Energy Policy Update

Volume 6, Issue 61 | October 24, 2014

Welcome to Constellation's Energy Policy Update. This publication is designed to provide Constellation customers and channel partners with an overview of recent and relevant regulatory and legislative matters affecting competitive energy markets.

Since the inception of retail competition in California in 1995, Constellation has been an active participant in regulatory and legislative matters affecting the development of competition, competitive markets, and customer choice.

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Inside this Issue

Republicans Pounce on Release of NRC Safety Report to Push Yucca Mountain

House and Senate Republicans called on the NRC to resume its review of the Yucca Mountain license application after the Commission released the results of its Safety Evaluation Report that found used nuclear fuel can be stored safely at the site for a million years. House Energy Committee Chairman Fred Upton (R-MI) and Rep. John Shimkus (R-IL) hailed the report's findings, with Upton saying that "science, not politics, should determine Yucca's course, and this report confirms that Yucca Mountain has met the safety requirements." Senate Energy Committee Ranking Member Lisa Murkowski (R-AK) said that "Knowing that the Yucca Mountain site is a safe, worthwhile investment as a permanent repository for the country's spent nuclear material is welcome, if long-overdue, news, and I call on the NRC to resume its license review process and for Congress to provide the NRC with the funds needed to complete its review." Senate Majority Leader Harry Reid (D-NV), however, dismissed the report as irrelevant, saying that Yucca Mountain would never move forward. Republicans are expected to push for legislation next year to require the Administration to resume the licensing process.

IRS Warns Congress "Action on Extenders is Needed"

IRS Commissioner John Koskinen wrote Senate Finance Committee Chairman Ron Wyden (D-OR), saying "it is important that Congress decide whether or not to extend these expired provisions as early as possible when Congress returns and no later than the end of November." Koskinen warned that "continued uncertainty would impose even more stress not only on the IRS, but also in the entire tax community," possibly leading to a delay in the beginning of the tax filing season. Wyden issued a statement calling on Congress to pass the Senate Finance extenders bill, which would extend the wind PTC and other provisions for two years.

New NRC Commissioners to be Sworn In - Former Capitol Hill aide Jeff Baran is expected to be sworn in on 10/14 according to an NRC spokesman. Stephen Burns, who has been working in Paris for the last two years with the Nuclear Energy Agency (NEA), is expected to be sworn-in next month.

DOE Seeks Applicants for Nuclear Loan Guarantees - The Department of Energy (DOE) issued a draft solicitation that would provide up to $12.6 billion in loan guarantees for Advanced Nuclear Energy Projects, including advanced nuclear reactors, small modular reactors, upgrades and uprates at existing facilities, and front-end nuclear projects. The Department is soliciting public feedback the program during a 30-day public comment period in defining the scope of the final solicitation.

STATE UPDATES

▶ CALIFORNIA

Federal Investigation of Ex Parte Communications/Commission President Peevey Announces Departure at End of Current Term - In the aftermath of the discovery of multiple emails between executives of Pacific Gas & Electric (PG&E) and Commissioners and Staff of the California Public Utilities Commission (CPUC) that discussed assignment of judges to the San Bruno pipeline explosion proceedings, new emails have been released that indicate that Commission President Michael Peevey urged the utilities to fund the defeat of a ballot proposition that would have halted implementation of California's greenhouse gas emission reduction law.

Commissioner Michel Florio has also come under fire for his role in a matter involving the level of maximum allowable pressure in a natural gas pipeline owned by PG&E, and his advice to PG&E executives that Commissioner Peevey was likely going to try to broker a compromise on the matter. Federal prosecutors from the U.S. Attorney's office announced on 10/6 that they are investigating five years of "back-channel" communications between the two entities. There has been no release of what laws may have been violated by the communications, but PG&E says that it is continuing to review all email communications to determine if there is more that should have been reported as ex parte. The CPUC has also retained an independent expert to assess ways to prevent such back channel communications.

On 10/9, Commissioner Peevey announced that he will leave at the end of his current term (12/31). It is not clear if this is enough to satisfy news reports that call for the Governor's office to immediately dismiss both Commissioners, especially in light of the fact that recently released emails indicate that staff in Governor Brown's office were aware of the inappropriate communications. It remains to be seen whether the state legislature or state attorney will commence any specific action.

CPUC Issues Staff Report on Reliability Services Initiative - The CPUC has issued a long awaited staff report on options for implementing a more robust capacity product. The report represents the next step in determining whether or not the CPUC will modify its resource adequacy obligations to include multi-year forward procurement by load serving entities. Comments on the staff report are due in late October.

▶ CONNECTICUT

PURA Issues Third Draft Decision in Supplier Investigation – On 10/10 the Connecticut Public Utility Regulatory Authority (PURA) issued its third draft decision in the retail supplier investigation proceeding. The revised decision appears more carefully crafted than prior drafts from a legal perspective and it is more consistent with Connecticut statutes. From a policy perspective, however, the PURA continues to take a hostile and distrustful attitude toward suppliers and seeks to impose a number of potentially burdensome requirements, particularly for mass market sales. In particular, the PURA seeks to adopt numerous requirements to file and post rates and offers, to deliver customer notices at multiple intervals and through a range of media, to provide time-of-use rates and to personally identify any and all marketing personnel by name, all of which will impose significant compliance burdens on retail suppliers in the Connecticut mass market.

