgrade O&M costs to Interconnection Customers; comment deadline Jan 23, 2023 |
| | | | Dec 14-Dec 23 | NEPOOL, Calpine, CPV Towantic, Eversource, MA AG, National Grid, NEPGA, NESCOE, New Leaf Energy, NextEra, NRG, Versant, Glenvale LLC, CT DEEP, MA DPU, and Public Citizen intervene |
| | | | Dec 16 | PTO AC requests 20-day extension of time to respond |
| | | | Dec 21 | NEPOOL, MA AG, NESCOE support PTO AC extension request |
| | | | Dec 22 | FERC grants 20-day extension of time to comment/respond |
| 1 | 1 | ENECOS Mystic COSA Complaint (EL23-4) | Dec 1 | ENECOS answer Mystic's Nov 16, 2022 answer |
| | | | Dec 16 | Mystic answers ENECOS' Dec 1, 2022 answer |
| 5 | 1 | NECEC/Avangrid Complaint Against NextEra/Seabrook (EL21-6) | Dec 9 | Avangrid moves to lodge an Amended E&P Agreement between NextEra Energy Seabrook and NECEC Transmission and to request expedited resolution of remaining issues |

II. Rate, ICR, FCA, Cost Recovery Filings

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| * | 10 | FCA17 Qualification Informational Filing (ER23-690) | Dec 21 | ISO-NE submits required FCA17 informational filing; comment deadline Jan 5, 2023 |
| | | | Dec 21-Jan 4 | NEPOOL, Calpine, Constellation, National Grid, NESCOE intervene |
| 10 | 10 | ICR-Related Values and HQICCs – FCA17 (2026-27) Capacity Commitment Period (ER23-405) | Dec 20 | FERC accepts the FCA17 (2026-27) ICR-Related Values, eff. Jan 7, 2023 |
| 11 | 11 | 2023 NESCOE Budget (ER23-100) | Dec 20 | FERC accepts revised Section IV.A Schedule 5 rate of \$0.00701 per kW of Monthly Network Load, eff. Jan 1, 2023 |
| 11 | 11 | 2023 ISO-NE Administrative Costs and Capital Budgets (ER23-94) | Dec 20 | FERC accepts revisions to Section IV.A to recover ISO-NE's 2023 Budgets, eff. Jan 1, 2023 |
| 11 | 11 | NESCOE 5-year (2023-2027) Pro Forma Budget (ER22-2812) | Dec 19 | FERC accepts NESCOE's 4 th 5-year Pro Forma Budget (2023-2027), eff. Nov 10, 2022 |
| 11 | 11 | Mystic COSA Updates to Reflect Constellation Spin Transaction (ER22-1192) | Dec 2 | Mystic submits compliance filing reflecting the FERC's action in this matter |

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| 12 | Mystic I Remand (ER18-1639-019) | Dec 6-7 | ISO-NE, CT Parties, ENECOS, MMWEC/NHEC, National Grid, NESCOE, MPUC answer Mystic/Constellation emergency motion requesting expedited action by Jan 9, 2022 , on the Cost Allocation and Clawback issues remanded to the FERC in the <i>Mystic I Remand Order</i> |
| | | Dec 21 | Mystic answers ENECOS' Dec 6 protest to the emergency motion |
| 12 | Mystic 8/9 COSA <i>Second</i> CapEx Info Filing (ER18-1639-018) | Dec 6 Dec 22 | ENECOS answer Mystic's Nov 17, 2022 answer Mystic responds to ENECOS' Dec 6 answer |
| 12 | Mystic 8/9 COSA <i>First</i> CapEx Info Filing Settlement Judge Procedures (ER18-1639-015) | Dec 20 Jan 3 | Third settlement conference held ALJ McBarnette issues status report; schedules fourth settlement conference for Jan 18, 2023 |
| 12 | Mystic Fuel Supply Agreement Revision Info Filing (ER18-1639-020) | Dec 9 | Mystic submits a revision to its Fuel Supply Agreement that memorializes Constellation LNG's pre-existing business practice of crediting Mystic under the FSA to account for firm gas trans. charges that Constellation LNG collects from forward 3 rd party gas sales |

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



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| * 14 | SATOA Revisions (ER23-739; ER23-743) | Dec 29 | ISO-NE, NEPOOL and the PTO AC file SATOA Revisions in 2 parts (ISO-NE Tariff Revisions (ER23-739)/TOA Revisions (ER23-743); comment date Jan 19, 2023 |
| | | Jan 3 | Eversource, NESCOE, MA DPU intervene |
| 15 | Waiver Request: Attachment F (NEP) (ER23-370) | Dec 22 | FERC grants NEP waiver of provisions in the formula rate template in ISO-NE Tariff Attachment F to account for the change in ownership of certain transmission facilities |
| 15 | FCA18 Schedule Modifications (ER23-50) | Dec 1 | FERC accepts FCA18 Schedule Modifications, eff. Dec 10, 2022 |
| 16 | IEP Remand (ER19-1428-006) | Dec 5, 12 Dec 5-13 | FirstLight and National Grid file doc-less interventions NEPOOL , Brookfield , MA AG , National Hydropower Association , and RENEW file comments and limited protests |
| | | Dec 28 | NECOS and ENE respond to protests and comments |

IV. OATT Amendments / TOAs / Coordination Agreements



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| * 16 | Attachment F, Appendix D-NSTAR: Updates to Depreciation Rates (ER23-637) | Dec 15 | NSTAR proposes revisions to the general plant depreciation rates for NSTAR (East) and NSTAR (West); comment deadline Jan 5, 2023 |
| 17 | Attachment F Revisions reflecting RI Energy Addition as PTO (ER23-299) | Dec 6 | FERC accepts revisions, eff. Jan 1, 2023 |
| 17 | Attachment F Depreciation Normalization Requirement Revisions (ER23-197) | Dec 13 | FERC accepts revisions, eff. Jan 1, 2023 |
| 17 | Attachment F, Appendix D-PSNH: Depreciation Rate for Accounts 357 and 358 (ER22-2953) | Dec 13 | FERC accepts revisions, eff. Jan 1, 2023 |

V. Financial Assurance/Billing Policy Amendments



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| * 19 | FA/Billing Policies IEP Changes; Monthly Statement Issuance Date Update (ER23-705) | Dec 22 | ISO-NE and NEPOOL jointly file IEP-related changes to the Billing Policy and FAP and an update to the definition of "Monthly Issuance"; comment deadline Jan 12, 2023 |
| | | Dec 28-Jan 3 | Calpine, Constellation, National Grid intervene |

VI. Schedule 20/21/22/23 Changes & Agreements



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| * 19 | Schedule 21-RIE: Transfer of SAs from Sched 21-NEP; Updated Thundermist ISA (ER23-678; ER23-681) | Dec 20 | RIE submits filing (i) to move certain RIE service agreements to Schedule 21-RIE from Schedule 21-NEP (Docket No. ER23-678) and (ii) to revise RIE's Interconnection Service Agreement with Thundermist Hydropower LLC. In Docket No. ER23-681, RIE and NEP submit a filing to cancel the NEP Tariff database that previously contained the SAs. Comment deadline, Jan 10, 2023 |
| 19 | Schedule 21-NEP: Removal of References to Narragansett; Update Ref. to National Grid LCC (ER23-165) | Dec 6 | FERC accepts Revisions, eff. Jan 1, 2023 |
| 19 | Schedule 21-RIE (ER23-16) | Dec 9 | FERC issues deficiency letter directing RIE to address the absence of a permanent ADIT worksheet (as required per <i>Order 864</i>) |
| | | Dec 12 | RIE responds to deficiency letter, including submission of recently-approved <i>Order 864</i> compliance changes |
| | | Dec 28 | FERC accepts Schedule 21-RIE/Attachment E Revisions, eff. Jan 1, 2023 |

VII. NEPOOL Agreement/Participants Agreement Amendments



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| 20 | PA Amendment No. 12 (ISO Board Member Age Limit Increase) | Dec 21 | PA Amendment No. 12 approved in balloting |
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VIII. Regional Reports



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| 21 | Capital Projects Report - 2022 Q3 (ER23-114) | Dec 20 | FERC accepts 2022 Q3 Report, eff. Oct 1, 2022 |
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IX. Membership Filings



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| * 21 | Jan 2023 Membership Filing (ER23-756) | Dec 30 | New Members: Just Energy Limited, Think Energy Terminations: Josco Energy MA, Starion Energy, RI Bioenergy Facility; Name Changes: BP Energy Retail Company LLC, BP Energy Holding Company LLC; RI Bioenergy, LLC; comment date Jan 21, 2023 |
| 22 | Nov 2022 Membership Filing II (ER23-402) | Dec 15 | FERC accepts Windham Energy Center membership, eff. Nov 10, 2022 |
| 22 | Nov 2022 Membership Filing I (ER23-310) | Dec 13 | FERC accepts (i) the memberships of Derby Fuel Cell; KCE CT 5, 7, 8, and 9; Rhode Island Bioenergy Facility; RI Division of Public Utilities Carriers; Sunnova Energy; and Triolith Energy Fund; (ii) the termination of the Participant status of EIP Investment; and (iii) the name change of Stones DR, LLC |
| * 22 | Suspension Notice – Manchester Methane, LLC (not docketed) | Dec 6 | ISO-NE files notice of Dec 2 suspension of Manchester Methane, LLC from the New England Markets |

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



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| 22 | Revised Reliability Standards: EOP-011-3 and EOP-012-1 (RD23-1) | Dec 1-8 | EPSCA , NEPGA , Invenergy , IRC , TAPS , and the Texas Competitive Power Advocates file comments on the <i>Cold Weather Standards</i> |
| | | Dec 16-23 | NERC , Competitive Generators , Invenergy , and APPA file reply comments |
| | | Jan 3 | IRC files reply comments |

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| 23 | CIP Standards Development: Info. Filings on Virtualization and Cloud Computing Services Projects (RD20-2) | Dec 15 | NERC files required quarterly report with revised schedule for Project 2016-02 (projected filing of revised standards now Jan 2023) |
| 24 | 2023 NERC/NPCC Business Plans and Budgets (RR22-4) | Jan 3 | NERC submits compliance filing in response to Nov 2 2023 <i>Budgets Order</i> ; comment deadline Jan 24, 2023 |

XI. Misc. - of Regional Interest



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| * 24 | 203 Application: Talen Energy Supply Reorganization (EC23-42) | Dec 15 | TES requests approval for a change in control transaction whereby 10% or more of the voting securities of a Reorganized Talen will be distributed to some or all of Indicated Noteholders pursuant to a joint plan of reorganization of the TES Debtors subject to confirmation by the Bankruptcy Court; comment deadline Jan 30, 2023 |
| | | Dec 19, 23 | PJM IMM, Public Citizen intervene |
| * 24 | 203 Application: Cogentrix / EGCO (Rhode Island State Energy Center) (EC23-41) | Dec 14 | RISEC and EGCO RISEC II, LLC (Buyer) request FERC authorization for a transaction pursuant to which Buyer, a wholly owned indirect subsidiary of EGCO, will acquire a 49% indirect ownership interest in RISEC from Cogentrix Sellers; comment deadline Jan 30, 2023 |
| | | Dec 23 | Public Citizen intervenes |
| 25 | 203 Application: Central Rivers Power / LSPower (EC23-22) | Dec 30 | FERC authorizes, as part of a larger transaction, LS Power's acquisition of Central Rivers Power's QF assets in New England |
| 25 | 203 Application: Seneca Energy II / BP (EC23-18) | Dec 22 | FERC authorizes transaction pursuant to which Seneca Energy II, LLC will ultimately become a Related Person of BP |
| | | Dec 30 | BP submits notice of Dec 28, 2022 consummation of transaction; Seneca Energy II is now a BP Related Person |
| 26 | 203 Application: EDF Energy / BP Retail (EC22-122) | Dec 5 | BP Energy Retail Company (f/k/a EDF Energy Services) et al. submit notice of Nov 30, 2022 consummation of transaction; BP Energy Retail Company is now a BP Related Person |
| 26 | 203 Application: Salem Harbor / Lenders (EC22-117) | Dec 19 | Salem Harbor files notice of Dec 16, 2022 consummation of transaction |
| 26 | 203 Application: Waterside Power / KKR (EC22-79) | Dec 21 | Applicants file notice of Dec 20, 2022 consummation of transaction |
| 26 | 203 Application: Stonepeak / JERA Americas (EC22-71) | Dec 2 | Applicants file notice of Dec 1, 2022 consummation of transaction; Stonepeak Kestrel Energy Marketing and Cricket Valley Energy Center become Related Persons to Marco DM Holdings |
| * 27 | EMM Contract (ER23-682) | Dec 15 | ISO files new contract for EMM services with Potomac Economics; comment deadline Jan 5, 2023 |
| | | Dec 21-Jan 3 | NEPOOL, National Grid, NESCOE, Public Citizen intervene |
| 27 | NEP Tariff No. 1 Revisions (ER23-348) | Dec 6 | FERC accepts Revisions, eff. Jan 1, 2023 |
| 27 | Versant MPD OATT: Changes to Treatment of CIS Costs and Expenses (ER23-345) | Jan 4 | FERC accepts changes, eff. Jun 1, 2023 |
| 28 | IA 2nd Amendment: CMP/Sappi Compl. Filing (ER22-1612-001) | Dec 16 | CMP submits compliance filing –a 2 nd Amendment to its IA with Sappi North America, Inc.; comment deadline Jan 6, 2023 |
| 29 | Orders 864/864-A (Public Util. Trans. ADIT Rate Changes) New England Compliance Filings | Dec 29 | FERC accepts the last of the region's pending <i>Order 864</i> compliance filings (UI's May 10, 2022 filing, Docket No. ER22-1850), eff. Jan 27, 2020 |

XII. Misc. - Administrative & Rulemaking Proceedings

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| 29 | Interregional HVDC Merchant Transmission (AD22-13) | Dec 5-23 | ENGIE NA , Grid United and SEIA file comments supporting Invenenergy's Nov 10, 2022 request that the FERC "hold a technical conference to examine and to improve the policy and processes relating to the interconnection of interregional MHVDC systems" |
| 29 | Joint FERC-DOE Supply Chain Risk Management Technical Conference (Dec 7) (AD22-12) | Dec 6 Dec 7 | FERC issues 4 th supplement notice of tech conference FERC holds tech conf; speaker materials posted to eLibrary Post-tech conf comments due Feb 17, 2023 |
| 30 | Reliability Tech Conf (Nov 10) (AD22-10) | | Post-tech conf comments due Jan 9, 2023 |
| 30 | Transmission Planning and Cost Management Tech Conf (AD22-8) | Dec 23 | FERC invites post-technical conference comments on questions listed in notice; comments due on or before Mar 23, 2023 |
| 31 | Modernizing Electricity Market Design - Resource Adequacy (AD21-10) | Dec 6 Dec 16, 21 | FERC grants EEI request for a 30-day extension of time to file comments on ISO/RTO Reports; comment deadline Jan 19, 2023 ELCON, SPP MMU file comments |
| 32 | NOPR: Duty of Candor (RM22-20) | Dec 12 | US Chamber of Commerce submits reply comments |
| 34 | NOPR: Interconnection Reforms (RM22-14) | Dec 14 | More than 50 sets of reply comments filed, including by: ACPA , ACORE , Advanced Energy United (f/k/a/ AEE) , APPA/LPPC , Avangrid , Dominion , EDF , EEI , Enel , ENGIE , Invenenergy , the IRC , Longroad Energy , NERC , NESCOE , NextEra , Orsted , SEIA , Shell , Sierra Club , UCS , WIRES |
| 38 | Transmission NOPR (RM21-17) | Dec 6, 12 | Harvard Electricity Law Initiative , P. Alaama submit comments |

XIII. FERC Enforcement Proceedings

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| * 41 | Todd Meinershagen (IN23-4) | Dec 21 | FERC approves Stipulation and Consent Agreement that resolves OE's investigation into Meingershagen's role, both individually and as co-owner of a DR aggregator, in a fraudulent scheme to register DR resources with MISO without those resources' knowledge or consent and to clear LMR capacity that would not have performed if the resources were dispatched during the Relevant Period; Meinershagen must pay \$525,451.93 in restitution to MISO |
| * 42 | FirstEnergy Corp (IN23-2) | Dec 30 | FERC approves Stipulation and Consent Agreement that resolves OE's investigation into FirstEnergy's failure to disclose during a FERC audit payments of nearly \$60 million made in connection with the passage of Ohio House Bill 6; FirstEnergy must pay a \$3.86 million civil penalty and submit two annual compliance monitoring reports |
| 42 | PacifiCorp (IN21-6) | Dec 30 | To fully resolve this matter, in which PacifiCorp was alleged to have violated NERC Reliability Standard FAC-009-1 R1 (which requires a TO to establish and have facility ratings that are consistent with its Facility Ratings Methodology, PacifiCorp agreed to: (a) pay a civil penalty of \$4.4 million ; and (b) be subject to two years' of semi-annual compliance monitoring |
| 44 | Total Gas & Power North America, Inc. et al. (IN12-17) | Dec 16 Dec 21 Dec 22 | Respondents file for a preliminary injunction in the US District Court for the Southern District of Texas FERC issues order holding this proceeding in abeyance for 90 days, and deferring the beginning of the hearing scheduled before ALJ Krolikowski to no earlier than Apr 24, 2023 Presiding ALJ Krolikowski issued a status order |

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

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| 48 | 2nd Revised Narragansett LSA Orders (22-1161, 22-1108) (consolidated) | Dec 12 Dec 19 | FERC file Respondent's Brief National Grid files Intervenor for Respondent's Brief |
| 50 | Opinion 531-A Compliance Filing Undo (20-1329) | Dec 6 | FERC files status report indicating that the proceedings before the FERC remain ongoing and that this appeal should continue to remain in abeyance |
| 51 | Northern Access Project (22-1233) | Dec 16 | Sierra Club files Petitioner's Brief |

MEMORANDUM

TO: NEPOOL Participants Committee Members and Alternates

FROM: Patrick M. Gerity, NEPOOL Counsel

DATE: January 4, 2023

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 January 3, 2023. If you have questions, please contact us.