▶ DISTRICT OF COLUMBIA

Community Renewable Energy Facilities (CREF) - The DC Public Service Commission (PSC) issued two notices

DELAWARE

Review of Delmarva's Standard Offer Service Approach - The Delaware PSC has opened a docket for the "purpose of reviewing Delmarva's current Standard Offer Service approach and whether such an approach will lead to lower energy supply costs over the long-term for a period of 20 to 25 years." The docket will also consider other options for Delmarva to secure Standard Offer Service that could lead to lower ratepayer costs over the longer term and will provide the opportunity to review current statutory requirements and recommend changes that may be necessary to enable more cost effective structures. A procedural schedule is not yet set.

ILLINOIS

Illinois Commerce Commission Holds Workshop on Retail Markets – On 10/16, the Office of Retail Market Development (ORMD) of the Illinois Commerce Commission (ICC) held a workshop on retail market issues, with specific focus on definitions of fixed and variable rates as well as disclosures for residential and non-residential customers. The workshop comes on the heels of the ICC's recently issued Notice of Investigation on activities of retail suppliers, in large measure prompted by the behavior of some market participants in regard to the polar vortex.

The Citizens Utility Board/City of Chicago also filed a petition with the ICC this summer to investigate suppliers' compliance with the Public Utilities Act concerning marketing prohibitions and restrictions. Formal comments in the ICC proceeding are due 11/6.

Illinois Government Aggregation Rules Rejected by Joint Committee – The Illinois Joint Committee on Administrative Rules (JCAR) rejected the ICC's proposed governmental aggregation rules. The primary issue in play is a notice requirement that aggregation suppliers are to send to all customers, when a corresponding limitation on a utility's ability to provide the aggregation supplier with customer-specific information (beyond what it makes available to all retail electric suppliers) may not provide sufficient information for the aggregation supplier to deliver the required notice. The next step is that the proposed rule goes back to the ICC, with a 90 day clock on responding. Assuming that some agreement can be reached such that a modified ICC proposed rule will make it through JCAR at the next round, the adoption of any rule is likely to be delayed into the middle of first quarter 2015.

Exelon Files Objection to IPA 2014 Procurement Plan - On 10/6, both Exelon and the Illinois Competitive Energy Association (ICEA) filed objections with the ICC regarding the Illinois Power Authority's (IPA) 2014 Power Procurement Plan. The IPA Plan will secure electricity commodity and associated transmission services, plus required renewable energy certificates to meet the supply needs and obligations of the Renewable Portfolio Standard for eligible retail customers (residential and small commercial customers) served by Ameren and ComEd for June 2015 through May 2020.

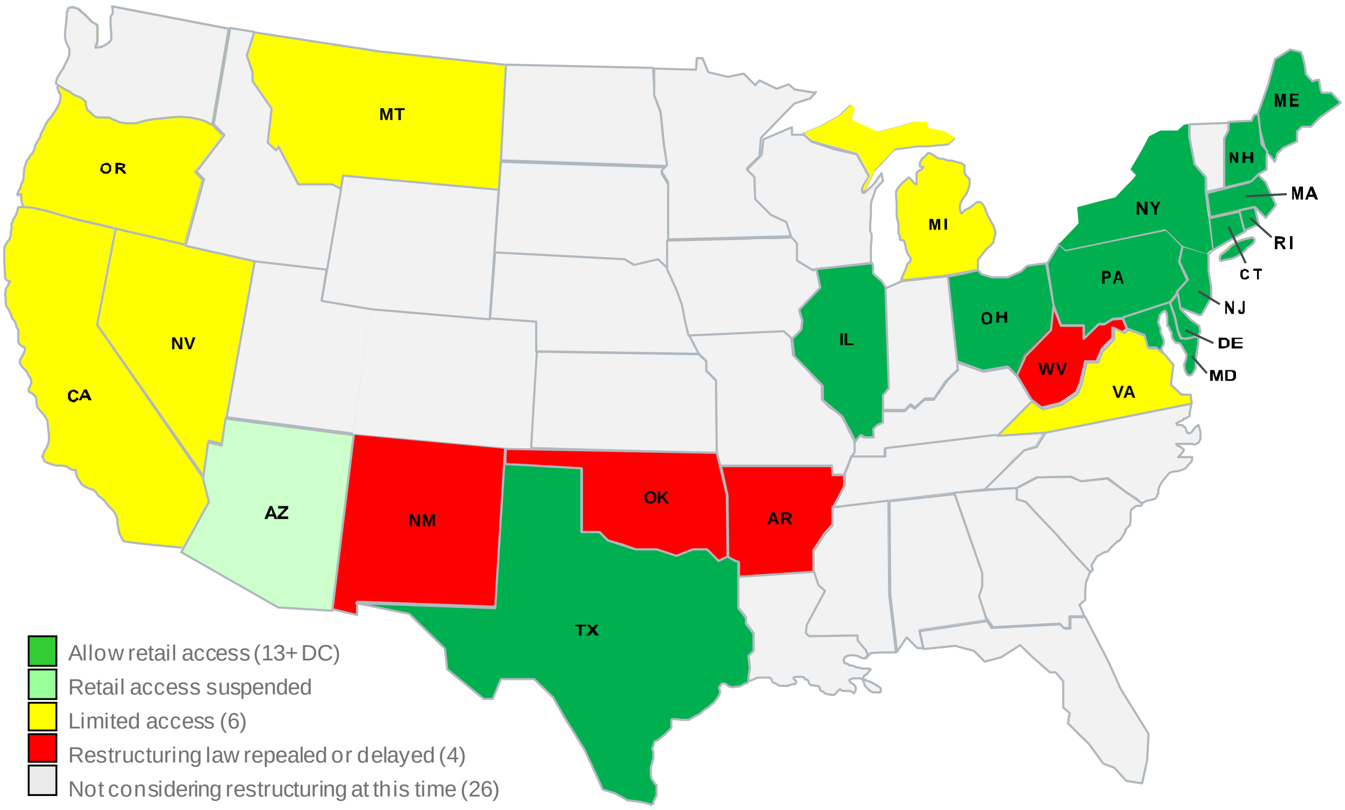
The Plan, similar to last year's, utilizes the three-year laddered, block and spot, approach which ExGen has objected to in prior plans. The ExGen and ICEA objections continue to recommend that the IPA include fixed price full requirements products for a portion of the procurement on a four year trial pperiod basis. Responses to Objections are due 10/21, and Replies to Responses are due 10/31.

NEI Economic Report Released - The Nuclear Energy Institute (NEI) released a study analyzing the economic benefits of the nuclear fleet in the State of Illinois. The Report found that the Exelon nuclear fleet in Illinois contributes almost $9 Billion to the State on an annual basis.

ICC Approves the Results of the September 2014 Procurement Event for Default Supply - On 9/26, the Illinois Commerce Commission (ICC) approved the results of the Ameren procurement event and the ComEd procurement event. The procurement events were administered by the IPA and procured generation for eligible retail customers receiving supply from the respective utilities.

ICC Opens Retail Markets Investigation - On 9/30, the ICC initiated a Notice of Investigation (NOI) surrounding the activities of retail suppliers, in large measure prompted by the behavior of some market participants surrounding the polar vortex. This NOI will address definitions of fixed and variable rates, as well as disclosures for residential and non-residential customers. The ICC announcement of an investigation comes on the heels of a Citizens Utility Board/City of Chicago petition to investigate suppliers' compliance with the Public Utilities Act concerning

Competitive US Retail Electricity Markets



of proposed rulemaking earlier this month. Both addressed proposed rule changes to implement the Community Renewable Energy Amendment Act of 2013. That legislation permitted Community Renewable Energy Facilities or CREFs. A CREF is a generating facility that contracts with Subscribers for a portion of its output. The CREF is not connected to the Subscribers' meter and is not located behind the meter of its Subscribers.

The proposed rules define the payment flow, Megawatt flow and Subscriber benefits, as described below. A CREF must meet the following requirements: (1) have a capacity of 5 MW or less; (2) qualify for Tier 1 certification; (3) be directly connected to the PEPCO distribution system and located within the District; and (4) have at least two subscribers (subscribers may be updated no more than once per quarter). A Subscriber: (1) can offset no more than 120% of their usage over the previous 12 months (calculation is updated on an annual basis); (2) must have a meter located in the District; (3) can aggregate meters, so long as credit is applied to a single billing account; (4) is entitled to receive a $ credit for subscribed energy from the CREF equal to the allocation of kWhs to that Subscriber and the CREF rate (the SOS rate for General Service Low Voltage Non-Demand Customer class); (5) can carry over excess credit values month to month; and (6) can continue to take service from a Competitive Electricity Supplier, in which case the Subscriber is billed for its usage (without taking account of the credit) and PEPCO pays the subscriber the value of its CREF credits (subscribers who are served by a competitive supplier can only utilize utility consolidated billing).

Unsubscribed Energy from the CREF will be purchased by PEPCO at the LMP (up to 5 MW maximum per CREF) and the cost of this is recovered by SOS customers. Comments are due 10/12.

marketing prohibitions/restrictions. Formal comments are due 11/6; however, the topic will be discussed at a workshop to be held by the ICC's Office of Retail Market Development in two weeks.

ICC Approves ComEd Plan to Remove Minimum Stay Requirements - On 9/30, the ICC approved ComEd's proposed tariff change, effective 10/9, which will allow residential customers to more freely switch between ComEd and competitive suppliers. Under the revised tariff, customers can switch at will with only one condition - the customer may not switch from Supplier X to ComEd supply and then back to Supplier X for 6 months. The current rules allow monthly switching and eliminate the 12-month bundled hold provision if customers returning to ComEd fail to select a different supplier during a 2-month window.

▶ MAINE

PUC Issues Examiners Report Finding Cost of Pipeline Contracts Likely to Exceed Benefits to Ratepayers - Pursuant to legislation enacted in 2013, the Maine Public Utilities Commission was granted the authority to enter into Energy Cost Reduction Contracts (ECRCs) for up to 200 MMcf/d of gas transportation and to resell the rights. The purpose of the law is to facilitate the expansion of the natural gas pipeline infrastructure into Maine and reduce energy costs by lowering the gas basis differential.