I. Complaints/Section 206 Proceedings

- **RENEW Network Upgrades O&M Cost Allocation Complaint (EL23-16)**

On December 13, 2022, RENEW filed a complaint against ISO-NE and the Participating Transmission Owners ("PTOs") seeking changes to the ISO Tariff (Schedules 11 and 21) that would eliminate the direct assignment of Network Upgrade Operations and Maintenance ("O&M") costs to Interconnection Customers. RENEW also requested (i) that it be considered an Interested Party or afforded adequate opportunity to participate and access transmission rate information under the PTOs' Formula Rate Protocols and (ii) the PTOs be directed to provide greater transparency regarding O&M costs in the interconnection process. The proposed revisions to Schedule 11 of the Tariff were voted by the Transmission Committee on October 26, 2021, and discussed at the November 3, 2021 Participants Committee meeting. RENEW asked the FERC to issue an order granting the Complaint by April 14, 2023 (approximately 60 days prior to the June 15, 2023 deadline for the NE PTOs to publish a draft of the Annual Update to the data used in the transmission formula rate). Following a request by the PTO AC for a 20-day extension of time to submit comments, supported by NEPOOL, the MA AG and NESCOE, and granted by the FERC on December 22, 2022, comments are now due on or before **January 23, 2023**. Thus far, doc-less interventions have been filed by NEPOOL, Calpine, CPV Towantic, Eversource, MA AG, National Grid, NEPGA, NESCOE, New Leaf Energy, NextEra, NRG, Versant, Glenvale LLC, CT DEEP, MA DPU, and Public Citizen. If you have questions on this proceeding, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com) or Margaret Czepiel (202-218-3906; mczepiel@daypitney.com).

- **ENECOS Mystic COSA Complaint (EL23-4)**

As previously reported, On October 17, 2022, Eastern New England Consumer-Owned Systems ("ENECOS") filed a Complaint against Mystic and ISO-NE challenging the pass-through to ISO-NE customers of firm pipeline transportation costs under the 2nd Amended and Restated Mystic Cost-of-Service Agreement ("COSA"), which ENECOS claimed are associated with pipeline facilities that are neither used nor usable to supply fuel to Mystic 8 and 9, and therefore should not be charged to ISO-NE and its customers under the COSA. Specifically, ENECOS asked that all references to "Pipeline Transportation Agreements" be stricken from the COSA, template Line No. 7 "Fixed Pipeline Transportation" be removed from the true-up methodology, and Mystic be precluded from recovering the dollar amounts associated with that line item. ENECOS explained that the Complaint was filed as a procedural precaution as the charges that are the subject of the Complaint can be addressed by the FERC in

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").

proceedings on the DC Circuit's remand of issues relating to the FERC's allocation of Everett Marine Terminal costs under the COSA.²

Responses and Comments. Responses to and comments on ENECOS' Complaint were due on or before November 16, 2022. Mystic and ISO-NE filed responses. In its response, *Mystic* urged the FERC to dismiss the Complaint by asserting that (i) ENECOS have not, as required, sufficiently alleged changed circumstances since the pipeline transportation costs recovery mechanisms were found just & reasonable by the FERC; (ii) ENECOS are wrong on the merits; (iii) Mystic and the COSA are cost causative for Everett; and (iv) allocation of the costs is justified by tank management, which allows Mystic to meet the reliability need that the COSA is intended to address. For its part, *ISO-NE* also requested that the FERC deny the Complaint because the costs challenged are encompassed by the *Mystic Remand Order*. However, if the FERC does not dismiss the Complaint, ISO-NE urged the FERC to either consolidate the Complaint with the Mystic Remand Proceeding or hold the Complaint in abeyance. Comments supporting the Complaint were filed by MMWEC/NHEC (together, "Public Systems"), and by the Connecticut Public Utilities Regulatory Authority ("CT PURA") and the Connecticut Office of Consumer Counsel ("CT OCC", and together with CT PURA, the "CT Parties"). Doc-less interventions only were filed by NEPOOL, Calpine, Eversource, MA AG, National Grid, NESCOE, NRG, and the CT DEEP have intervened doc-lessly. Since the last Report, ENECOS answered Mystic's November 16, 2022 answer and Mystic answered ENECOS' December 1, 2022 answer. This matter is pending before the FERC. If you have questions on this proceeding, please contact Joe Fagan (202-218-3901; jfagan@daypitney.com) or Margaret Czepiel (202-218-3906; mczepiel@daypitney.com).

- **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.³ 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.⁴ As noted below, ISO-NE answered by explaining why it believes its existing Tariff provisions to be just and reasonable and changes not necessary.

By way of background, the *FTR Collateral Show Cause 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 FERC stated that, although the record developed through the technical conference highlighted numerous different approaches to managing credit risk, "we believe that two specific

² *Constellation Mystic Power, LLC v. FERC*, 45 F.4th 1028, 1050-1052 (D.C. Cir. 2022) ("*Mystic Remand Order*").

³ *CAISO, ISO-NE, NYISO, and SPP*, 180 FERC ¶ 61,049 (July 28, 2022) ("*FTR Collateral Show Cause Order*").

⁴ *Id.* at P 31.

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).

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 currently employs 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, August 3, 2022.⁹ Those interested in participating in this proceeding were required to intervene on or before August 18, 2022. Doc-less interventions were filed by NEPOOL, Calpine, DC Energy, NRG, the Maine Public Utilities Commission (“MPUC”), Electric Power Supply Association (“EPSA”), PJM, SPP, Public Citizen, and Financial Marketers Coalition¹⁰ (out-of-time).

ISO-NE Response. On October 26, 2022, ISO-NE submitted its answer in response to the *FTR Collateral Show Cause Order*. In its Answer, ISO-NE explained how the FTR financial assurance calculations contained in the Financial Assurance Policy (“FAP”) remain just and reasonable, adequately accounting for FTR risk in the absence of a more sophisticated risk management solution such as a clearing solution. ISO-NE asked that, should the FERC not agree and proceed to require volumetric FTR collateral requirements, that it be permitted to follow the Participants Processes to propose revisions to the FAP consistent with any such order. Comments on ISO-NE’s response were due on or before November 25, 2022; none were filed. This matter is pending before the FERC.

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

- **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 the eighteenth Forward Capacity Auction (“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 of time 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](#), [Advanced Energy United \(f/k/a/ AEE\) \(“AEU”\)](#), [Calpine](#), [EDF](#), [FirstLight](#), [LS Power](#), [NEPGA](#),

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 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 The *Notice* was published in the *Fed. Reg.* on Aug 3, 2022 (Vol. 87, No. 148) p. 47,409.

¹⁰ “Financial Marketers Coalition” identified themselves in their doc-less intervention as “financial market participants participating in the various ISO/RTO markets, including those operated by CAISO, SPP, NYISO and ISO-NE. Many of the Coalition members participate in these ISO/RTOs’ FTR markets.”

NESCOE, Public Interest Orgs (“PIOs”),¹¹ Vistra/LSP Power, State Parties,¹² 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, Excelerate, National Grid, NextEra, NH OCA, North East Offshore, NRG, Public Systems,¹³ CT PURA, MA DPU, MPUC, Repsol, APPA, EPSA, the Institute for Policy Integrity at New York University School of Law, and Public Citizen. On July 20, 2022, ISO-NE submitted a letter requested expeditious action on the Complaint (a request NEPOOL supported). RENEW/ACPA 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 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”). On November 7, 2022, RENEW and ACPA, in comments submitted also in the New England Winter Gas-Electric Forum proceeding (see AD22-9 below), drew attention to, reiterated its arguments in, and urged the FERC to expeditiously act on, this Complaint.

There was no activity in this proceeding since the last Report. 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 September 26, 2022, the FERC issued a notice¹⁴ that the Northern Maine Independent System Administrator’s (“NMISA”) request for rehearing of the FERC’s order¹⁵ denying NMISA’s complaint against ISO-NE and the Participating Transmission Owners (“PTOs”) Administrative Committee (“PTO AC”)¹⁶ may be deemed denied by operation of law, triggering the 60-day period during which a petition for review of the *NMISA Order* can be filed with an appropriate federal court. The notice also indicated that the FERC, as is its right, “may modify or set aside [the *NMISA Order*], in whole or in part, in such manner as it shall deem proper”. The FERC issued that order on November 21, 2022, modifying the discussion in the *NMISA Order*, but reaching the same the result.¹⁷ If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

¹¹ “Public Interest Orgs” are the Sustainable FERC Project, Acadia Center, Conservation Law Foundation (“CLF”), Sierra Club, and Natural Resources Defense Council (“NRDC”).

¹² “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”).

¹³ “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”).

¹⁴ *Northern Maine Indep. Sys. Administrator, Inc. v. ISO New England Participating Transmission Owners Administrative Comm.*, 180 FERC ¶ 61,044 (Sep. 23, 2022) (notice that req. for reh’g of July 28 order may be deemed denied).

¹⁵ *Northern Maine Indep. Sys. Administrator, Inc. v. ISO New England Participating Transmission Owners Administrative Comm.*, 180 FERC ¶ 62,168 (July 28, 2022) (“*NMISA Order*”) (order denying reciprocal TOUT discount complaint).

¹⁶ As previously reported, the FERC found in the *NMISA Order* 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”. 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 FPA Section 206 statutory burden. In requesting rehearing, NMISA asserted that the FERC erred by (i) failing to provide a reasoned explanation for its determination that NMISA and NYISO are not similarly situated; and (ii) failed to justify its decision not to enforce the requirement that ISO-NE engage in extensive efforts to reduce seams with neighboring control areas.

¹⁷ *Northern Maine Indep. Sys. Administrator, Inc. v. ISO New England Participating Transmission Owners Administrative Comm.*, 181 FERC ¶ 61,148 (Nov. 21, 2022) (“*NMISA Allegheny Order*”) (order modifying the *NMISA Order* and sustaining the result).

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

Still pending before the FERC is the FERC-instituted FPA Section 206 proceeding under which the FERC is considering whether Schedule 25 and Tariff § I.3.10 may be unjust and unreasonable.¹⁸ As previously reported, 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.¹⁹

The FERC directed ISO-NE to: (1) show cause as to why Schedule 25 and Tariff § I.3.10 remain just and reasonable or (2) explain what changes to Schedule 25 and/or Tariff § 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 is 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, 2021²⁰ and included 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.

ISO-NE Answer. On November 8, 2021, ISO-NE submitted its answer explaining why Schedule 25 and Tariff § 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, 2022, [NextEra](#) answered the NECEC/Avangrid comments. On January 28, 2022, [NECEC](#) answered NextEra’s January 20 answer and [ISO-NE](#) answered NECEC’s Jan 7 comments.

As noted, 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).

- **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 relief²¹ and direct NextEra to immediately commence engineering, design, planning and procurement activities that are

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) (“Sep 7 Order”).

¹⁹ *Id.* at P 20.

²⁰ The Notice was published in the *Fed. Reg.* on Sep. 14, 2021 (Vol. 86, No. 175) p. 51,140.

²¹ 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.

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).²² Initial briefs²³ were due on 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.

Dec 9, 2022 Motion to Lodge and Request for Expedited Consideration. On December 9, 2022, Avangrid filed a motion to lodge an Amended E&P Agreement between NextEra Energy Seabrook and NECEC Transmission and to request expedited resolution of remaining issues. The Amended E&P Agreement allows for the delivery of the Seabrook Breaker in advance of the scheduled Fall 2024 refueling outage at Seabrook Station. However, the Amended E&P Agreement does not address construction and installation of the Seabrook Breaker, which will require resolution of the disputed issues in this proceeding, and for which the parties again requested FERC action.

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

²² *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).

²³ 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, 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.

- **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,²⁴ set the TOs’ Base ROE at 10.57% (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*).²⁵ However, the FERC’s orders were challenged, and in *Emera Maine*,²⁶ 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

²⁴ 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*”).

²⁵ *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*”).

²⁶ *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).

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)²⁷ and third (EL14-86)²⁸ 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.²⁹ 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 proceeding³⁰ also went to hearing before an Administrative Law Judge ("ALJ"), Judge Glazer, who issued his initial decision on March 27, 2017.³¹ 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 FPA.³² 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.³³ 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*³⁴ (EL14-12; EL15-45) in

²⁷ 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%.

²⁸ 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.

²⁹ *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").

³⁰ 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.

³¹ *Belmont Mun. Light Dept. v. Central Me. Power Co.*, 162 FERC ¶ 63,026 (Mar. 27, 2018) ("Base ROE Complaint IV Initial Decision").

³² *Id.* at P 2.; Finding of Fact (B).

³³ *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (Oct. 18, 2018) ("Order Directing Briefs" or "Coakley").

³⁴ *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

Section XI below). The FERC established a paper hearing on how its proposed methodology should apply to the four pending ROE proceedings.³⁵

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%.³⁶ 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 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 Customers³⁷ 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.

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*.

³⁵ *Id.* at P 19.

³⁶ *Id.* at P 59.

³⁷ For purposes of the motion seeking clarification, “Customers” are CT PURA, MA AG and EMCOS.

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*³⁸ 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

- **FCA17 Qualification Informational Filing (ER23-690)**

On December 21, 2022, ISO-NE submitted its informational filing for qualification in FCA17 (the "FCA17 Informational Filing"). ISO-NE is required under Market Rule Section 13.8.1 to submit an informational filing with the FERC containing the determinations made by ISO-NE for the upcoming Forward Capacity Auction ("FCA") at least 90 days prior to each auction. FCA17 is scheduled to begin March 6, 2023. The Informational Filing contained ISO-NE's determinations that three Capacity Zones will be modelled for FCA17 - Northern New England ("NNE"), Maine, and Rest of Pool. NNE and Maine will be modeled as export-constrained. The Informational Filing reported that there will be 32,518 MW of existing capacity in FCA17 competing with 5,032 MW of new capacity under a Net ICR of 30,305 MW (ICR minus HQICCs). ISO-NE reported also that there were a total of 474 MW of De-List Bids. A summary of the De-List Bids accepted and those rejected for reliability purposes was included in a privileged Attachment E. ISO-NE qualified 2 demand bids, totaling 7.8 MW, and 88 supply offers, totaling 515 MW, to participate in the substitution auction. Comments on the FCA17 Informational Filing are due on or before **January 5, 2023**. Thus far, NEPOOL, Calpine, Constellation, National Grid, and NESCOE have filed doc-less interventions. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **ICR-Related Values and HQICCs – Annual Reconfiguration Auctions (ER23-534)**

On November 30, 2022, ISO-NE and NEPOOL jointly filed materials that identify the Installed Capacity Requirement ("ICR"), Local Sourcing Requirements ("LSR"), Maximum Capacity Limits ("MCL"), Hydro Quebec Interconnection Capability Credits ("HQICCs"), and capacity requirement values for the System-Wide and Marginal Reliability Impact Capacity Demand Curves (collectively, the "ICR-Related Values") for the third annual reconfiguration auction ("ARA") for the 2023-24 Capability Year, the second ARA for the 2024-25 Capability Year, and the first ARA for the 2025-26 Capability Year. The ICR-Related Values were supported by the Participants Committee at its November 2, 2022 meeting (Consent Agenda Items 1 and 2). A January 29, 2023 effective date was requested. Comments on this filing were due on or before December 21, 2022; none were filed. Calpine, Eversource, National Grid, and NESCOE filed doc-less motions to intervene. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

- **ICR-Related Values and HQICCs – FCA17 (2026-27) Capacity Commitment Period (ER23-405)**

On December 20, 2022, the FERC accepted the ICR, LSR for SENE, MCL for the Maine and NNE Capacity Zones, HQICCs, and Marginal Reliability Impact ("MRI") Demand Curves (collectively, the "2026-27 ICR-Related Values") for the 2026-27 Capacity Commitment Period ("CCP").³⁹ As previously reported, the 2026-27 ICR will be

³⁸ *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).

³⁹ *ISO New England Inc. and New England Power Pool Participants Comm.*, Docket No. ER23-405-000 (Dec. 20, 2022) (unpublished letter order).

31,306 MW (reflecting tie benefits of 2,100 MW) and HQICCs of 1,001 MW/mo., the net amount of capacity to be purchased in FCA17 to meet the ICR will be 30,305 MW. The MCL for the Maine Capacity Zone is 4,065 MW. The MCL for the NNE Capacity Zone is 8,595 MW. (For FCA17, there are no import-constrained Capacity Zones). The FERC accepted the 2026-27 ICR-Related Values, effective as of January 7, 2023, as requested. Unless the December 20 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).

- **2023 NESCOE Budget (ER23-100)**

Also on December 20, 2022, the FERC accepted the Section IV.A Schedule 5 rate of \$0.00701 per kilowatt (“kW”) of Monthly Network Load (a \$0.00035/kW decrease from 2022) for the funding of NESCOE’s 2023 operations.⁴⁰ As previously reported, the 2023 Operating Expense Budget for NESCOE is \$2,691,505 and the amount to be recovered reflects true-ups from 2022 (over-collections of \$1,108,802). The rate became effective January 1, 2023, as requested. If there are any questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **2023 ISO-NE Administrative Costs and Capital Budgets (ER23-94)**

Also on December 20, 2022, the FERC accepted revisions to Section IV.A to recover ISO-NE’s 2023 Budgets (for both administrative costs (the “2023 Revenue Requirement”) and capital costs (“2023 Capital Budget”, and together with the 2023 Revenue Requirement, the “2023 ISO Budgets”).⁴¹ As previously reported, the 2023 Revenue Requirement is \$240.2 million (a \$25.1 million or 11.7% increase over 2022), which decreases to \$225.6 million after the over-collection for 2021 is subtracted. Of that total, ISO-NE’s administrative costs (i.e., the 2023 Core Operating Budget) comprise \$209.2 million; depreciation and amortization of regulatory assets, \$31 million; and a \$14.6 million true-up decrease for 2021 over-collections. ISO-NE further reported that the 2023 Capital Budget is \$33.5 million, a \$1.5 million increase over 2022.⁴² Unless the December 20 order in this proceeding is challenged, this proceeding will be concluded. If there are any questions on this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

- **NESCOE 5-year (2023-2027) Pro Forma Budget (ER22-2812)**

On December 19, 2022, the FERC accepted NESCOE’s fourth 5-year *pro forma* budget covering years 2023 - 2027 (the “5-year Pro Forma Budget”).⁴³ Unless the December 19 5-year Pro Forma Budget order is challenged, this proceeding will be concluded. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **Mystic COS Agreement Updates to Reflect Constellation Spin Transaction⁴⁴ (ER22-1192)**

As previously reported, on May 2, 2022, 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.⁴⁵ The changes were accepted effective as of June 1, 2022, but subject to refund and to the outcome of paper hearing (or settlement procedures) on the issues of capital structure and cost of debt raises issues. Mystic filed an offer of settlement on September 8, 2022 to resolve all issues set for hearing and settlement proceedings and the FERC accepted that offer of settlement on November 2,

⁴⁰ *ISO New England Inc. and New England States Comm. on Electricity*, Docket No. ER23-100-000 (Dec. 20, 2022) (unpublished letter order) (“2023 NESCOE Budget Order”).

⁴¹ *ISO New England Inc.*, Docket No. ER23-94-000 (Dec 20, 2022) (unpublished letter order) (“2023 ISO Budgets Order”).

⁴² See Nov. 1 or Dec. 1, 2022 Reports for Capital Budget highlights.

⁴³ *New England States Comm. on Elec.*, Docket No. ER22-2812-000 (Dec. 19, 2022) (unpublished letter order).

⁴⁴ 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.

⁴⁵ *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,081 (May 2, 2022) (“May 2, 2022 Order”).

2022,⁴⁶ directing Mystic to make a compliance filing with revised tariff records in eTariff format reflecting the FERC's action in the November 2 order. Mystic submitted that compliance filing on December 2, 2022 (ER22-1192-003). No comments were received by the December 23, 2022 comment date, and the compliance filing is now pending before the FERC. FERC action on the compliance filing will conclude this proceeding. 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 ("COSA") (ER18-1639)**

Mystic I Remand. As previously reported, the DC Circuit issued a decision on August 23, 2022⁴⁷ that, among other things: (i) granted State Petitioners' petitions for review on the cost allocation issue; (ii) vacated the clawback portions excluding Everett costs and the challenged delay provision of the orders under review; and (iii) remanded the cases to the FERC to address NESCOE's request for clarification about revenue credits and for clarification of the apparent contradictions in the FERC's *December 2020 Rehearing Order*.

(-019) Emergency Motion for Expedited Action. On November 22, 2022, as corrected on November 23, Mystic and Constellation filed an emergency motion requesting expedited action by **January 9, 2023**, on the Cost Allocation and Clawback issues remanded to the FERC in the *Mystic I Remand Order*, asserting that expedited FERC action on remand is needed given the implications for sales of gas from the Everett facility during the term of the COSA and the future of the Everett facility post-COSA. That motion triggered a round of pleadings, most supporting expedited resolution (even if not agreeing with the underlying justification for emergency action presented by Mystic and Constellation); one pleading, by ENECOS, opposed the emergency action in its entirety, and requested post-remand briefing on the allocation of Everett Marine Terminal costs. Mystic and Constellation answered ENECOS' opposition on December 21, 2022. This round of pleadings is pending before the FERC. No remand order has yet been issued.

Other Mystic COSA-Related Matters Still Pending or With Activity Since the Last Report include:

(-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 COSA ("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.⁴⁸ 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).⁴⁹ The FERC reiterated that all items except 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

⁴⁶ *Constellation Mystic Power, LLC*, 181 FERC ¶ 61,099 (Nov. 2, 2022).

⁴⁷ *Constellation Mystic Power, LLC v. FERC*, 45 F.4th 1028 (D.C.Cir. 2022) ("*Mystic I Remand Order*").

⁴⁸ *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,011 (Apr. 28, 2022) ("*Mystic First CapEx Info. Filing Order*").

⁴⁹ *Id.* at PP 23-24.

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.⁵⁰ 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, is holding the hearing in abeyance pending the completion of settlement judge procedures (-015) summarized just below.⁵¹

(-015) First CapEx Info. Filing Settlement Judge Procedures. On May 4, Chief Judge Cintron designated Judge Andrea McBarnette as the Settlement Judge. Thus far, three settlement conferences have been held, the first on June 15 and the second on November 17, 2022. A third settlement conference was held December 20, 2022. A fourth settlement conference is scheduled for **January 18, 2023**. In her last status report, submitted on January 3, 2023, Settlement Judge McBarnette recommended the continuation of settlement judge procedures.

(-018) Second CapEx Info Filing. On September 15, 2022, 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 “Second CapEx Info Filing” to provide support for the capital expenditures and related costs that Mystic projects will be collected as an expense between January 1, 2023 to December 31, 2023 (“2023 CapEx Projects”). Formal challenges to the Second CapEx Info Filing were submitted by NESCOE and ENECOS. Comments on NESCOE’s and ENECOS’ challenges were due on or before November 16, 2022 and November 17, 2022, respectively. Mystic responded separately to NESCOE’s and ENECOS’ challenges. MMWEC/NHEC filed comments supporting ENECOS’ formal challenge, emphasizing its support for formal challenge to the pass through of charges incurred by Everett for pipeline transportation reservations (see ENECOS Mystic COSA Complaint (EL23-4) above). Since the last Report, on December 6, 2022, ENECOS answered Mystic’s November 17, 2022 answer. On December 22, 2022, Mystic filed a response to ENECOS’ December 6 answer, and requested that the FERC reject the Formal Challenges, and accept the Second Filing as expeditiously as possible. The Second CapEx Info Filing, including the formal challenges, and the responses/comments thereon, are pending before the FERC.

(-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.

(-020) Fuel Supply Agreement Revision Info Filing. On December 9, 2022, Mystic submitted a revision to its Fuel Supply Agreement (“FSA”) that memorializes Constellation LNG’s pre-existing business practice of crediting Mystic under the FSA to account for firm gas transportation (“FT”) charges that Constellation LNG collects from forward third-party sales of gas. This crediting mechanism, along with the other credits already included in the FSA, Mystic explained, ensures that Mystic (and thus ISO New England) only bears the cost responsibility for the pipeline transportation costs that are not offset by third-party sales of gas. Mystic stated the credit to the FSA reduces Mystic’s cost-of-service. This informational filing was not noticed for public comment.

If you have questions on any aspect of these proceedings, 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 2023 annual filing identifying adjustments to Regional Transmission Service charges, Local Service charges, and Schedule 12C Costs under Section II of the Tariff. The filing reflected the charges to be assessed under annual transmission and settlement formula rates, reflecting

⁵⁰ *Id.* at P 26.

⁵¹ *Id.* at P 27.

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,⁵² 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 was not noticed for public comment.

The July 29 filing was reviewed with the Transmission Committee at its August 16, 2022 summer meeting and at an August 22, 2022 technical session for Interested Parties. 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

- **SATOA Revisions (ER23-739; ER23-743)**

On December 29, 2022, ISO-NE, NEPOOL and the PTO AC filed revisions to the Tariff and the TOA, in two parts, to enable electric storage facilities to be planned and operated as transmission-only assets (“SATOA”) to address system needs identified in the OATT’s regional system planning process (“SATOA Revisions”). The SATOA Revisions were supported by the Participants Committee at its October 6, 2022 meeting (Agenda Item #7). ISO-NE requested a FERC order by March 29, 2023 and indicated that it intends to implement the SATOA Revisions effective July 1, 2024. ISO-NE committed to submit a filing specifying the precise effective date prior to implementation. For eTariff reasons, Part I included the ISO-NE Tariff revisions (ER23-739); Part II, the TOA revisions (ER23-743). Comments on the SATOA Revisions are due on or before **January 19, 2023**. Thus far, Eversource, NESCOE and the MA PUD have intervened. If you have any questions concerning this proceeding, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

- **Solar DNE Dispatch Changes (ER23-517)**

On November 30, 2022, ISO-NE and NEPOOL filed revisions to the Do Not Exceed (“DNE”) dispatch rules in Market Rule 1 to allow front-of-meter solar resources to become Dispatchable Resources (“Solar DNE Dispatch Changes”). The Solar DNE Dispatch Changes were supported by the Participants Committee at its September 1, 2022 meeting (Consent Agenda Item #6). A December 5, 2023 effective date was requested. Comments on the Solar DNE Dispatch Changes were due on or before December 21, 2022; none were filed. Eversource, National Grid and NESCOE filed doc-less interventions. This matter is pending before the FERC. If you have any questions concerning this proceeding, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

⁵² 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 FERC ¶ 61,270 (2020) (“Settlement Order”).

- **Waiver Request: Attachment F (NEP) (ER23-370)**

On December 22, 2022, the FERC granted New England Power's request for a limited waiver of certain provisions in the Attachment F formula rate template to ensure that, as of the date RI Energy becomes a PTO (January 1, 2023), NEP's transmission revenue requirements collected through regional and local rates will not include a forecast based on historical NEP revenue requirements that included costs of RI Energy-owned transmission facilities.⁵³ Unless the *Attachment F RIE Waiver Order* is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **FCA18 Schedule Modifications (ER23-50)**

On December 1, 2022, the FERC accepted Tariff changes that modify the schedule for FCA18 ("FCA18 Schedule Modifications").⁵⁴ As previously reported, the FCA18 Schedule Modifications compress the schedule for FCA18 in order that FCA18 can be conducted as originally scheduled (on February 5, 2024) notwithstanding delays in FA16 and FCA17 that otherwise would have caused the FCA18 auction date to slip. The FCA18 Schedule Modifications were accepted effective as of December 19, 2022. The December 1 order was not challenged and is final and unappealable. If you have any questions concerning this proceeding, please contact Rosendo Garza (860-275-0660; rgarza@daypitney.com).

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

New England's *Order 2222* Compliance Filing remains pending before the FERC. As previously reported, ISO-NE, NEPOOL and the PTO AC ("Filing Parties") submitted on February 2, 2022 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: [AEU/PowerOptions/SEIA](#); [Environmental Organizations](#);⁵⁵ [MA AG](#); [Volutus](#); [AEMA](#) and [4 New England US Senators](#).⁵⁶ Doc-less interventions were filed by: 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, [AEU/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 AEU, AEMA, PowerOptions, and SEIA ("[Joint Protest](#)"). The

⁵³ *New England Power Co.*, 181 FERC ¶ 61,253 (Dec. 22, 2022) ("*Attachment F RIE Waiver Order*").

⁵⁴ *ISO New England Inc.*, Docket No. ER23-50-000 (Dec. 1, 2022) (unpublished letter order).

⁵⁵ Environmental Organizations are Acadia Center, Conservation Law Foundation ("CLF"), Environmental Defense Fund ("EDF"), Massachusetts Climate Action Network, NRDC, Sierra Club, and the Sustainable FERC Project.

⁵⁶ Senators Markey (MA), Sanders (VT), Warren (MA), and Whitehouse (RI).

Joint Protest, while supportive of certain responses (those regarding the exemption of DERAs 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. On August 9, 2022, AEU, AEMA, PowerOptions, and SEIA [answered](#) ISO-NE’s July 25 answer.

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

- **IEP Remand (ER19-1428-006)**

On November 22, 2022, ISO-NE filed Tariff provisions governing the Inventoried Energy Program (“IEP”) consistent with the D.C. Circuit’s *IEP Decision*.⁵⁷ ISO-NE’s proposed Tariff changes remove nuclear, biomass, coal, and hydroelectric generators from the IEP. ISO-NE’s Tariff changes were supported by the Participants Committee at its November 2 meeting (as were alternative Tariff changes proposed by Brookfield that explicitly allow pumped hydro resources to participate in the IEP as Electric Storage Facilities). Comments were due on or before December 13, 2022.

Comments and limited protests were filed by: [NEPOOL](#), [Brookfield, MA AG](#), [National Hydropower Association](#), and [RENEW](#); doc-less interventions only, by Calpine, FirstLight and National Grid. On December 28, 2022, New England Consumer-Owned Systems⁵⁸ and Energy New England (“ENE”) responded to those protests and comments (urging the FERC to accept ISO-NE’s compliance filing without modification). ISO-NE did not respond. This matter is pending before the FERC. If you have any questions concerning this matter, please contact Sebastian Lombardi (860-275-0663; slombardi@daypitney.com) or Rosendo Garza (860-275-0660; rgarza@daypitney.com).

IV. OATT Amendments / TOAs / Coordination Agreements

- **Attachment F, Appendix D-NSTAR: Updates to Depreciation Rates (ER23-637)**

On December 15, 2022, NSTAR proposed revisions to the general plant depreciation rates for NSTAR (East) and NSTAR (West). The depreciation changes included in this filing provide for the same depreciation rates that were approved November 30, 2022 by the Massachusetts Department of Public Utilities (“MA DPU”). NSTAR requested an effective date of January 1, 2023 (the same effective date approved by the MA DPU for the implementation of these depreciation rates for NSTAR’s distribution rates. Comments on this filing are due on or before **January 5, 2023**. If you have any questions concerning this matter, please contact Eric Runge (617-345-4735; ekrunge@daypitney.com).

⁵⁷ *Belmont Mun. Light Dept., et al., v. FERC*, 2022 WL 2182810 (June 17, 2022) (the “*IEP Decision*”). The *IEP Decision* leaves intact the FERC’s June 2020 *IEP Remand Order* (*ISO New England Inc.*, 171 FERC ¶ 61,235 (June 18, 2020)) 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.

⁵⁸ New England Consumer-Owned Systems (“NECOS”) are Belmont, Block Island Utility District, Braintree, Georgetown, Groveland, Hingham, Littleton (MA), Merrimac, Middleborough, Middleton, Norwood, Pascoag, Reading, Rowley, Stowe, Taunton, Wellesley, and Westfield.

- **Attachment F Revisions Reflecting RIE Addition as PTO (ER23-299)**

On December 6, 2022, the FERC accepted revisions to Attachment F of the OATT filed by The Narragansett Electric Company d/b/a Rhode Island Energy ("RI Energy") to reflect RI Energy's addition as an independent Participating Transmission Owner ("PTO").⁵⁹ The revisions were accepted effective as of January 1, 2023, as requested. Unless the December 6, 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).

- **Attachment F Depreciation Normalization Requirement Revisions (ER23-197)**

On December 13, 2022, the FERC accepted revisions to Attachment F of the OATT, filed by certain Transmission Owners,⁶⁰ that apply the IRS's ADIT proration formula to the TOs' actual (true-up) revenue requirements (thereby maintaining compliance with the IRS's depreciation normalization requirements and ensuring the TOs' continued ability to use accelerated depreciation).⁶¹ The changes were accepted effective as of January 1, 2023, as requested. Unless the December 13 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).

- **Attachment F, Appendix D-PSNH: Establishment of Depreciation Rate for Accounts 357 and 358 (ER22-2953)**

Also on December 13, 2022, the FERC accepted changes to Attachment F, Appendix D-PSNH that establish the transmission plant depreciation rates for Account 357 (Underground Conduit) and Account 358 (Underground Conductors and Devices).⁶² Those accounts will be used to calculate PSNH's annual transmission revenue requirements for transmission service under the ISO-NE OATT. The changes were accepted effective as of January 1, 2023, as requested. Unless the December 13 order in this proceeding 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).