To implement the law the PUC opened a proceeding in March, conducted evidentiary hearings in July and August, and on 10/1 the hearing examiners issued their report to the PUC. In their report the examiners conclude as follows:

> Based on the evidence before us, we conclude that it is not likely to be in the best interest of Maine consumers for the State to act alone in this regard, as the costs of a Maine-only ECRC would likely exceed the benefits. This is the case because (1) the costs would be fully born by Maine consumers, yet the benefits would be spread region-wide; and (2) due to the likelihood that new capacity will be funded by firm contracts from the private sector, the incremental benefits of an ECRC diminish significantly.

Nevertheless, the examiners do recommend that the PUC proceed with phase II of the proceeding in which specific ECRC proposals will be evaluated.

▶ MASSACHUSETTS

DEP Considers Clean Energy Standard – The Massachusetts Department of Environmental Protection (DEP), the Department of Public Utilities and the Department of Energy Resources are holding a stakeholder meeting on 10/27 to begin discussing a Clean Energy Standard (CES) for Massachusetts. This initiative is part of the outgoing Patrick's Administration's clean energy agenda.

The DEP is recommending a share-of-sales requirement for electricity suppliers, similar to the existing RPS, and is soliciting general input on aspects of the CES including: which generation technologies will count as clean energy; should eligibility be limited to new generators; the compliance obligation of municipal utilities; and the stringency and timeline of emission reductions.

DOER Initiates Low Demand Analysis – The Department of Energy Resources (DOER) has retained Synapse Energy Economics to conduct a low demand modeling analysis. The purpose of the modeling analysis is to consider various demand scenarios and to evaluate energy supply scenarios to address potential resource needs. DOER seeks to compare a range of energy solutions to meet Massachusetts' short and long-term energy needs. As part of the modeling analysis process, Synapse and DOER will be soliciting stakeholder input and feedback through a series of public sessions to be held on 10/15, 10/30, 11/20 and 12/23.

This effort would appear to be driven by the increased pressure from neighboring states to expand natural gas deliverability into New England and the resistance in Massachusetts, both grass roots and political, against pipeline expansion projects.

Gas Companies Emergency Authorization Plan Approved with Modification - Due to reliability concerns, seven Massachusetts gas companies jointly filed a plan that would authorize them to procure up to 30% of the winter 2014/2015 gas supply requirements of capacity-exempt transportation customers that convert to default service between 11/1/14 and 4/30/15. Upon election of default service, these customers permanently lose their capacity exemption. On 9/30, the Department of Public Utilities (DPU) approved the plan with modification. Utilities were granted emergency authorization to plan for up to 30% of the winter gas supply requirement of capacity-exempt transportation customers, however, in part due to the objection of competitive suppliers, the DPU rejected the utilities proposed solicitation process.

The utilities are not authorized to solicit these transportation customers and before procuring the full 30% each utility must review its historical migration experience to determine the appropriate amount of gas supply to procure and, no later than 3/31/15, must report back to the DPU.

▶ MICHIGAN

Consumers Energy Files Application to Modify its Cost Allocation and Rate Design –Consumers Energy (CE) filed an Application requesting that the Michigan Public Service Commission (MPSC) modify the existing cost allocation and rate design methods that set existing rates. The CE filing was made in accordance with the MPSC's 8/5 Order implementing Act 169, which required the MPSC to open dockets for the "sole purpose" of commencing separate proceedings for CE and DTE Electric Company "to examine cost allocation methods and rate design methods used to set rates" for electric customers. CE is requesting that the rate design be effective for service rendered on or after 12/1/2015. The CE filing alleges that under the new cost allocation methodology, the following classes of customers may see the following rate impacts on their average bills:

- Industrial: decrease by approximately 5% per month;
- Commercial: decrease by approximately 1.3% per month;
- Residential: increase by approximately 2.5% per month.

▶ NEW HAMPSHIRE

Exelon Delivers Keynote at Energy Summit - On 9/29, the third annual New Hampshire Energy Summit convened in Concord, New Hampshire. Constellation was a premier sponsor of the event and Exelon SVP for Governmental and Regulatory Affairs and Public Policy Joe Dominguez delivered the keynote address. In his remarks, Dominguez highlighted the need for policymakers to look for market-based approaches to implementing energy policy goals and to avoid the unintended consequences of market intervention. Joe highlighted the value of nuclear energy, the need for more natural gas in New England and he praised New Hampshire for taking a market-oriented approach to energy policy through RGGI, RPS mechanisms and the passage of a divestiture bill.