- **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,⁶³ and the Schedule 20A Service Providers.⁶⁴ 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 service (together, the "Phase I/II HVDC-TF Order 881 Compliance Filing"). Comments on the Phase I/II HVDC-TF Order 881 Compliance Filing were due on or before August 12, 2022; none were filed. The IRH

⁵⁹ *ISO New England Inc.*, Docket No. ER23-299-000 (Dec. 6, 2022) (unpublished letter order).

⁶⁰ The TO filers are as follows: Central Maine Power Co. ("CMP"); Eversource Energy Service Co. ("Eversource") on behalf of The Conn. Light and Power Co. ("CL&P"), Public Service Co. of New Hampshire ("PSNH"), NSTAR Elec. Co. ("NSTAR"); Fitchburg Gas and Elec. Light Co.; Green Mountain Power Corp.; Maine Elec. Power Co.; New England Power Co. d/b/a National Grid; New Hampshire Transmission, LLC; The United Illuminating Co.; Vermont Transco, LLC; and Versant Power.

⁶¹ *ISO New England Inc.*, Docket No. ER23-197-000 (Dec. 13, 2022) (unpublished letter order).

⁶² *ISO New England Inc. and Pub. Srvc. Co. of NH*, Docket No. ER22-2953-001 (Dec. 13, 2022) (unpublished letter order).

⁶³ 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").

⁶⁴ 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.

Management Committee submitted a doc-less intervention. 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 881 Compliance Filing: New England (ER22-2357)**

As previously reported, ISO-NE, NEPOOL, the PTO AC, and CSC (the “Filing Parties”) filed, on July 12, 2022, proposed revisions to the OATT in response to the requirements of *Order 881*⁶⁵ (“*Order 881 Compliance Changes*”). Specifically, the Filing Parties proposed the addition of 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* were due on or before August 2, 2022; none were filed. Eversource, Narragansett Electric Company (“Narragansett”) and National Grid filed doc-less interventions. 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 (CSC-Schedule 18-Attachment Z) (ER22-1168)**

On March 2, 2022, in response to the requirements of *Order 676-J*,⁶⁶ ISO-NE and 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”).⁶⁷ 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).

- **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”).⁶⁷ An effective date as of the date the FERC may determine was requested. Comments on this filing were 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

⁶⁵ *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*”).

⁶⁶ *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.

⁶⁷ 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.

and PFV standards contained in NAESB WEQ Version 003.3 Standards (“Schedule 24 Order 676-J Part I Changes”).⁶⁷ 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

- **IEP Changes to Financial Assurance and Billing Policies; Ministerial Change to Monthly Statements Issuance Date (ER23-705)**

On December 22, 2022, ISO-NE and NEPOOL jointly filed IEP-related changes to the Tariff and a definition change revising “Monthly Issuance” in Section I’s omnibus definition section (The “FAP/BP Changes”). Specifically, revisions to the FAP are designed to ensure adequate collateral is provided by Market Participants participating in the IEP; revisions to the Billing Policy (“BP”) reflect charges and credits related to the IEP; and the definition of “Monthly Issuances” in Section I.2.2 are designed to ensure consistency with the Billing Policy. The FAP/BP Changes were supported by the Participants Committee at its November 2, 2022 meeting (Agenda Item #5). ISO-NE requested a February 23, 2023 effective date for the FAP/BP Changes. Comments on the FAP/BP Changes are due on or before **January 12, 2023**. Thus far, Calpine, Constellation and National Grid have submitted doc-less interventions. If you have any questions concerning this proceeding, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

VI. Schedule 20/21/22/23 Changes & Agreements

- **Schedule 21-RIE: Transfer of SAs from Sched 21-NEP; Updated Thundermist ISA (ER23-678; ER23-681)**

On December 20, 2022, Rhode Island Energy submitted a filing (i) to move certain RIE service agreements (“SAs”) to Schedule 21-RIE from Schedule 21-NEP (Docket No. ER23-678) and (ii) to revise RIE’s Interconnection Service Agreement (“ISA”) with Thundermist Hydropower LLC (“Thundermist”). In a companion filing (Docket No. ER23-681), RIE and NEP submitted a filing to cancel the NEP Tariff database that previously contained the SAs. RIE expects the SA transfers to become effective as of January 1, 2023. Comments on these filings, if any, are due on or before **January 10, 2023**. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **Schedule 21-NEP: Removal of References to Narragansett; Update Ref. to National Grid LCC (ER23-165)**

On December 6, 2022, the FERC accepted revisions to Schedule 21-NEP.⁶⁸ The revisions remove references in Schedule 21-NEP to The Narragansett Electric Company (“Narragansett”) as an affiliate of the New England Power Company (“NEP”) and any Narragansett-specific rate provisions. Minor revisions to Schedule 21-NEP to update references in the local service schedule to the National Grid Local Control Center (“LCC”) (f/k/a REMVEC) were also accepted. The Revisions were accepted January 1, 2023, as requested. Unless the December 6, 2022 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).

- **Schedule 21-RIE (ER23-16)**

On December 28, 2022, the FERC accepted revisions to Schedule 21 and Attachment E of Section II of the OATT (the “Schedule 21-RIE/Attachment E Revisions”) filed by The Narragansett Electric Company d/b/a Rhode

⁶⁸ ISO New England Inc., Docket No. ER23-165-000 (Dec. 6, 2022) (unpublished letter order).

Island Energy (“RI Energy”), as amended on December 12, 2022,⁶⁹ to establish RI Energy’s rates, terms, and conditions for the provision of Local Service and to accommodate RIE as a new Participating Transmission Owner (“PTO”).⁷⁰ Unless the *RIE Schedule 21-RIE 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).

- **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 remains 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 10, 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

- **Participants Agreement Amendment No. 12 (ISO Board Member Age Limit Increase)**

Following a second balloting period, the Minimum Response Requirement for PA Amendment No. 12 was satisfied and the Participants Committee approved Amendment No. 12 to the Participants Agreement, which would raise the age limitation prohibiting the election or re-election of any candidate to the ISO Board of Directors from 70 to 75. The proposed PA change will be filed later this month. If you have any questions concerning this proceeding, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

⁶⁹ On Dec. 12, 2022, RI Energy filed, in response to a Dec. 9, 2022 deficiency letter, further amendments to its proposed Schedule 21-RIE to (i) comply with the requirements of *Order 864* by adopting the proposed changes to Schedule 21-NEP that the FERC approved in Docket No. ER20-2551-000 and (ii) to include the ADIT worksheets approved by the FERC for New England Power with slight modifications for RI Energy’s name, specific circumstances, and accounting practices, including changing references to “fiscal year” to “calendar year.”

⁷⁰ *ISO New England, Inc.*, 181 FERC ¶ 61,260 (Dec. 28, 2022) (“*RIE Schedule 21-RIE Order*”).

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*⁷¹ and *531-B*⁷² also remains pending. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **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 Q3 (ER23-114)**

On December 20, 2022, the FERC accepted ISO-NE's Capital Projects Report and Unamortized Cost Schedule covering the third quarter ("Q3") of calendar year 2022 (the "Report").⁷³ As previously reported, Report highlights included the following new projects: (i) FCM Order 2222 (\$1.15 million); and (ii) IT Asset Workflow Integration and Updates (\$1.06 million). Projects with a significant changes (with amounts returned to the Emerging Work Fund following in parentheses) were (i) 2022 Issue Resolution (\$120,000); (ii) Privileged Account Management Security Enhancements (\$105,900); and (iii) Packet Broker Infrastructure Replacement Project (\$105,500). The Report was accepted effective as of October 1, 2022, as requested. Unless the December 20 order is challenged, this proceeding will be concluded. If you have any questions concerning this matter, please contact Paul Belval (860-275-0381; pnbelval@daypitney.com).

IX. Membership Filings

- **January 2023 Membership Filing (ER23-756)**

On December 30, 2022, NEPOOL requested that the FERC accept (i) the memberships of Just Energy Limited [Related Person to Just Energy (U.S.) Corp. and Hudson Energy Services, LLC (Supplier Sector); and Think Energy, LLC (Supplier Sector); (ii) the termination of the Participant status of Josco Energy MA (Supplier Sector), Starion Energy (Supplier Sector), and Rhode Island Bioenergy Facility [Related Person to Rhode Island Bioenergy, LLC (AR Sector, RG Sub-Sector, Small RG Group Seat)]; and (iii) the name changes of BP Energy Retail Company LLC (f/k/a EDF Energy Services, LLC), BP Energy Holding Company LLC (f/k/a BP Energy Retail LLC), and Rhode Island Bioenergy Facility, LLC (f/k/a formerly known as Rhode Island Bioenergy, LLC). Comments on the January membership filing are due on or before **January 21, 2023**.

⁷¹ Martha Coakley, Mass. Att'y Gen., 149 FERC ¶ 61,032 (Oct. 16, 2014) ("*Opinion 531-A*").

⁷² Martha Coakley, Mass. Att'y Gen., Opinion No. 531-B, 150 FERC ¶ 61,165 (Mar. 3, 2015) ("*Opinion 531-B*").

⁷³ ISO New England Inc., Docket No. ER23-114-000 (Dec. 20, 2022) (unpublished letter order).

- **December 2022 Membership Filing (ER23-518)**

On November 30, 2022, NEPOOL requested that the FERC accept the membership of 11772244 Canada Inc. (Supplier Sector), effective as of December 1, 2022. Comments on the December membership filing were due on or before December 21, 2022; none were filed. This matter is pending before the FERC.

- **November 2022 Membership Filing II (ER23-402)**

On December 15, 2022, the FERC accepted the membership of Windham Energy Center (Provisional Member), effective as of November 10, 2022.⁷⁴ Unless the December 15 order is challenged, this proceeding will be concluded.

- **November 2022 Membership Filing I (ER23-310)**

On December 13, 2022, the FERC accepted (i) the memberships of: Derby Fuel Cell, LLC [Related Person to Fuel Cell Energy Companies, DFC ERG CT and Bridgeport Fuel Cell (AR Sector, RG Sub-Sector)]; KCE CT 5, KCE CT 7, KCE CT8, and KCE CT 9 [Related Persons to KCE CT 1 and 2 (Provisional Group Member); Maven Energy, LLC (Supplier Sector); Rhode Island Bioenergy, LLC (since renamed to Rhode Island Bioenergy Facility, LLC (see ER23-756 above)); Rhode Island Division of Public Utilities Carriers (End User Sector); Sunnova Energy Corporation (AR Sector, DG Sub-Sector); and Triolith Energy Fund, LP (Supplier Sector); (ii) the termination of the Participant status of EIP Investment, LLC (Provisional Group Member); and (iii) the name change of Stones DR, LLC (f/k/a Centrica Business Solutions Optimize, LLC).⁷⁵ Unless the December 13 order is challenged, this proceeding will be concluded.

- **Suspension Notice (not docketed)**

Since the last Report, ISO-NE filed, pursuant to Section 2.3 of the Information Policy, a notice with the FERC noting that the following Market Participant was suspended from the New England Markets on the date indicated (at 8:30 a.m.) due to a Financial Assurance Default:

| <i>Date of Suspension/ FERC Notice</i> | <i>Participant Name</i> | <i>Default Type</i> | <i>Date Reinstated</i> |
|---|--------------------------------|----------------------------|-----------------------------------|
| Dec 6/2 | Manchester Methane, LLC | Financial Assurance | -- |

Suspension notices are for the FERC's information only and are not docketed or noticed for public comment.

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).

- **Revised Reliability Standards: EOP-011-3 and EOP-012-1 (RD23-1)**

NERC's October 28, 2022 request for approval of proposed changes to Reliability Standards EOP-011-3 (Emergency Operations) and EOP-012-1 (Extreme Cold Weather Preparedness and Operations) (the "*Cold Weather Standards*") is pending before the FERC. As previously reported, the changes to the *Cold Weather Standards*, which address certain key recommendations from the *Feb 2021 Cold Weather Outages Joint Report*,⁷⁶ establish a more comprehensive framework of requirements addressing generator preparedness for cold

⁷⁴ *New England Power Pool Participants Comm.*, Docket No. ER23-402-000 (Dec. 15, 2022) (unpublished letter order).

⁷⁵ *New England Power Pool Participants Comm.*, Docket No. ER23-310-000 (Dec. 13, 2022) (unpublished letter order).

⁷⁶ FERC, NERC, Regional Entity Staff Report: The February 2021 Cold Weather Outages in Texas and the South Central United States (Nov. 2021), <https://www.ferc.gov/media/february-2021-cold-weather-outages-texasand-south-central-united-states-ferc-nerc-and> ("*Feb 2021 Cold Weather Outages Joint Report*").

weather operations. The *Cold Weather Standards* also address the use of manual load shed during Emergency conditions, requiring Transmission Operators to take steps to minimize the use of manual load shed that could further exacerbate Emergency conditions and threaten system reliability. NERC requested that these *Cold Weather Standards* become effective on the first day of the first calendar quarter that is 18 months after FERC approval (“Effective Date”). Generator Owners would have an additional 42 months from the Effective Date to come into compliance with new freeze protection measures and 60 months from the Effective Date to perform their first five-year update of the Extreme Cold Weather Temperature. Comments on the *Cold Weather Standards* were due, following a request for an extension of time filed by EPSA and partially granted by the FERC on November 29, 2022, on or before December 8, 2022.

Comments on the *Cold Weather Standards* were filed by: [EPSA](#), [NEPGA](#), [Invenergy](#), the [IRC](#), Transmission Access Policy Study Group (“[TAPS](#)”), and the [Texas Competitive Power Advocates](#). Reply comments were filed by: [NERC](#), [Competitive Generators](#),⁷⁷ [Invenergy](#), and [APPA](#). On January 3, 2023, the [IRC](#) answered the reply comments filed by NERC and Competitive Generators, requesting that the FERC, particularly if it assigns the issues raised by the IRC to additional work in Phase II of the stakeholder process, find the issues raised by the IRC have merit and direct they be resolved through changes to the proposed standard within one year. This matter is pending before the FERC.

- **Inverter-Based Resource Registration (RD22-4)**

On November 17, 2022, to address FERC concerns regarding the reliability impacts of inverter-based resources (“IBRs”)⁷⁸ on the Bulk-Power System (“BPS”), the FERC issued an order⁷⁹ directing NERC to submit a work plan on or before **February 15, 2023** describing how it plans to identify and register owners and operators of IBRs that are connected to the BPS, but that are not currently required to register with NERC under the bulk electric system (“BES”) definition (“unregistered IBRs”), and that “have an aggregate, material impact on the reliable operation of the [BPS]”. FERC stated that the work plan should explain how NERC will modify its processes to address unregistered IBRs within 12 months of approval of the work plan. The work plan must also include implementation milestones ensuring that owners and operators meeting the new registration criteria are identified within 24 months of the approval date of the work plan, and that they are registered and required to comply with applicable Reliability Standards within 36 months of the approval date of the work plan. The FERC will notice the work plan for public comment. Once approved, NERC must file progress reports every 90 days thereafter detailing the progress towards identifying and registering owners and operators of unregistered IBRs.

- **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”))⁸⁰ on December 15, 2022. Project 2016-02 focuses on modifications to the CIP Reliability Standards to incorporate applicable protections for virtualized environments. In the December 15 report, NERC reported that, because ballot body approval was not achieved for two related Reliability Standards, the schedule for Project 2016-02 has been revised

⁷⁷ Competitive Generators are: the New England Power Generators Association, Inc. (“NEPGA”), the Electric Power Supply Association (“EPSA”) and the PJM Power Providers Group (“P3”).

⁷⁸ IBRs include all generating facilities that connect to the BPS using power electronic devices that change direct current (“DC”) power produced by a resource to alternating current (“AC”) power compatible with distribution and transmission systems. IBRs connected to the distribution system are not addressed in the *IBR Registration Order*.

⁷⁹ *Registration of Inverter-based Resources*, 181 FERC 61,124 (Nov. 17, 2022) (“*IBR Registration Order*”).

⁸⁰ 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.

and now calls for final balloting of revised standards in March 2023, NERC Board of Trustees Adoption in May 2023 and filing of the revised standards with the FERC in June 2023.

- **2023 NERC/NPCC Business Plans and Budgets (RR22-4)**

As previously reported, the FERC accepted, subject to a 60-day compliance filing, NERC's proposed Business Plan and Budget, as well as the Business Plans and Budgets for the Regional Entities, including NPCC, for 2023.⁸¹ In accepting NERC's Business Plan/Budget Filing, the FERC agreed with EEI that additional transparency into certain Electricity Information Sharing and Analysis Center ("E-ISAC") costs would better allow the FERC to fulfill its oversight duties, and thus directed NERC to submit a compliance filing providing additional information related to E-ISAC costs, the E-ISAC vendor affiliate program, and the E-ISAC and natural gas stakeholder partnership. That compliance filing was due, and was filed, on January 3, 2023. Comments on the January 3 compliance filing are due on or before **January 24, 2023**.

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

As previously reported, the FERC conditionally approved, on July 8, 2022, changes to the NPCC Bylaws (the "Bylaws") 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).⁸² In accepting the Bylaws Changes, the FERC directed NERC/NPCC to submit in a compliance filing 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 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. On October 5, 2022, NERC and NPCC submitted that compliance filing, with revisions to the Bylaws to (i) require that prior to terminating any NPCC Member under section 4.6, the NPCC Board must provide the affected Member 21 days prior written notice and an opportunity to cure the problem or appeal the reason for the proposed termination; (ii) to specify that the meeting notices shall be posted on NPCC's public website in a "reasonably prominent location; and (iii) to update the NPCC Bylaws' Table of Contents. Comments on the compliance filing were due on or before October 26, 2022; none were filed. The compliance filing remains pending before the FERC.