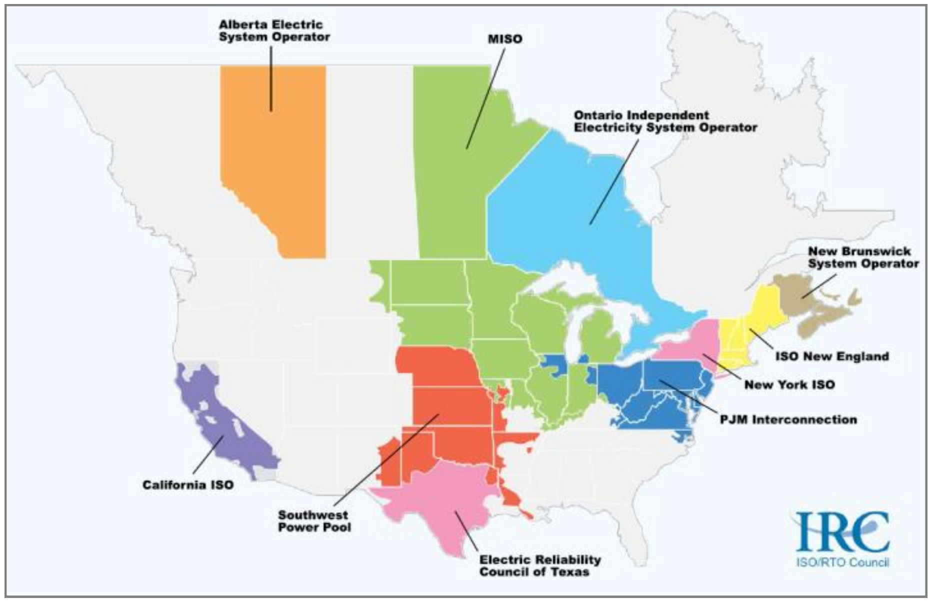
The conference was attended by a crowd of over 200, including a large percentage of lawmakers, regulators and regulatory staff. Other speakers included Governor Maggie Hassan, her opponent Walt Havenstien, Senator Jeanne Shaheen and her opponent Scott Brown.

▶ NEW JERSEY

Bill Would Require 80% Come from Renewable Sources - At a Senate Environment Committee hearing, legislation proposing to increase the state's RPS to 80% by 2050 drew the ire of large manufacturers and the Rate Counsel. The legislation (S-2444), backed by a few members of the solar-energy sector and with some reservations by clean-energy advocates, would set one of the most aggressive renewable energy goals, not only in the nation, but in the world. Committee Chairman, Senator Bob Smith (D-Middlesex), said the legislation is likely to be voted out of Committee in the next month. Even if the measure does win legislative approval, it is unclear that it would be signed by Governor Christie.

Contract Summary – Residential - At its monthly hearing, the Board of Public Utilities (BPU) issued an order on some of its proposed changes in response to the polar vortex. The BPU noted that it is reviewing its rules to ensure sufficient consumer safeguards, but in the meantime will be requiring that a Contract Summary be provided for each residential customer that signs up or renews for service on or after 11/15. The Contract Summary must be at the front of the customer's contract and must be provided when the customer signs up for service or renewal of service.

Basic Generation Service (BGS) - The BPU held a legislative style hearing with respect to its annual review of BGS procurement. The testimony went largely along the lines it has historically, with NextEra seeking a modification of the collateral process, requesting that some consideration be given to negative exposure when calculating the collateral required to be posted by suppliers. There was quite a bit of discussion around the PJM Capacity Product as it relates to the Transition Years. BPU Staff requested that interested parties file final comments with respect to how to handle this charge, specifically stating that Staff is focused on balancing the auction construct (that is, requiring suppliers most efficiently price the components of BGS and bear the risk associated with that pricing) vs. the arguments that these costs should be passed through to consumers. Staff is also seeking comments on how bundling the Transition Charges into the BGS product would affect the risk premium added by suppliers, as well as supplier participation in the auction.



▶ NEW YORK

PSC Chair Zibelman and NYS Energy Chief Richard Kauffman on New York Energy Policy – PSC Chair Zibelman and NY State Energy Chief Richard Kauffman presented at the Alliance for Clean Energy Conference held on 10/15 in Albany. Both commented on Reforming the Energy Vision (REV) and New York's energy policy direction going forward. Zibelman said the technology and vision commitment already exist; however, New York needs to work through the details to get it right. While REV is in development, New York has other challenges with existing transmission and distribution infrastructure needs and central generation station mothball and retirement notices. Kauffman reinforced that New York needs to change the Business As Usual (BAU) energy construct.

New York has the opportunity to lead on clean energy policy and provide leadership for the federal government to consider. With respect to REV, Mr. Kauffman stressed the utilities will need to manage the REV platform but encourage active participation from other third party market participants. He felt the utilities should be able to own distributed resources but market power considerations will need to be addressed. In 2015, he would like to see 10 to 20 REV-type trials or pilots implemented. These trials could not only be commercial opportunities for different companies but also be informative in setting the policy direction, understanding technical issues, and obtaining a more comprehensive view of costs. Kauffman stressed New York is trying to change the game, reduce CO_2 emissions and set the path to address climate change in a comprehensive manner.

DOE Approves Canada-New York Power Line - The Department of Energy (DOE) issued a presidential permit to Champlain Hudson Power Express to build and operate a 1,000-MW, high-voltage transmission line that would run from Canada through New York State and into New York City. The direct-current line would bring power from Canada into the constrained area of New York City when it is energized, expected in 2017. It would end in the New York borough of Queens, where it would be converted to alternating current at Consolidated Edison's Rainey substation.