XI. Misc. - of Regional Interest

- **203 Application: Talen Energy Supply Reorganization (EC23-42)**

On December 15, 2022, Talen Energy Supply, LLC ("TES") requested the required FPA Section 203 approvals for a change in control transaction whereby 10% or more of the voting securities of a new parent of TES and its affiliated debtors ("Reorganized Talen") will be distributed to some or all of Indicated Noteholders pursuant to a joint plan of reorganization of the TES Debtors subject to confirmation by the Bankruptcy Court. Comments on the 203 application are due on or before **January 30, 2023**. Thus far, the PJM IMM and Public Citizen have intervened. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **203 Application: Cogentrix / EGCO (Rhode Island State Energy Center) (EC23-41)**

On December 14, 2022, Rhode Island State Energy Center, LP ("RISEC") and EGCO RISEC II, LLC ("Buyer") requested FERC authorization for a proposed transaction pursuant to which Buyer, a wholly owned indirect subsidiary of Electricity Generating Public Company Limited ("EGCO"), will acquire a 49% indirect ownership

⁸¹ *N. Am. Elec. Rel. Corp.*, 181 FERC ¶ 61,095 (Nov. 2, 2022) ("2023 Budgets Order").

⁸² *N. Am. Elec. Rel. Corp.*, 180 FERC ¶ 61,016 (July 8, 2022).

interest in RISEC from Cogentrix Sellers.⁸³ Following the transaction, RISEC will be indirectly owned by Buyer (49%) and the Cogentrix Sellers (51%). Comments on this 203 application are due on or before **January 30, 2023**. Thus far, Public Citizen has intervened. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **203 Application: Agilitas Companies / AB CarVal Funds (EC23-30)**

On November 21, 2022, Agilitas Companies⁸⁴ requested authorization for a transaction pursuant to which the AB CarVal Funds⁸⁵ will convert their existing passive, non-voting ownership interest in Agilitas Energy, Inc., which indirectly owns all of the membership interests in the Agilitas Companies, into 21.3% of the voting interests in Agilitas Energy. Comments on the 203 application were due on or before December 12, 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).

- **203 Application: Central Rivers Power / LSPower (EC23-22)**

On December 30, 2022, the FERC authorized⁸⁶ a transaction pursuant to which Patriot Hydro, LLC, an indirect, wholly controlled subsidiary of LS Power Development, LLC and affiliate of LS Power (together, "LSPower") will acquire the New England QF assets of Central Rivers Power Super Holdings Holdco, LLC, an affiliate of Hull Street Energy Partners and Central Rivers Power (together, "Central Rivers Power"). Once consummated, NEPOOL Participants Central Rivers Power MA, LLC and Central Rivers Power NH, LLC will become Related Persons to AR Sector member Jericho Power. Pursuant to the December 30 order, notice must be filed within 10 days of consummation of the transaction, which as of the date of this Report has not yet occurred. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **203 Application: Seneca Energy II / BP (EC23-18)**

On December 22, 2022, the FERC authorized a transaction pursuant to which Seneca Energy II, LLC ("Seneca") will ultimately become a Related Person of BP Products North America Inc. ("BP").⁸⁷ Pursuant to the December 22 order, BP filed a December 30, 2022 notice that, on December 28, 2022, the authorized transaction closed. Reporting on this matter is now concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **203 Application: ConEd / RWE (EC23-17)**

On October 28, 2022, RWE Renewables Americas, LLC ("RWE") and ConEd⁸⁸ requested authorization for a transaction pursuant to which RWE will acquire 100% of the equity interests in ConEd's Clean Energy Businesses (including NEPOOL members Consolidated Edison Energy, Inc.; Consolidated Edison Development, Inc.; and Consolidated Edison Solutions, Inc. (but not Consolidated Edison Company of New York)). Comments on the 203 application were due on or before November 28, 2022; none were filed. PJM and Public Citizen filed doc-less interventions. 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).

⁸³ "Cogentrix Sellers" are RISEC CPP II Holdings, LLC and Cogentrix RISEC CPOCP Holdings, LLC.

⁸⁴ For purposes of this proceeding, "Agilitas Companies" are: Madison BTM LLC; Madison ESS, LLC; Rumford ESS, LLC; South Portland ESS, LLC; Sanford ESS, LLC; Ocean State BTM, LLC; and AE-ESS NWS 1, LLC. Madison BTM, Madison ESS, Rumford ESS, and Ocean State BTM are each NEPOOL Participants. This transaction will not impact Agilitas' membership in the AR Sector.

⁸⁵ The "AB CarVal Funds" are CEF Master Fund IV LP, CVI CEF II Pooling Fund IV LP, and CVI CSF Master Fund II LP.

⁸⁶ *Central Rivers Power Super Holdings Holdco, LLC et al.*, 181 FERC ¶ 62,215 (Dec. 30, 2022).

⁸⁷ *Seneca Energy, II LLC*, 181 FERC ¶ 62,193 (Dec. 22, 2022).

⁸⁸ "ConEd" includes Consolidated Edison, Inc., its wholly-owned subsidiary Con Edison Clean Energy Businesses, Inc. ("CEB"), and CEB's public utility subsidiaries (together, members of the Supplier Sector). RWE's NEPOOL Related Person (Cassadaga Wind LLC) is a member of the Supplier Sector.

- **203 Application: Great River Hydro / HQI US (EC23-16)**

Also on October 28, 2022, Great River Hydro, LLC (“Great River Hydro”) and HQI US Holding LLC (“HQI US”), an indirect and wholly-owned subsidiary of Hydro-Québec (“HQ”) requested authorization for a transaction pursuant to which HQI US will indirectly acquire 100% of the membership interests in Great River Hydro. Comments on this 203 application were due on or before December 12, 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).

- **203 Application: EDF Energy / BP Retail (EC22-122)**

On November 14, 2022, the FERC authorized a transaction pursuant to which BP Retail Energy LLC (“BP Retail”) will acquire 100% of the membership interests in EDF Energy Services, LLC (“EDF Energy”),⁸⁹ making EDF Energy and BP Retail Related Persons. EDF Energy (now known as BP Energy Retail Company, *see* ER23-756 in Section IX above) filed a notice on December 5, 2022 that the transaction was consummated on November 30, 2022. Reporting on this matter is now concluded. If you have any questions concerning this matter, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **203 Application: Salem Harbor / Lenders (EC22-117)**

As previously reported, the FERC authorized on October 31, 2022⁹⁰ a transaction pursuant to which the direct and indirect equity interests in Salem Harbor that are currently directly and indirectly held by Salem Harbor Power FinCo, LP will be transferred to a newly formed Delaware limited liability company (“New HoldCo”), and (2) the equity interests of New HoldCo will be issued to Salem Harbor’s lenders (the “Lenders”) under a pre-petition credit facility. A notice that the transaction was consummated on December 16, 2022 was filed on December 19, 2022. Reporting on this matter is now concluded. If you have any questions, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

As previously reported, the FERC authorized on August 19, 2022 the sale of 100% of the equity interests in Applicants, including Generation Group Seat Member Waterside Power, among others,⁹¹ 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”)).⁹² A notice that the transaction was consummated on December 20, 2022 was filed on December 21, 2022. Reporting on this matter is now concluded. If you have any questions, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

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

On November 23, 2022, the FERC authorized⁹³ the sale by Stonepeak⁹⁴ of 100% of the interests in Canal Power Holdings LLC to a wholly-owned affiliate of JERA Americas Inc. (“JERA Americas”).⁹⁵ On December 2, 2022, applicants filed a notice that the sale was consummated on December 1, 2022. As a result of the transaction,

⁸⁹ *BP Energy Retail et al.*, 181 FERC ¶ 62,102 (Nov. 14, 2022).

⁹⁰ *Salem Harbor Power Development LP*, 181 FERC ¶ 62,084 (Oct. 31, 2022).

⁹¹ 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.

⁹² *Lea Power Partners, LLC*, 180 FERC ¶ 62,086 (Aug. 19, 2022) (“August 19 Order”).

⁹³ *Canal Generating LLC et al.*, 181 FERC ¶ 61,157 (Nov. 23, 2022).

⁹⁴ “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”).

⁹⁵ JERA Americas Related Persons in NEPOOL include Cricket Valley Energy Center, LLC.

Stonepeake Kestrel Energy Marketing and Cricket Valley Energy Center became Related Persons to Generation Sector voting member Marco DM Holdings. Reporting on this matter is now concluded. If you have any questions, please contact Pat Gerity (pmgerity@daypitney.com; 860-275-0533).

- **EMM Contract (ER23-682)**

In a new matter since the last Report, ISO-NE filed on December 15, 2022, pursuant to Section 9.4.5 of the Participants Agreement, a copy of its new 3-year contract with Potomac Economics, Ltd. to continue as its External Market Monitor (“EMM”). In its filing, ISO-NE notes that the new agreement is closely modeled on the existing agreement between Potomac and ISO-NE, including all of the functions laid out for the EMM in Section 9.4.3 of the Participants Agreement. The new EMM contract term will run from January 1, 2023 through December 31, 2025. Comments on the filing are due **January 5, 2023**. NEPOOL, National Grid, NESCOE, and Public Citizen have thus far filed doc-less interventions. If there are questions on this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **LGIA-ISO-NE/NSTAR/Vineyard Wind 1 (ER23-488)**

On November 23, 2022, ISO-NE and NSTAR filed a First Revised LGIA with Vineyard Wind 1, LLC to reflect the assignment of the LGIA by Vineyard Wind, LLC to Vineyard Wind I, LLC. A November 4, 2022 effective date was requested. Comments on this filing were due on or before December 14, 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).

- **Cost Reimbursement Agreement: NEP/Holden (ER23-396)**

On November 9, 2022, New England Power filed a Cost Reimbursement Agreement with Holden Municipal Light Department (“Holden”) pursuant to which NEP will perform work to support Holden’s plan to rebuild its Chaffins Substation. An October 10, 2022 effective date was requested. Comments on this filing were due on or before November 30, 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).

- **NEP Tariff No. 1 Revisions (ER23-348)**

On December 6, 2022, the FERC accepted revisions to NEP’s Tariff No. 1 that (i) remove certain language in light of PPL’s acquisition of The Narragansett Electric Company d/b/a Rhode Island Energy (“RI Energy”), reflect the transition in operational control of RI Energy’s transmission facilities, and an associated change in the mechanism through which RI Energy recovers its transmission revenue requirements; and (ii) make non-substantive edits to Tariff No. 1, replacing outdated references therein.⁹⁶ The Revisions were accepted January 1, 2023, as requested. Unless the December 6 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).

- **MPD OATT: Changes to Treatment of CIS Costs and Expenses (ER23-345)**

On January 4, 2023, the FERC accepted Versant Power’s changes to the formula rate in its MPD OATT that modify the treatment of costs and expenses associated with the company’s Customer Information System (“CIS”).⁹⁷ The changes: (i) eliminate the inclusion in wholesale transmission charges under the MPD OATT of costs and expenses associated with the CIS and (ii) modify the allocation of CIS costs and expenses as between transmission and distribution functions in order to align such allocation with the ISO-NE OATT. Unless the January 4 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).

⁹⁶ *ISO New England Inc.*, Docket No. ER23-348-000 (Dec. 6, 2022) (unpublished letter order).

⁹⁷ *Versant Power*, Docket No. ER23-345-000 (Jan. 4, 2023) (unpublished letter order).

- **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. On August 2, 2022, MPUC submitted comments asserting that Versant’s Compliance Filing, without further detail, is insufficient to meet the requirements of *Order 881* and should either (i) be rejected outright, ordering Versant to re-file with sufficient detail, or (ii) subject to a deficiency letter requiring further information with respect to the Compliance Filing. MPUC withdrew those comments on August 31, 2022 in exchange for certain understandings with Versant Power (including MPUC’s attendance, as a non-voting participant, at any NMISA working group discussions on *Order 881* implementation planning and Versant Power’s submission of informational compliance filings to keep the FERC apprised of versant’s progress in developing its AAR implementation plan). On September 6, 2022, Versant Power supplemented its compliance filing to confirm the MPUC’s understandings, as delineated in its Notice of Withdrawal. 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).

- **IA 2nd Amendment: CMP/Sappi Compliance Filing (ER22-1612-001)**

On December 16, 2022, and as required in the June 10, 2022 order in this proceeding,⁹⁸ CMP submitted a compliance filing that included a Second Amended Agreement and Schedules between CMP and Sappi North America, Inc. (“Sappi”). The Second Amended Agreement reflected the November 17, 2022 closing date of the FERC-authorized transaction in which Sappi transferred its hydroelectric facilities to Presumpscot Hydro LLC (“Presumpscot Hydro”) and its membership interests in Presumpscot Hydro to an unrelated third-party buyer. Comments on the compliance filing are due on or before **January 6, 2023**. If you have any questions, 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”).⁶⁷ 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).

⁹⁸ *Central Maine Power Co.*, Docket No. ER22-1612-000 (June 10, 2022) (unpublished letter order).

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

The last of the region's *Order 864*⁹⁹ and *Order 864-A*¹⁰⁰ compliance filings (UI's May 10, 2022 filing, Docket No. ER22-1850) was accepted on December 29, 2022.¹⁰¹ Consolidated reporting on the *Order 864* compliance filings is now complete.

XII. Misc. - Administrative & Rulemaking Proceedings¹⁰²

- **Interregional HVDC Merchant Transmission (AD22-13)**

As previously reported, Invenergy Transmission ("Invenergy") filed a petition, on July 19, 2022, requesting that the FERC hold a technical conference to explore ways to potentially make available and compensate certain grid reliability and resilience benefits associated with interregional high voltage direct current ("HVDC") merchant transmission. Any comments to be considered by the FERC in its determination of any action to be taken were due on or before August 26, 2022. Comments were filed by 13 parties and included, among others, [CSC](#), [ENGIE](#), [Invenergy](#), [Phase I/II Asset Owners and IRH](#), [Joint Consumer Advocates](#), [MISO](#), [ACORE](#), [ACPA](#), [SEIA](#), and [Neptune and Hudson](#). [Invenergy](#) answered the comments filed by [MISO](#). On November 10, 2022, Invenergy again urged the FERC to "hold a technical conference to examine and to improve the policy and processes relating to the interconnection of interregional MHVDC systems. Since the last Report, [ENGIE](#), [Grid United](#) and [SEIA](#) file comments supporting Invenergy's November 10 request. This matter remains pending before the FERC.

- **Joint FERC-DOE Supply Chain Risk Management Technical Conference (Dec 7) (AD22-12)**

On December 12, 2022, the FERC and the DOE convened a joint technical conference held its annual Commissioner-led technical conference to discuss supply chain security challenges related to the BPS, ongoing supply chain-related activities, and potential measures to secure the supply chain for the grid's hardware, software, computer, and networking equipment. Speaker materials are posted in eLibrary and [a recording of the conference](#) will be available on the FERC website for roughly two more months. On December 19, 2022, the FERC invited all those interested to file post-technical conference comments to address issues raised during the technical conference identified in the Supplemental Notice of Technical Conference issued on December 6, 2022. Comments are due on or before **February 17, 2023**.

⁹⁹ *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.

¹⁰⁰ *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*").

¹⁰¹ *ISO New England Inc.*, Docket No. ER22-1850-001 (Dec. 29, 2022) (unpublished letter order).

¹⁰² Reporting on the following Administrative & Rulemaking proceedings has been suspended since the last Report and will be continued if and when there is new activity to report: Improving Generating Units Winter Readiness (AD22-4); NOI: Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses (RM22-5); NOI: Reactive Power Capability Compensation (RM22-2); NOI: Removing the DR Opt-Out in ISO/RTO Markets (RM21-14).

- **Reliability Technical Conference (Nov 10) (AD22-10)**

On November 10, 2022, the FERC held its annual Commissioner-led technical conference to discuss policy issues related to the reliability of the BPS. The conference's two panels were: (I) "Managing the Electric Grid to Advance Reliability" (to explore the current state of grid reliability and efforts that can be undertaken to improve it); and (II) "Managing Cyber Security Threats, the CIP Reliability Standards, and Best Practices for the Bulk-Power System" (to discuss how cyber security governance encompasses the CIP Reliability Standards and compliance as well as best practices; the challenges of implementing appropriate oversight; and ways in which industry can address these challenges to improve its response to evolving vulnerabilities and threats to reduce the risk to the BPS). On November 22, 2022, the FERC invited all those interested to file post-technical conference comments to address issues raised during the technical conference identified in the Supplemental Notice of Technical Conference issued on November 3, 2022. Comments are due on or before **January 9, 2023**.

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

The FERC held a New England Gas-Electric Forum on September 8, 2022 in Burlington, VT. The purpose of the Forum was to discuss and achieve a greater understanding among stakeholders in defining the electric and natural gas system challenges in the New England Region. Topics discussed included the historical context of New England winter gas-electric challenges, concerns and considerations for upcoming winters such as reliability of gas and electric systems and fuel procurement issues, and whether additional information or modeling exercises are needed to inform the development of solutions to these challenges. On September 21, 2022, the FERC invited parties wishing to submit comments regarding the topics discussed at the Forum to do so on or before November 7, 2022. Post-Forum Comments were submitted by: [ISO-NE](#), [Acadia](#), [AEU](#), [AIM](#), [Calpine](#), [Constellation](#), [Excelerate](#), [FirstLight](#), [LS Power](#), [NECOS](#), [NEPGA](#), [NESCOE](#), [Public Systems](#), [Repsol](#), [TOs](#), [VELCO](#), [Vistra](#), [Potomac Economics](#), [CT DEEP](#), [AEMA](#), [APGA](#), [EPSA](#), [INGA](#), [NE LDCs](#), [NGSA](#), [New England Council](#), [NEPPA](#), [NH BIA](#), [PIOs](#), [RENEW/ACPA](#), [Berkshire Action Team](#), [Greater Concord Chamber of Comm.](#), [Mass. Alliance for Econ. Dev.](#), [Mass. Business Roundtable](#), [Mass. Coalition for Sustainable Energy](#), [Mass. United Assoc. of Journeymen](#), [Middlesex County Chamber of Commerce](#), [Public Citizen](#), [Western Mass. Economic Dev. Council](#), and Individual Citizens ([M. Axner](#), [E. Blank](#), [S. Botkin](#), [D. Heimann](#), [J. Krieger](#), [B. Little](#), [I. McDonald](#), [J. Neville](#), [W. Persons](#), [R. Spector](#)). On November 22, [National Grid](#) filed reply comments. This matter is pending before the FERC.

- **Transmission Planning and Cost Management Technical Conference (AD22-8)**

On October 6, 2022, the FERC convened a Commissioner-led technical conference regarding transmission planning and cost management for transmission facilities developed through local or regional transmission planning processes. The 5 panels throughout the day addressed: (1) the processes by which transmission providers develop local transmission planning criteria, identify local transmission needs using those criteria, and evaluate and choose local transmission facilities to address those needs; (2) whether local transmission facility costs are adequately scrutinized; (3) the processes by which transmission providers evaluate, select, and develop regional transmission facilities for reliability; (4) whether regional transmission facilities for reliability costs are adequately scrutinized; and (5) cross-cutting themes and potential best practices for both local transmission facilities and regional reliability transmission planning and cost management, in addition to innovative approaches that could be explored further, including the possibility of establishing a role for an Independent Transmission Monitor, and mechanisms to support enhanced transparency. Advance materials were submitted by representatives on behalf of: [ISO-NE](#), [CA PUC](#), [KY PSC](#), [NC Utils. Comm. Public Staff](#), [NV PUC](#), [RI PUC](#), [AEU](#), [AEP](#), [Ameren](#), [AMP/APPA](#), [Ari Peskoe](#), [L. Azar](#), [Clean Energy Buyers Assoc.](#), [Coalition of MISO Customers](#), [Harvard Electricity Law Initiative](#), [ITC Holdings](#), [LPPC](#), [IA Consumer Advocate](#), [J. Macey](#), [NESCOE](#), [Northern California Power Agency](#), [Northwest & Intermountain Power Producers Coalition](#), [OH Consumers' Counsel](#), [OH PUC](#), [Old Dominion Elec. Coop.](#), [PJM](#), [G. Poulos](#), [SPP](#), [Potomac Economics](#), [Southern California Edison](#), [Southern Environmental Law Center](#), and [TAPS/FMPA](#) and [WIRES](#).

On September 30 and October 4, the FERC issued supplemental notices that included a final agenda, including further details regarding the agenda and speakers, for this technical conference. An additional supplemental notice identifying the opportunity for interested parties to submit post-technical conference

comments has yet to be issued. On November 1, 2022, a transcript of the technical conference was posted in the FERC's eLibrary. Since the last Report, the FERC issued a notice on December 23, 2022 inviting post-technical conference comments on questions listed in that notice. Those comments are due on or before **March 23, 2023**.

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

On February 17, 2022, the FERC issued a notice of inquiry ("NOI")¹⁰³ 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, 2022¹⁰⁴ and were filed by: [AEP](#), [Clean Energy Entities](#),¹⁰⁵ [EEI](#), [Joint Consumer Advocates](#), [MISO TOs](#), and the [R Street Institute](#). This matter is pending before the FERC.

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

A fifth meeting of the FERC-established Joint Federal-State Task Force on Electric Transmission ("Transmission Task Force")¹⁰⁶ was held on November 15, 2022, in New Orleans, LA. Discussion addressed regulatory gaps/challenges in the oversight of transmission development.¹⁰⁷ The FERC's December 23, 2022 notice inviting comments following its October 6, 2022 technical conference on Transmission Planning and Cost Management (see AD22-8 above) was also posted in this docket. As noted above, comments on the topics/questions provided in the December 23 notice are due on or before **March 23, 2023**.

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

ISO/RTO Reports. On April 21, 2022, the FERC issued an order¹⁰⁸ directing each independent system operator ("ISO") and regional transmission organization ("RTO"), including ISO-NE, to submit on or before October

¹⁰³ *Implementation of Dynamic Line Ratings*, 178 FERC ¶ 61,110 (Feb. 17, 2022) ("Dynamic Line Ratings NOI").

¹⁰⁴ The *Dynamic Line Ratings NOI* was published in the Fed. Reg. on Feb. 24, 2022 (Vol. 87, No. 37) pp. 10,349-10,354.

¹⁰⁵ The "Clean Energy Entities" are the Working for Advanced Transmission Technologies Coalition ("WATT"), ACPA, AEU, and SEIA.

¹⁰⁶ *Joint Federal-State Task Force on Electric Transmission*, 175 FERC ¶ 61,224 (June 18, 2021). The Transmission Task Force is comprised of all FERC Commissioners as well as 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." 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 Sept. 1, 2022 – Aug. 31, 2023 term. See Order on Nominations, *Joint Federal-State Task Force on Elec. Trans.*, 180 FERC ¶ 61,030 (July 15, 2022).

¹⁰⁷ Summaries of the first – fourth meetings of the Transmission Task Force can be found in previous Reports.

¹⁰⁸ *Modernizing Wholesale Electricity Market Design*, 179 FERC ¶ 61,029 (Apr. 21, 2022) ("Order Directing Reports").

18, 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; 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. The *Order Directing Reports* follows a series of staff-led technical conferences, convened in 2021 and summarized in previous Reports, addressing ISO/RTO resource adequacy¹⁰⁹ and energy and ancillary services markets.¹¹⁰

ISO-NE Report. On October 18, 2022, [ISO-NE](#) (as well as the other ISO/RTOs) filed its report in response to the *Order Directing Reports*. The FERC will review the RTO/ISO reports and comments related thereto to determine whether further action is appropriate. Comments in response to the RTO/ISO reports were initially due on or before December 19, 2022. However, on November 30, 2022, EEI requested, and on December 6, 2022 the FERC granted, an additional 30 days, until **January 18, 2023**, to submit comments on the ISO/RTO reports. Thus far, comments have been filed by [America’s Power](#) (addressing coal retirements), ELCON and the SPP MMU.

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

On July 28, 2022, the FERC issued a NOPR¹¹¹ 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 (“Duty of Candor Requirements”). 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 Duty of Candor Requirements.

¹⁰⁹ 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: [AEU](#), [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 [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: [AEU](#), [Calpine](#), [CT Parties](#), [Dominion](#), [Eversource](#), [MMWEC](#), [NESCOE](#), [NEPGA](#), [NextEra](#), [NRG](#), [Public Interest Orgs](#), [Vistra](#), [AEMA](#), [EPSA](#), [RENEW](#).

¹¹⁰ 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.](#), [NYSEDA](#), [PJM Providers Group](#), and [Public Citizen](#). Reply comments were filed by [EPRI](#), [NERC and its Regional Entities](#) and [Vistra](#).

¹¹¹ *Duty of Candor*, 180 FERC ¶ 61,052 (July 28, 2022) (“*Duty of Candor NOPR*”).

On September 1, 2022, Joint Associations¹¹² requested an additional month to submit comments.¹¹³ On September 14, 2022, the FERC granted that request. Accordingly, initial comments were due November 11, 2022 and over 30 sets of comments were filed, including by: [ISO-NE](#), [ISO-NE IMM](#), [ISO-NE EMM](#), [PJM IMM](#), [ABA](#), [AGA](#), [APGA](#), [APPA](#), [EEL](#), [Energy Trade Associations](#), [INGA](#), [NGSA](#), [Nodal Exchange](#), [NRECA](#), [State Agencies](#), [US Chamber of Commerce](#), [DE Riverkeeper Network](#), [New Civil Liberties Alliance](#), and [Nodal Exchange](#). Since the last Report, the [US Chamber of Commerce](#) filed reply comments. This matter is pending before the FERC.

- **NOPR: Advanced Cybersecurity Investment (RM22-19)**

On September 22, 2022, the FERC issued a NOPR¹¹⁴ proposing to provide incentive-based rate treatments for the transmission of electric energy in interstate commerce and the sale of electric energy at wholesale in interstate commerce by utilities for the purpose of benefitting consumers by encouraging investments by utilities in advanced cybersecurity technology and participation by utilities in cybersecurity threat information sharing programs, as directed by the Infrastructure Investment and Jobs Act of 2021 (“Infrastructure and Jobs Act”). This NOPR also terminated the NOPR proceeding in Docket RM21-3 (*Dec 2020 Cybersecurity Incentives NOPR*)¹¹⁵ described in previous Reports.

Initial comments on the *Advanced Cybersecurity Investment NOPR* were due on or before November 7, 2022 and reply comments were due November 21, 2022.¹¹⁶ Nearly 30 sets of initial comments were filed, including by: [Avangrid](#), [APPA](#), [EEL](#), [EPSA](#), [INGA](#), [Joint Consumer Advocates](#), [Microsoft](#), [MISO TOs](#), [PJM TOs](#), [NERC](#), [NRECA](#), [TAPS](#), and the [Operational Technology Cybersecurity Coalition](#). Reply comments were filed by [DOE](#), [EEL](#), [ELCON](#), [CA PUC](#), [AEP](#), and [Anterix](#). This matter is pending before the FERC.

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

On June 16, 2022, as corrected on July 12, 2022, the FERC issued a notice¹¹⁷ proposing to require transmission providers to submit one-time informational reports describing their current or planned policies and processes for conducting extreme weather vulnerability assessments¹¹⁸ (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

¹¹² “Joint Associations” included the following trade associations on behalf of their respective members: the American Gas Association (“AGA”), American Public Gas Association (“APGA”), Interstate Natural Gas Association of America (“INGA”), Edison Electric Institute (“EEL”), Electric Power Supply Association (“EPSA”), Energy Trading Institute (“ETI”), Natural Gas Supply Association (“NGA”), and Process Gas Consumers Group (“PGCG”).

¹¹³ The *Duty of Candor NOPR* was published in the *Fed. Reg.* on Aug. 12, 2022 (Vol. 87, No. 155) pp. 49,784-49,793.

¹¹⁴ *Incentives for Advanced Cybersecurity Investment; Cybersecurity Incentives*, 180 FERC ¶ 61,189 (Sep. 22, 2022) (“*Advanced Cybersecurity Investment NOPR*”).

¹¹⁵ *Cybersecurity Incentives*, 173 FERC ¶ 61,240 (Dec. 17, 2020) (“*Dec 2022 Cybersecurity Incentives NOPR*”). As described in previous Reports, the *Dec 2022 Cybersecurity Incentives NOPR* proposed 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 Bulk Power System.

¹¹⁶ The *Advanced Cybersecurity Investment NOPR* was published in the *Fed. Reg.* on Oct. 6, 2022 (Vol. 87, No. 193) pp. 60,567-60,580.

¹¹⁷ *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*”).

¹¹⁸ “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”.

weather risks). Initial comments were due August 30, 2022¹¹⁹ and were filed by over 13 parties, including among others, [Eversource](#), [NRDC](#), [NERC](#), [MISO](#), [PJM](#), and [EPSA](#). This matter is pending before the FERC.

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

On June 16, 2022, the FERC issued a notice of proposed rulemaking (“NOPR”),¹²⁰ 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. Initial comments were due October 13, 2022¹²¹ and over 130 sets of comments were filed, including: [NEPOOL](#), [ISO-NE](#), [NESCOE](#), [AEU](#), [Anbaric](#), [Avangrid](#), [Cypress Creek Renewables](#), [Dominion](#), [EDF Renewables](#), [ENGIE](#), [Envir. Defense Fund](#), [Longroad](#), [National Grid](#), [NextEra](#), [PPL](#), [RWE](#), [Shell](#), [VELCO](#), [Vistra](#), [ACPA](#), [ACRE](#), [APPA](#), [US DOE](#), [EEI](#), [ELCON](#), [EPRI](#), [EPSA](#), [IRC](#), [NARUC](#), [NERC](#), [NRECA](#), [PIOs](#), [R Street Institute](#), [SEIA](#), [State Agencies](#), and [WIRES](#).

Reply Comments. Following a request by EEI for a 30-day extension of time to submit reply comments, supported by AEU, ACPA, ACRE, and SEI, and granted by the FERC on October 28, 2022, reply comments were due December 14, 2022. More than 50 sets of reply comments were filed, including by [ACPA](#), [ACORE](#), [AEU](#), [APPA/LPPC](#), [Avangrid](#), [Dominion](#), [EDF](#), [EEI](#), [Enel](#), [ENGIE](#), [Invenergy](#), the [IRC](#), [Longroad Energy](#), [NERC](#), [NESCOE](#), [NextEra](#), [Orsted](#), [SEIA](#), [Shell](#), [Sierra Club](#), [UCS](#), [WIRES](#).

As previously reported, 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;

¹¹⁹ 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.

¹²⁰ *Improvements to Generator Interconnection Procedures and Agreements*, 179 FERC ¶ 61,194 (June 16, 2022) (“*Interconnection Reforms NOPR*”).

¹²¹ 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;¹²²
- ♦ 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;¹²³ and
- ♦ Impose withdrawal penalties when the interconnection customer withdraws from the interconnection queue.¹²⁴

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); and
- ♦ 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;

¹²² 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.

¹²³ *Id.* at P 128.

¹²⁴ 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 NOPR¹²⁵ proposing to revise its regulations to permit ISO/RTOs to share among themselves¹²⁶ credit-related information regarding market participants.¹²⁷ 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. Initial comments were due October 7, 2022¹²⁸ and were filed by, among others: [NEPOOL](#), [Dominion](#), [EEI](#), [Energy Trading Institute](#), [EPA](#), and the [IRC](#).

Reply Comments. Reply comments were due November 7, 2022 and were filed by the [ISO/RTO Council](#) ("IRC") and a [couple of persons](#) from Augusta University.

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

On June 16, 2022, the FERC issued a notice¹²⁹ 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

¹²⁵ *Credit-Related Information Sharing in Organized Wholesale Electric Markets*, 180 FERC ¶ 61,048 (July 28, 2022) ("ISO/RTO Credit-Related Info Sharing NOPR").

¹²⁶ 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).

¹²⁷ 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.

¹²⁸ The *ISO/RTO Credit-Related Info Sharing NOPR* was published in the *Fed. Reg.* on Aug. 8, 2022 (Vol. 87, No. 151) pp. 48,118-48,125.

¹²⁹ *Transmission System Planning Performance Requirements for Extreme Weather*, 179 FERC ¶ 61,195 (June 16, 2022) ("Extreme Weather Transmission System Planning NOPR").

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 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 were due August 26, 2022¹³⁰ and were filed by over 37 parties, including, among others, [ISO-NE](#), [Eversource](#), [NESCOE](#), [NRDC](#), [UCS](#), [NERC](#), [ERCOT](#), [MISO](#), [NYISO](#), [PJM](#), [ACPA](#), [EPRI](#), [EPSA](#), [NARUC](#), and [Trade Associations](#). 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 NOPR¹³¹ proposing to direct NERC to develop and submit for FERC approval new or modified Reliability Standards that require internal network security monitoring (“INSM”)¹³² 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.”¹³³

Comments on the *Internal Network Security Monitoring NOPR* were due on or before March 28, 2022.¹³⁴ 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, 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.

¹³⁰ 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.

¹³¹ *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*”).

¹³² 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.

¹³³ *Id.* at P 2.

¹³⁴ 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.

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

Following its ANOPR process,¹³⁵ the FERC issued on April 21, 2022 a NOPR¹³⁶ 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
- (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*.

¹³⁵ 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](#), [AEU](#), [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](#), [AEU](#), [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/AEU/SEIA](#).

¹³⁶ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 179 FERC ¶ 61,028 (Apr. 21, 2022) (“*Transmission NOPR*”).