The project still needs approvals from the Army Corps of Engineers, which is expected this month. In addition, the project must make a determination on its NYISO Class Year System Upgrade Facility (SUF) charge allocation of approximately $150 million within the next sixty (60) days. If they accept the SUF allocation cost, the developer must still secure an anchor tenant who is willing to assume the energy and capacity price risk associated with the project.

▶ OHIO

Ohio Commission Approves Results of First Energy Standard Service Auction, Exelon is Winning Bidder – On 10/15, the Public Utilities Commission of Ohio (PUCO) approved the results of FirstEnergy's wholesale auction that will ultimately determine its standard service offer (SSO) retail generation service rates through May 2016. During the 18-round auction, held 10/14, four competitive suppliers submitted winning bids for the one-year product opportunity to provide electricity to FirstEnergy customers.

That auction resulted in an average clearing price of $73.82 per megawatt hour for the delivery period June 2015 through May 2016. ExGen was a winning bidder in the auction. CRA International served as the independent auction manager, and Boston Pacific Company, a consultant retained by the PUCO, monitored the auction process. The names of the winning bidders will remain confidential for 21 days.

PUCO Clarifies No Ohio-Based REC Requirement for 2014 – On 10/15, the Ohio Commission adopted Exelon's position that there should be no Ohio-based Renewable Energy Credits (RECs) required for 2014. Senate Bill 310, which eliminates the Ohio-Based REC requirement, went into effect in September, leaving open the question of whether Ohio-based RECs were going to be required for the portion of the year (January to September) which preceded the effective date of the new law. Environmental and social action groups argued in favor of an apportionment, while Exelon, other suppliers and the industrials argued that the clear intent was to do away with the Ohio-based RECs for 2014.

The Commission adopted the Exelon position and thus, on April 2015 when RECs are reported to the Commission for 2014, there will be no requirement for Ohio-based REC supplies.

COMPETE Members Send Letter to Ohio Commission Opposing PPA Proposals – On 10/16, a coalition of customers submitted a letter to the PUCO and served all parties in the AEP Electric Security Plan (ESP) proceeding opposing the proposal to implement non-bypassable riders that would collect a surcharge from all customers, shopping and non-shopping, to provide full cost recovery on mostly coal-fired generation owned by affiliates of AEP. While the letter was filed in the AEP ESP proceeding, it made reference to the proposals by the other OH utilities.

The letter, which was sent to the PUCO Chairman and Commissioners, states that the utility PPA proposals are an "unfair tax on consumers" and that if implemented the PPAs will reduce the choices and flexibility customers need to manage energy requirements, will result in higher costs for electricity for Ohio businesses, and "will deny Ohio businesses the right to purchase electricity at the lowest possible price." The letter was signed by twelve COMPETE members with a significant presence in Ohio, including Loews, Boston Market, Costco, Owen's Corning and Wendys. Collectively, the 12 retailers and manufacturers maintain 1,729 facilities in Ohio, spending $111 million annually on electricity while providing 79,000 jobs.

AEP Ohio Files an Expanded PPA Proposal with PUCO - On 10/2, AEP filed an application with the PUCO seeking a purchase power agreement (PPA) for 2,600 MW of additional coal fired generation previously divested to its competitive affiliate. AEP's original Electric Security Plan (ESP) application sought a non-bypassable rider that would collect a surcharge from all customers, shopping and non-shopping, to provide full cost recovery only on a legacy PPA entitlement for 900 MW of coal generation associated with the Ohio Valley Electric Cooperative.

However, the original AEP ESP had a mechanism that would allow AEP to "add" new PPAs at a later date. Although AEPs original ESP application has not been ruled on yet by PUCO, the separate filing on 10/3 essentially accelerates the pursuit of the "additional" PPAs and identifies the specific assets. The filing for cost recovery on the AEP plants comes on the heels of First Energy's ESP filing which seeks PPAs for 3,000 MW of generation owned by First Energy Solutions. PUCO now has proposals from Ohio utilities seeking customer-funded cost recovery on more than 6,000 MW of generation.

▶ PENNSYLVANIA

Bill Mandating Legislative Approval of State's CPP Plan to be Enacted – The State Legislature passed legislation allowing either one of the General Assembly's chambers to, in effect, veto the state carbon dioxide emissions plan. Only if both chambers approve the plan can the PA DEP send the plan to the US EPA for review. The legislation is on the Governor's desk and he will sign it into law.

There are questions about the constitutionality of the bill, so the environmental groups are considering a legal challenge. It is anticipated that Democrat Tom Wolf will be elected Governor but the legislature will remain in Republican control. Therefore, the Pennsylvania Coal Alliance, FirstEnergy, GE Capital, the United Mine Workers of America, CONSOL, and Alpha Natural Resources worked to enact this legislation to ensure that a “Wolf Administration PA DEP” will need to compromise with the Republican controlled legislature during their development of the state’s 111(d) compliance plan.

▶ TEXAS

Texas House Environmental Regulation Committee Holds Hearing on GHG Rule - On 9/29 and 9/30, the Texas House Environmental Regulation Committee held a hearing on EPA’s 111(d) proposal. They took testimony from electric market experts, lawyers, generators, industrial consumers, and environmental groups. The general tone was much the same as a previous hearing on the subject at the PUCT.

As expected, overall the testimony discussed how EPA’s rule would be very difficult for Texas to achieve in the contemplated timeframes and how unfair the rule was to Texas in terms of the relative reductions compared to other states, the potential impact on reliability, and the fact that the baseline calculations of the rule fail to give much credit to Texas’ significant wind resources installed prior to 2012. As expected, other than the legal challenges from the Texas’ Attorney General (who did not speak), the committee adjourned with no clear plan of action as to what Texas can or should do with regard to the proposed rule.

▶ VIRGINIA

Virginia SCC Pepco Approval - The Virginia State Corporation Commission (SCC) approved the proposed merger of Exelon and Pepco. The transaction required approval by the SCC because PHI’s Pepco and Delmarva Power utilities previously served distribution customers in Virginia and still own a small amount of transmission infrastructure in the state.

2014 Energy Plan - The Department of Mines, Minerals and Energy has released its 2014 Energy Plan, which was required by legislation passed in the 2014 General Assembly. Essentially the Plan calls for an all of the above strategy, with an emphasis on increasing renewables in Virginia (VA currently has a voluntary RPS and renewables account for only a small percentage of total energy sources in the state). The Plan also highlights energy efficiency and provides that the Governor will appoint a Chief Energy Efficiency Officer responsible for maximizing opportunities in the public sector. In addition, the Governor will convene an energy efficiency board comprised of leaders in the energy efficiency industry.

FEDERAL REGULATORY

▶ FERC

FERC Open Meeting Presentations on Winter Weather – At its 10/16 open meeting, FERC staff presented on the Commission’s and industry actions taken related to the winter of 2013-2014, and provided an assessment of winter 2014-2015. The presentation on winter 2013-2014 discussed FERC actions to explore the role of centralized capacity markets in attracting investment and improve gas-electric coordination. FERC enforcement staff also outlined its review of market participant behavior during the winter, noting that enforcement staff is in the early stages of three non-public investigations but has otherwise found no evidence of endemic market manipulation during the extreme cold of last winter.

Enforcement staff disclosed few details related to the three investigations other than that one involved a potential downward price manipulation of a monthly natural gas index to benefit financial derivative positions, and two focused on whether certain generators improperly benefitted from constrained conditions by offering in a manner that resulted in increased uplift payments. Regarding the winter of 2014-2015, FERC staff reported that while the natural gas market is amply supplied and the prices in the spot market are in the $4.00/MMBtu range, futures prices are significantly higher (especially in New England), natural gas storage is below average resulting in higher prices than last September with pipeline capacity restrictions going into New England, and coal stockpiles are lower than usual. FERC anticipates colder than normal temperatures this winter, but warmer temperatures than last winter.

FERC Reaffirms New Method to Determine Transmission ROEs and Sends MISO ROE to Hearing – On 10/16, FERC issued two ROE orders. In the first order, which addressed a single open issue in the complaint on the ROE for the New

England Transmission Owners, FERC decided that it would use the Gross Domestic Product as the measure of long-term growth for its new two-step discounted cash flow method. FERC then confirmed the preliminary determination it made in June that the New England Transmission Owner new ROE should be set at 10.57%. Finally, it clarified that the ROE including incentives cannot exceed the top of the zone of reasonableness which in the case of the New England Transmission Owners is 11.74%.

It is unknown if FERC will apply the 'top of the range' limit on a project-by-project basis or on the entire rate base such that an incentive on a few projects that otherwise would exceed the ROE cap would not exceed a total ROE when measured against the utility's total transmission investment. In the second order, as expected FERC set the MISO base ROE of 12.38% for hearing. As the outcome of the MISO complaint will affect all the other Illinois transmission owners (Ameren, MidAmerican, ITC), the results ultimately could influence Illinois stakeholders to file a complaint against ComEd's 11.0% base ROE.

FERC Price Formation Workshop Series – On 10/10, the FERC issued two notices related to its series of workshops on price formation in the energy and ancillary services markets. The first workshop on uplift was held on 9/8. The second workshop, on scarcity and shortage pricing and offer mitigation and offer caps will be held on 10/28. Joseph Cavicchi of Compass Lexicon will be representing EPSA on the morning panel discussing scarcity and shortage pricing and on the afternoon panel discussing offer mitigation and offer caps. FERCs final workshop in this series will be held on 12/9 and will discuss technical, operational, and market issues related to operator actions in the energy and ancillary services markets.

FERC Joint Capacity Market Technical Conference with NYPSC – On 10/10, the FERC announced the agenda for its joint technical conference with the NYPSC on issues relating to the capacity market and energy infrastructure in NY, including a review of the role of NY's centralized capacity market in attracting investment and ensuring resource adequacy and reliability. The agenda focuses on the performance of NY's capacity market and what changes may be needed to meet public policy goals, looking specifically at: the capacity market's ability to attract infrastructure investment from merchant entities; whether changes are needed to ensure resource performance and to account for fuel availability; and the impact of RSSA agreements on the capacity market. The conference will be held in NY on 11/5.