Comments. Following a number of requests for extensions of time, comments on the *Transmission NOPR* were due August 17, 2022.¹³⁷ Nearly 200 sets of comments were filed, including comments by [NEPOOL](#), [ISO-NE](#), [Acadia/CLF](#), [Anbaric](#), [AEU](#), [Avangrid](#), [BP](#), [Dominion](#), [Enel](#), [Engie](#), [Eversource](#), [Invenergy](#), [LSP Power](#), [MOPA](#), [MMWEC/CMEEC/NHEC/VPPSA](#), [National Grid](#), [NECOES](#), [NESCOE](#), [NextEra](#), [NRG](#), [Onward Energy](#), [Orsted](#), [PPL](#), [Shell](#), [Transource](#), [VELCO](#), [Vistra](#), [ISO/RTO Council](#), [NERC](#), [US DOJ/FTC](#), [MA AG](#), [State Agencies](#), [VT PUC/DPS](#), [Potomac Economics](#), [ACPA](#), [ACRE](#), [APPA](#), [EEI](#), [EPSA](#), [Industrial Customer Organizations](#), [LPPC](#), [NASUCA](#), [NRECA](#), [Public Interest Organizations](#), [SEIA](#), [TAPS](#), [WIRES](#), [Harvard Electricity Law Initiative](#), [New England for Offshore Wind](#), and the [R Street Institute](#).

Reply Comments. Reply comments were due **September 19, 2022**. Nearly 100 sets of reply comments were filed, including by: [ISO-NE](#), [AEU](#), [Anbaric](#), [Avangrid](#), [CT DEEP](#), [Cypress Creek](#), [Dominion](#), [ENGIE](#), [Eversource](#), [Invenergy](#), [LS Power](#), [MA AG](#), [NECOS](#), [NESCOE](#), [NextEra](#), [Shell](#), [Transource](#), [UCS](#), [ACPA](#), [ACRE](#), [APPA](#), [EEI](#), [Industrial Customer Organizations](#), [LPPA](#), [NRECA](#), [Public Interest Organizations](#), [R Street](#), and [SEIA](#). On November 28, 2022, the New Jersey BPU moved to lodge its recently issued [Board Order](#) selecting transmission projects to be built pursuant to PJM's State Agreement Approach ("SAA") for the purpose of supporting New Jersey's offshore wind ("OSW") goals, the Brattle Group's [SAA Evaluation Report](#), and [PJM's SAA Economic Analysis Report](#), which it stated demonstrates that competitive transmission solicitations can provide significant value to consumers. Since the last Report, the [Harvard Electricity Law Initiative](#), and [P. Alaama](#) submitted comments.

This matter 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).

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

On July 28, 2022, the FERC issued a NOPR¹³⁸ 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* were due November 17, 2022.¹³⁹ Seven sets of comments were filed by: [Dominion](#), [ACPA/SEIA](#), [EEI](#), [Liquid Energy Pipeline Assoc.](#), [RESA](#), [PG&E/SDG&E](#), [C. Pechman](#). This matter is pending before the FERC.

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

Supplemental NOPR. In light of comments already received in this proceeding,¹⁴⁰ the FERC issued on April 15, 2021 a *Supplemental NOPR*¹⁴¹ 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

¹³⁷ A July 27, 2022, request by the Georgia Public Service Commission ("GA PUC") for an additional 30 days of time to submit comments and reply comments was denied on Aug. 9, 2022.

¹³⁸ *Accounting and Reporting Treatment of Certain Renewable Energy Assets*, 180 FERC ¶ 61,050 (July 28, 2022) ("*Renewable Energy Assets USofA and Reporting NOPR*").

¹³⁹ The *Renewable Energy Assets USofA and Reporting NOPR* was published in the *Fed. Reg.* on Oct. 3, 2022 (Vol. 87, No. 190) pp. 59,870-59,963.

¹⁴⁰ 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.

¹⁴¹ *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, 175 FERC ¶ 61,035 (Apr. 15, 2021) ("*Supplemental NOPR*").

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*.¹⁴² 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](#).¹⁴³ Reply comments were also posted from New England State Parties,¹⁴⁴ Alliant/Consumers/DTE, AEP, Pacific Gas & Electric, Joint Consumer Advocates, and the ACPA.

September 10, 2021 Workshop. The FERC convened a workshop on September 10, 2021¹⁴⁵ 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

¹⁴² 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.

¹⁴³ "Public Interest Groups" are NRDC, Sierra Club, Sustainable FERC Project, and Western Grid Group.

¹⁴⁴ "New England State Parties" are CT PURA, CT DEEP and the MA AG.

¹⁴⁵ 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).

incentives and shared savings. Comments were due on or before January 14, 2022 and were filed by APPA, CAISO, Clean Energy Parties,¹⁴⁶ 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).

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

On December 22, 2021, 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: [AEU](#), [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.

XIII. FERC Enforcement Proceedings

Electric-Related Enforcement Actions

- ***Todd Meinershagen (IN23-4)***

On December 21, 2022, the FERC approved a Stipulation and Consent Agreement with Todd Meinershagen, co-owner of a demand response aggregator of retail customers that resolved OE’s investigation into Meingershagen’s role, both individually and as co-owner of the DR aggregator, in a fraudulent scheme to register DR resources with MISO without those resources’ knowledge or consent and clear Load Modifying Resource (“LMR”) capacity that would not have performed if the resources were dispatched during the Relevant Period (June 2019 through October 2021).¹⁴⁷ Mr. Meinershagen used a web scraping tool to identify companies that would be eligible to participate in the MISO program, and his co-owner was to contact those companies, enter into contracts with those companies, and then register those companies in the MISO programs. OE determined that, at no point during the Relevant Period, did the DR aggregator ever contact or contract with the customers it registered as LMRs with MISO, and those LMRs would not have curtailed load if dispatched by MISO. During the Relevant Period, however, MISO paid the DR aggregator a total of \$1,013,004 in capacity payments. OE concluded that Meinershagen was unaware of the MISO tariff and Anti-Manipulation Rule violations and that, upon becoming aware of the violations, Meinershagen assisted in stopping payments by MISO to the DR aggregator. Under the settlement agreement, Meinershagen agreed to *disgorge* the amounts he received inclusive of interest as restitution to MISO (**\$525,451.93**). Further, Meinershagen agreed to continue to cooperate with any investigation into potentially fraudulent DR resources offered in MISO’s markets, including by providing any documents or testimony requested by OE, and to participate as a witness in any a lawsuit filed by the FERC in Federal District Court against the DR aggregator or his co-owner. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

¹⁴⁶ The “Clean Energy Parties” are: Working for Advanced Transmission Technologies (“WATT Coalition”), ACPA, AEU, American Council on Renewable Energy (“ACORE”), NRDC, and the Sustainable FERC Project.

¹⁴⁷ *Todd Meinershagen*, 181 FERC ¶ 61,251 (Dec. 21, 2022).

- **FirstEnergy Corp (IN23-2)**

On December 30, 2022, the FERC approved a Stipulation and Consent Agreement with FirstEnergy Corp. (“FirstEnergy”)¹⁴⁸ that resolved OE’s investigation into whether FirstEnergy violated the FERC’s Duty of Candor rule, PUHCA’s audit provisions, § 301 of the FPA, and related FERC regulations by omitting material information responsive to data requests issued by Enforcement’s Division of Audits and Accounting (“DAA”) during the course of its audit of FirstEnergy and its affiliates and subsidiaries in Docket No. FA19-1-000 by failing to disclose payments of nearly \$60 million made in connection with the passage of Ohio House Bill 6 (a bill that, upon its passage into law, provided a billion-dollar subsidy for FirstEnergy’s two Ohio nuclear plants.) Under the Settlement, in which FirstEnergy stipulated to the facts and admitted the violations, FirstEnergy must **pay a \$3.86 million civil penalty** to the United States Treasury and to submit two annual compliance monitoring reports. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

- **PacifiCorp (IN21-6)**

We have long reported that, on April 15, 2021, in the FERC’s first-ever Show Cause Order addressing alleged violations of NERC Reliability Standards,¹⁴⁹ 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 December 30, 2022, to fully resolve this matter, the FERC approved a Stipulation and Consent Agreement under which PacifiCorp agreed to: (a) pay a **civil penalty of \$4.4 million**, of which (i) \$1.9 million will be paid to the United States Treasury, and (ii) as an offset to the remaining \$2.5 million in civil penalty, PacifiCorp will invest \$2.5 million, subject to Enforcement’s approval, in reliability enhancement measures identified in the Agreement, that go above and beyond what the Reliability Standards require; and (b) be subject to two years’ of semi-annual compliance monitoring. PacifiCorp stipulated to facts set forth in Section II of the Agreement, but neither admitted nor denied the alleged violations set forth in Section III of the Agreement. If you have any questions concerning this matter, please contact Pat Gerity (860-275-0533; pmgerity@daypitney.com).

Natural Gas-Related Enforcement Actions

- **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,

¹⁴⁸ *First Energy Corp.*, 181 FERC ¶ 61,277 (Dec. 30, 2022).

¹⁴⁹ *PacifiCorp*, 175 FERC ¶ 61,039 (Apr. 15, 2021) (“*PacifiCorp Show Cause Order*”).

“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.¹⁵⁰

As previously reported, on March 18, 2021, the FERC issued a show cause order¹⁵¹ 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).¹⁵² 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, 2021.

Procedural Schedule Suspended. As previously reported, ALJ Joel DeJesus will be the presiding judge for hearings in this matter. On May 24, 2022, the Honorable Judge Karen Gren Scholer of the U.S. District Court for the Northern District of Texas issued an order staying this proceeding. Consistent with that order and out of an abundance of caution, Judge DeJesus suspended the procedural schedule until such time as the Court’s stay is lifted and the parties provide jointly a proposed amended procedural schedule.

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

On December 16, 2021, the FERC issued a show cause order¹⁵³ 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,¹⁵⁴ 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;¹⁵⁵ (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**.

¹⁵⁰ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 178 FERC ¶ 61,028 (Jan. 20, 2022) (“*Rover/ETP Hearings Order*”).

¹⁵¹ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 174 FERC ¶ 61,208 (Mar. 18, 2021) (“*Rover/ETP CPCN Show Cause Order*”).

¹⁵² 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.

¹⁵³ *Rover Pipeline, LLC, and Energy Transfer Partners, L.P.*, 177 FERC ¶ 61,182 (Dec. 16, 2021) (“*Rover/ETP Tuscarawas River HDD Show Cause Order*”).

¹⁵⁴ *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*”).

¹⁵⁵ 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.

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." The FERC denied Respondents' request for rehearing of the FERC's January 21, 2022 designation notice.¹⁵⁶ This matter is pending before the FERC.

- **BP (IN13-15)**

On December 17, 2020, the FERC issued *Opinion 549-A*,¹⁵⁷ a 159-page decision addressing arguments raised on rehearing requested of *Opinion 549*.¹⁵⁸ *Opinion 549-A* modifies the discussion in *Opinion 549*, but reaches the same 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.¹⁵⁹ *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.¹⁶⁰

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 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 order¹⁶¹ 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 2012.¹⁶²

¹⁵⁶ *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.

¹⁵⁷ *BP America Inc. et al.*, Opinion No. 549-A, 173 FERC ¶ 61,239 (Dec. 17, 2020) ("*BP Penalties Allegheny Order*").

¹⁵⁸ *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*"))).

¹⁵⁹ *BP Penalties Allegheny Order* at P 1.

¹⁶⁰ *Id.* at P 319.

¹⁶¹ *Total Gas & Power North America, Inc.*, 155 FERC ¶ 61,105 (Apr. 28, 2016) ("*TGPNA Show Cause Order*").

¹⁶² 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.

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.¹⁶³ On July 27, 2021, Chief Judge Cintron designated Judge Suzanne Krolkowski as the Presiding ALJ and established an extended Track III Schedule for the proceeding.

Discovery in this case closed on December 2, 2022. Since the last Report, on December 16, 2022, Respondents filed for a preliminary injunction in the US District Court for the Southern District of Texas. In order to allow for briefing and a decision on that motion, the FERC placed this proceeding in abeyance for 90 days, and directed that the hearing scheduled to begin on January 23, 2023, commence no earlier than **April 24, 2023**.¹⁶⁴

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.¹⁶⁵ 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*.

¹⁶³ *Total Gas & Power North America, Inc. et al.*, 176 FERC ¶ 61,026 (July 15, 2021).

¹⁶⁴ *Total Gas & Power North America, Inc., Total, S.A., Total Gas & Power, Ltd., Aaron Hall, and Therese Tran f/k/a Nguyen*, 181 FERC ¶ 61,252 (Dec. 21, 2022).

¹⁶⁵ *Iroquois Gas Transmission Sys., L.P.*, 178 FERC ¶ 61,200 (2022) (*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, 2019, the FERC denied the NY DEC and Sierra Club requests for rehearing.¹⁶⁶ 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*.¹⁶⁷ 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,¹⁶⁸ 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, 2017.¹⁶⁹ 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.¹⁷⁰ 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.

¹⁶⁶ *Nat'l Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 167 FERC ¶ 61,007 (Apr. 2, 2019).

¹⁶⁷ *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).

¹⁶⁸ 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).

¹⁶⁹ *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*").

¹⁷⁰ *Nat'l Fuel Gas Supply Corp. v. NYSDEC et al.* (2d Cir., Case No. 17-1164).

- ▶ 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,¹⁷¹ 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, even if the NY DEC and Sierra Club prevail in their currently pending court petitions challenging the basis for the Commission’s Waiver Order.¹⁷²
- ▶ 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,¹⁷³ 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.¹⁷⁴
- ▶ 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.¹⁷⁵
- ▶ A request for rehearing of the *Northern Access Project Add’l Extension Order* was denied by operation of law.¹⁷⁶
- ▶ On September 6, 2022, the Sierra Club petitioned the DC Circuit for review of the *Northern Access Project Add’l Extension Order* (see Section XVI below).

¹⁷¹ 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).

¹⁷² 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).

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

¹⁷⁴ *Id.* at P 10.

¹⁷⁵ *National Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 179 FERC ¶ 61,226 (June 29, 2022) (“*Northern Access Project Add’l Extension Order*”).

¹⁷⁶ *National Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 180 FERC ¶ 62,099 (Aug. 30, 2022).

XV. State Proceedings & Federal Legislative Proceedings

- **Maine - NECEC Transmission LLC et al. v. Bureau of Parks and Lands et al. (BCD-21-416)**

On August 30, 2022, the Maine Supreme Judicial Court concluded that the legislation enacted as a result of the passage of Maine's November 2, 2021 ballot question,¹⁷⁷ and that effectively halted construction of the NECEC Project,¹⁷⁸ was unconstitutional to the extent it required the legislation to be applied retroactively to the certificate of public convenience and necessity ("CPCN") issued for the Project if NECEC had acquired vested rights to proceed with Project construction (by undertaking substantial construction consistent with and in good-faith reliance on the CPCN before the Initiative was enacted). The Court remanded to the Business and Consumer Docket the factual question of whether NECEC performed substantial construction in good faith according to a schedule that was not created or expedited for the purpose of generating a vested rights claim (which it suggested appeared to be the case from the limited record developed in connection with the request for preliminary injunctive relief in this matter).

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: ER22-707¹⁷⁹

Petitioner: Green Development

Status: Briefing Underway

On June 15, 2022, Green Development petitioned the DC Circuit for review of the FERC's 2nd Revised Narragansett LSA Orders.¹⁸⁰ 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.

¹⁷⁷ The ballot question, approved by 59% of Maine voters, which summarized the citizen's initiative pursued under Maine's constitutional provision for direct initiative of legislation (ME. Const. Art. IV, pt. 3, § 18), read: "Do you want to ban the construction of high-impact electric transmission lines in the Upper Kennebec Region and to require the Legislature to approve all other such projects anywhere in Maine, both retroactively to 2020, and to require the Legislature, retroactively to 2014, to approve by a two-thirds vote such projects using public land?"

¹⁷⁸ The New England Clean Energy Connect ("NECEC") project (the "NECEC Project") is designed to transmit power generated in Québec through Maine and into Massachusetts. The Project includes a new 145.3-mile, high-voltage direct current ("HVDC") transmission line, proposed to run from the Maine-Québec border in Beattie Township, ME to a new converter station in Lewiston, ME and from there to an existing substation by a new 1.2-mile, high-voltage alternating current transmission line.

¹⁷⁹ *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".

¹⁸⁰ 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.

Green Development filed, on August 15, 2022, a Statement of Issues and Docketing Statement. Green Development filed Petitioner's Brief on October 11, 2022. Since the last Report, FERC filed Respondent's Brief on December 12, 2022 and National Grid filed its Intervenor for Respondent's Brief on December 19, 2022. The briefing schedule calls for the following additional submissions: Petitioner's Reply Brief (**January 9, 2023**); Deferred Appendix (**January 17, 2023**); and Final Briefs (**January 31, 2023**).

- **Mystic II (ROE & True-Up)**
(21-1198; 21-1222, 21-1223, 21-1224, 22-1001, 22-1008, 22-1026) (consolidated)

Underlying FERC Proceeding: EL18-1639-010, -011,¹⁸¹ -013¹⁸² -017¹⁸³

Petitioners: Mystic, CT Parties,¹⁸⁴ MA AG, ENECOS

Status: Being Held in Abeyance; Motions to Govern Future Proceedings Due Jan 24, 2023

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.

As previously reported, on July 8, 2022, Connecticut Parties and ENECOS jointly moved to hold these proceedings in abeyance until 30 days after the DC Circuit issued an opinion in *MISO Transmission Owners v. FERC*, 16-1325 ("*MISO TOs*"). 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*). Although Constellation opposed the abeyance request, the Court granted the abeyance request on July 27, 2022, directing the Parties to file motions to govern future proceedings within 30 days of the court's disposition of *MISO TOs*.

As previously reported, the Court has since decided *MISO TOs*. However, the parties continue to agree that this case should remain in abeyance pending further proceedings in *MISO TOs*, now on remand at the Commission. Accordingly, on October 25, 2022, Mystic, without opposition, asked the Court for an order keeping these proceedings in abeyance and directing that motions to govern future proceedings be filed within 90 days. On October 26, 2022, the Court effectively granted Mystic's request, ordering that the proceedings remain in abeyance pending further order of the court and directing the parties to file motions to govern future proceedings by **January 24, 2023**.

¹⁸¹ *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).

¹⁸² *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).

¹⁸³ *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,011 (Apr. 28, 2022) ("*Mystic First CapEx Info. Filing Order*"); *Constellation Mystic Power, LLC*, 179 FERC ¶ 62,179 (June 27, 2022) ("*June 27 Notice*") (Notice of Denial By Operation of Law of Rehearings of *Mystic First CapEx Info. Filing Order*).

¹⁸⁴ In this appeal, "CT Parties" are the CT PURA CT PURA, Connecticut Department of Energy and Environmental Protection ("CT DEEP"), and the CT OCC.

- **CASPR (20-1333, 21-1031) (consolidated)****
Underlying FERC Proceeding: ER18-619¹⁸⁵
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: ER15-414¹⁸⁶
Petitioners: TOs' (CMP et al.)
Status: Being Held in Abeyance

On August 28, 2020, the TOs¹⁸⁷ 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*¹⁸⁸ 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 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 December 6, 2022.

¹⁸⁵ *ISO New England Inc.*, 162 FERC ¶ 61,205 (Mar. 9, 2018) ("*CASPR Order*").

¹⁸⁶ *ISO New England Inc.*, 161 FERC ¶ 61,031 (Oct. 6, 2017) ("*Order Rejecting Filing*").

¹⁸⁷ 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.

¹⁸⁸ *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*").

Other Federal Court Activity of Interest

- **Northern Access Project (22-1233)**
Underlying FERC Proceeding: **CP15-115**¹⁸⁹
Petitioners: Sierra Club

Status: Filing of Initial Submissions Underway

On September 6, 2022, the Sierra Club petitioned the DC Circuit for review of *Northern Access Project Add'l Extension Order*. On October 11, 2022, Sierra Club filed a Docketing Statement, a Statement of Issues, and the underlying decision from which the appeal arises. Also on October 11, the FERC moved to hold this proceeding in abeyance. Sierra Club opposed that motion on October 21, 2022. Having issued its further order on rehearing on October 14, 2022,¹⁹⁰ the FERC, on November 4, 2022, withdrew its 's motion to hold this proceeding in abeyance and asked the Court to issue a scheduling order in this proceeding. The Court issued that schedule on November 9, 2022. The Certified Index to the Record was submitted on November 16, 2022 and Petitioner's (Sierra Club's) Brief on December 16, 2022. Remaining submissions include: Respondent's Brief (February 14, 2023); Brief for Respondent-Intervenors (February 21, 2023); Petitioner's Reply Brief (March 14, 2023); Joint Deferred Appendix (March 21, 2023); and Final Briefs (April 4, 2023). Next up is Respondent's Brief.

- **Order 872 (20-72788,* 21-70113; 20-73375, 21-70113) (consol.) (9th Cir.)**
Underlying FERC Proceeding: **RM19-15**¹⁹¹
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*.¹⁹² Briefing is complete and oral argument was held March 8, 2022 before Judges Nguyen, Miller and Bumatay. This matter remains pending before the Court.

- **Algonquin Atlantic Bridge Project Orders (21-1115*, 21-1138, 21-1153, 21-1155 consol.) and (22-1146, 22-1147 consol.)**
Underlying FERC Proceeding: **CP16-9-012**¹⁹³
Petitioners: LS Power, Algonquin, INGA
Status: Cases 22-1146/47 Deconsolidated and Briefing Schedule Set; Remaining Cases (21-1115 et al.) Being Held 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

¹⁸⁹ *National Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 179 FERC ¶ 61,226 (June 29, 2022) ("*Northern Access Project Add'l Extension Order*").

¹⁹⁰ *Corpus Christi Liquefaction Stage III, LLC*, 181 FERC ¶ 61,033 (Oct. 14, 2022).

¹⁹¹ *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).

¹⁹² *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.

¹⁹³ *Briefing Order; April 19 Notice of Denial of Rehearings by Operation of Law*.

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).

On August 16, 2022, the Court deconsolidated 22-1146 and 22-1147 from 21-1115 et al., which is to remain in abeyance pending a further order of the Court. The Court consolidated Cases 22-1146 and 22-1147 together and issued a briefing schedule that calls for the remaining submissions: Respondent Brief by **January 12, 2023**, Joint Brief of Intervenors by **January 26, 2023**, Joint Reply Brief of Petitioners by **February 16, 2023**, Deferred Joint Appendix by **March 2, 2023**, and Final Briefs by **March 9, 2023**. The date of oral argument and the composition of the merits panel will be provided at a later date. Next up, Respondent (FERC) Brief.

INDEX

Status Report of Current Regulatory and Legal Proceedings as of January 4, 2023

I. Complaints/Section 206 Proceedings

| | | |
|--|---|---|
| 206 Proceeding: ISO-NE Tariff Schedule 25 and Section I.3.10 | (EL21-94) | 5 |
| 206 Proceeding: FTR Collateral Show Cause Order | (EL22-63) | 2 |
| Base ROE Complaints I-IV | (EL11-66, EL13-33; EL14-86; EL16-64) | 7 |
| ENECOS Mystic COSA Complaint | (EL23-4) | 1 |
| NECEC/Avangrid Complaint Against NextEra/Seabrook..... | (EL21-6) | 5 |
| NextEra Energy Seabrook Declar. Order Petition: NECEC Elective Upgrade Costs Dispute . | (EL21-3) | 7 |
| NMISA Complaint Against PTO AC (Reciprocal TOUT Discount)..... | (EL22-31) | 4 |
| RENEW/ACPA Resource Capac. Accreditation & Operating Reserve Designat'n Complaint | (EL22-42) | 3 |
| RENEW Network Upgrades O&M Cost Allocation Complaint | (EL23-16) | 1 |

II. Rate, ICR, FCA, Cost Recovery Filings

| | | |
|---|---------------------------|----|
| 2023 ISO-NE Administrative Costs and Capital Budgets..... | (ER23-94) | 11 |
| 2023 NESCOE Budget..... | (ER23-100) | 11 |
| ENECOS Mystic COSA Complaint | (EL23-4) | 1 |
| FCA17 Qualification Informational Filing | (ER23-690) | 10 |
| ICR-Related Values and HQICCs – Annual Reconfiguration Auctions | (ER23-534) | 10 |
| ICR-Related Values and HQICCs – FCA17 (2026-27) Capacity Commitment Period | (ER23-405) | 10 |
| Mystic 8/9 Cost of Service Agreement | (ER18-1639) | 12 |
| Mystic COS Agreement Updates to Reflect Constellation Spin Transaction | (ER22-1192) | 11 |
| NESCOE 5-year (2013-2027) Pro Forma Budget | (ER22-2812) | 11 |
| Orders 864/864-A (Public Util. Trans. ADIT Rate Changes): New England Compliance Filings (various)..... | | 29 |
| RENEW Network Upgrades O&M Cost Allocation Complaint | (EL23-16) | 1 |
| Transmission Rate Annual (2022-23) Update/Informational Filing | (ER09-1532; RT04-2) | 13 |

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

| | | |
|--|----------------------------|----|
| FCA18 Schedule Modifications | (ER23-50) | 15 |
| IEP Remand..... | (ER19-1428-005) | 16 |
| New England's Order 2222 Compliance Filing | (ER22-983) | 15 |
| SATOA Revisions | (ER23-739; ER23-743) | 14 |
| Solar DNE Dispatch Changes..... | (ER23-517) | 14 |
| Waiver Request: Attachment F (NEP)..... | (ER23-370) | 15 |

[continued on next page]

IV. OATT Amendments/Coordination Agreements

| | | |
|---|------------------------------|----|
| 206 Proceeding: ISO-NE Tariff Schedule 25 and Section I.3.10 | (EL21-94) | 5 |
| Attachment F Depreciation Normalization Requirement Revisions | (ER23-197) | 17 |
| Attachment F Revisions Reflecting RIE Addition as PTO | (ER23-299) | 17 |
| Attachment F, Appendix D-NSTAR: Updates to Depreciation Rates | (ER23-637) | 16 |
| Attachment F, Appendix D-PSNH: Establishment of Depreciation Rate for Accounts 357 and 358 | (ER22-2953) | 17 |
| Order 676-J Compliance Filing Part I (CSC-Schedule 18-Attachment Z) | (ER22-1168) | 18 |
| Order 676-J Compliance Filing Part I (ISO-NE-Schedule 24) | (ER22-1150) | 18 |
| Order 676-J Compliance Filing Part I (TOs-Schedule 20/21-Common) | (ER22-1161) | 18 |
| Order 881 Compliance Filing: New England | (ER22-2357) | 18 |
| Phase I/II HVDC-TF Order 881 Compliance Filing: Sched. 20-A Common Attachment M and the HVDC TOA | (ER22-2468; ER22-2467) | 17 |
| RENEW Network Upgrades O&M Cost Allocation Complaint | (EL23-16) | 1 |
| SATOA Revisions | (ER23-739; ER23-743) | 14 |

V. Financial Assurance/Billing Policy Amendments

| | | |
|---|------------------|----|
| 206 Proceeding: FTR Collateral Show Cause Order | (EL22-63) | 2 |
| FA/Billing Policies IEP Changes; Monthly Statement Issuance Date Update | (ER23-705) | 19 |

VI. Schedule 20/21/22/23 Updates & Agreements

| | | |
|---|----------------------------|----|
| Schedule 21-NEP: Removal of Narragansett References; Update NGrid LCC References | (ER23-165) | 19 |
| Schedule 21-RIE | (ER23-16) | 19 |
| Schedule 21-RIE: Transfer of SAs from Sched 21-NEP; Updated Thundermist ISA | (ER23-678; ER23-681) | 19 |
| Schedule 21-VP: 2020 Annual Update Settlement Agreement | (ER15-1434-005) | 20 |
| Schedule 21-VP: 2021 Annual Update Settlement Agreement | (ER20-2119-001) | 20 |

VII. NEPOOL Agreement/Participants Agreement Amendments

| | |
|---|----|
| Participants Agreement Amendment No. 12 (ISO Board Member Age Limit Increase) | 20 |
|---|----|

VIII. Regional Reports

| | | |
|--|------------------|----|
| Capital Projects Report - 2022 Q3 | (ER23-114) | 21 |
| Opinion 531-A Local Refund Report: FG&E | (EL11-66) | 21 |
| Opinions 531-A/531-B Local Refund Reports | (EL11-66) | 21 |
| Opinions 531-A/531-B Regional Refund Reports | (EL11-66) | 21 |

IX. Membership Filings

| | | |
|---|----------------------|----|
| Dec 2022 Membership Filing | (ER23-518) | 22 |
| Jan 2023 Membership Filing | (ER23-756) | 21 |
| Nov 2022 Membership Filing I | (ER23-402) | 22 |
| Nov 2022 Membership Filing II | (ER23-310) | 22 |
| Suspension Notice – Manchester Methane, LLC | (not docketed) | 22 |

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

| | | |
|---|----------------|----|
| 2023 NERC/NPCC Business Plans and Budgets | (RR22-4) | 24 |
| CIP Standards Development: Info. Filings on Virtualization and Cloud Computing Services Projects | (RD20-2) | 23 |
| NPCC Bylaws Changes | (RR22-2) | 24 |
| Revised Reliability Standards: EOP-011-3 and EOP-012-1 | (RD23-1) | 22 |

XI. Misc. Regional Interest

| | | |
|---|-----------------|----|
| 203 Application: Agilitas Companies / AB CarVal Funds..... | (EC23-30) | 25 |
| 203 Application: Central Rivers Power / LSPower | (EC23-22) | 25 |
| 203 Application: Cogentrix / EGCO (Rhode Island State Energy Center)..... | (EC23-41) | 24 |
| 203 Application: ConEd / RWE..... | (EC23-17) | 25 |
| 203 Application: EDF Energy / BP Retail..... | (EC22-122) | 26 |
| 203 Application: Great River Hydro / HQI US | (EC23-16) | 26 |
| 203 Application: Salem Harbor / Lenders..... | (EC22-117) | 26 |
| 203 Application: Seneca Energy II / BP..... | (EC23-18) | 25 |
| 203 Application: Stonepeak / JERA Americas | (EC22-71) | 26 |
| 203 Application: Talen Energy Supply Reorganization | (EC23-42) | 24 |
| 203 Application: Waterside Power / KKR | (EC22-79) | 26 |
| Cost Reimbursement Agreement: NEP/Holden..... | (ER23-396) | 27 |
| EMM Contract | (ER23-682) | 27 |
| IA 2nd Amendment: CMP/Sappi Compliance Filing | (ER22-1612-001) | 28 |
| LGIA-ISO-NE/NSTAR/Vineyard Wind 1 | (ER23-488) | 27 |
| MPD OATT: Changes to Treatment of CIS Costs and Expenses | (ER23-345) | 27 |
| NEP Tariff No. 1 Revisions..... | (ER23-348) | 27 |
| Orders 864/864-A (Public Util. Trans. ADIT Rate Changes): New England Compliance Filings (various)..... | | 29 |
| Versant Power MPD OATT Order 676-J Compliance Filing Part I | (ER22-1142) | 28 |
| Versant Power MPD OATT Order 881 Compliance Filing | (ER22-2358) | 28 |

XII. Misc. Administrative & Rulemaking Proceedings

| | | |
|--|--------------------|----|
| Interregional HVDC Merchant Transmission | (AD22-13) | 29 |
| Joint Federal-State Task Force on Electric Transmission | (AD21-15) | 31 |
| Modernizing Electricity Mkt Design - Resource Adequacy | (AD21-10) | 31 |
| New England Gas-Electric Forum..... | (AD22-9) | 30 |
| NOI: Dynamic Line Ratings..... | (AD22-5) | 31 |
| NOPR: Accounting and Reporting Treatment of Certain Renewable Energy Assets | (RM21-11) | 39 |
| NOPR: Advanced Cybersecurity Investment..... | (RM22-19) | 33 |
| NOPR: Cybersecurity Incentives | (RM21-3) | 33 |
| NOPR: Duty of Candor | (RM22-20) | 33 |
| NOPR: Electric Transmission Incentives Policy | (RM20-10) | 39 |
| NOPR: Extreme Weather Vulnerability Assessments | (RM22-16; AD21-13) | 33 |
| NOPR: Interconnection Reforms | (RM22-14) | 34 |
| NOPR: Internal Network Security Monitoring..... | (RM22-3) | 37 |
| NOPR: ISO/RTO Credit Information Sharing | (RM22-13) | 36 |
| NOPR: Transmission Planning and Allocation and Generator Interconnection | (RM21-17) | 38 |
| NOPR: Transmission System Planning Performance Requirements for Extreme Weather .. | (RM22-10) | 36 |
| Reliability Technical Conference..... | (AD22-10) | 30 |
| Transmission Planning and Cost Management Technical Conference (Oct 6, 2022) | (AD22-8) | 30 |
| Voltus Petition for a FERC Technical Conference on Order 2222 | (RM18-9) | 41 |

XIII. FERC Enforcement Proceedings

| | | |
|--|-----------|----|
| BP Initial Decision | (IN13-15) | 42 |
| FirstEnergy Corp | (IN23-2) | 42 |
| Todd Meinershagen..... | (IN23-4) | 41 |
| PacifiCorp..... | (IN21-6) | 42 |
| Rover Pipeline, LLC and Energy Transfer Partners, L.P. (CPCN Show Cause Order) | (IN19-4) | 42 |
| Rover and ETP (Tuscarawas River HDD Show Cause Order) (IN17-4)..... | (IN17-4) | 43 |
| Total Gas & Power North America, Inc..... | (IN12-17) | 42 |

XIV. Natural Gas Proceedings

| | |
|--|----|
| New England Pipeline Proceedings | 45 |
| Iroquois ExC Project (CP20-48) | 45 |
| Non-New England Pipeline Proceedings | 46 |
| Northern Access Project (CP15-115) | 46 |

XV. State Proceedings & Federal Legislative Proceedings

| | |
|---|----|
| Maine - NECEC Transmission LLC et al. v. Bureau of Parks and Lands et al. (BCD-21-416) | 48 |
|---|----|

XVI. Federal Courts

| | | |
|--|------------------------------|----|
| 2nd Revised Narragansett LSA Orders..... | 22-1161..... (DC Cir.) | 48 |
| Algonquin Atlantic Bridge Project Briefing Order | 21-1115..... (DC Cir.) | 51 |
| CASPR | 20-1333..... (DC Cir.) | 50 |
| Mystic II (ROE & True-Up) | 21-1198..... (DC Cir.) | 49 |
| <i>Opinion 531-A</i> Compliance Filing Undo | 20-1329..... (DC Cir.) | 50 |
| <i>Order 872</i> | 20-72788.. (9th Cir.) | 51 |