FERC Conditionally Accepts CAISO Flexible Capacity Requirements – On 10/16, the FERC conditionally accepted CAISO's flexible resource adequacy proposal. In June 2014, the CPUC expanded its resource adequacy program to require LSEs to procure resources to meet flexible capacity needs in addition to base capacity needs. In response to this change, CAISO proposed to expand its backstop capacity procurement mechanism to require resources committed to meet flexible capacity needs to submit economic bids in CAISO's market to be available for dispatch.

The FERC largely accepted the CAISO proposal but also required an informational report in 12 months that: (1) quantifies the impact of non-contracted variable energy resources on procurement costs to determine if there are any changes needed to cost allocation; (2) determines the feasibility of expanding participation eligibility to imports that are not pseudo-tied; and (3) demonstrates the progress towards developing a flexible capacity performance incentive mechanism. CAISO's current backstop capacity procurement mechanism expires in February 2016, and the FERC encouraged the development of a solution prior to expiration, noting CAISO's commitment to file a market-based replacement for the capacity procurement mechanism.

▶ PJM

PJM Preliminary 2015 Forecast – On 10/17, PJM presented its preliminary findings for the 2015 energy forecast. The forecast shows a decrease of approximately 2GW from the 2014 forecast which represents updated estimation period and economic variations. PJM will provide its final forecast in December 2014/January 2015 for final stakeholder approval. However, PJM provided notification to the stakeholders they will be creating an alternate forecast in the future.

Over time, PJM has observed a systemic over-forecast bias. PJM believes this is mostly due to customers' efficient energy usage not being captured appropriately, especially during peak energy usage periods. PJM plans to use data from the US Energy Information Administration (EIA) to obtain history and forecasts for appliance saturation and efficiency. The alternate forecast concept is still in the draft stages and more stakeholder input will be provided prior to implementation.

PJM Capacity/Firm Fuel - On 10/7, PJM published a 35-page capacity market reform proposal featuring its new Capacity Performance product. The proposal substantially revised concepts introduced in PJM's 8/20 proposal following extensive stakeholder commentary. The goals of the proposed reforms remain the same; namely, to encourage resource performance and flexibility and diversity during both summer and winter peak system stress.

PJM Demand Response - On 10/7, PJM published an eight-page paper entitled "The Evolution of Demand Response in the PJM Wholesale Market" and also submitted it to the FERC as an informational filing in docket EL14-55 regarding FirstEnergy's complaint seeking to remove DR from all PJM markets and to re-run the 2017/18 BRA. The paper offers an approach to accommodating DR in wholesale markets despite the apparent jurisdictional roadblocks presented in the EPSA v. FERC decision.

PJM's proposal attempts to distinguish "wholesale" and "retail" demand response, with the former being offered by Load Serving Entities in direct privity with PJM and also outlines a method for such "wholesale" DR to participate in the capacity market, notably by shifting the RPM demand curve inward to represent cleared quantities of DR offers. They specifically distinguish the previously approved Price Responsive Demand product, but bypass promoting it in favor of direct capacity market participation by demand response.

PJM also firmly opines that demand response should be able to participate in the ancillary services markets and stresses the urgency for a clear policy path regarding demand response to avoid market uncertainty. PJM states that it will not revise the DR provisions of its tariff until FERC directs it to do so.

Energy/Capacity - AEP Intent to Split Into Four Settlement Zones Effective 6/1 - AEP notified PJM of their intent to split the AEP load zone, effective 6/1/15, into four separate zones: Indiana Michigan Power, Kentucky Power, Ohio Power, and Appalachian Power. PJM Manual 27, Section 5.7 recites the timeline and requirements for making such an election. AEP's notice is of intent to change the settlement area definitions. AEP must make a formal notice where it must fully identify the composition of the new area(s) by 12/1. LSE nodal peak loads for the new settlement areas must be establish by the later of 1/15/15 or 30 days prior to the open of the 2014 annual FTR auction. It appears that under the proposal, any load currently priced at the AEP physical transmission zone will shift to being priced at the applicable operating company load aggregate.

▶ MISO

Redesign of Pricing Under Emergency Conditions - In September, MISO and the IMM both proposed alternatives to enhance pricing under emergency conditions. MISO had proposed to adjust the offer prices of external resource, generation and demand response resources to the maximum of their offer price or the average ELMP of the hour immediately prior to the initiation of the maximum generation procedure.

The IMM, however, had proposed that all emergency resources should have an offer floor of $1,000 rather than being tied to pre-emergency conditions. MISO and the IMM returned to the Market Subcommittee in October, to present a new compromise. The new alternative is to utilize the maximum ELMP calculation of economic generation that is available to be dispatched at the time that Emergency Procedures are initiated as the offer floor for emergency resources. MISO and the IMM believe that this is a good compromise because it would prevent LMP from falling below the offer price of economic generation through the duration of the emergency event.

Capacity Credit Evaluation for Demand Response - At the 10/1 Demand Response Working Group (DRWG), MISO announced a kick-off of an evaluation of the IMM's recommendation in his 2013 State of the Market Report that Demand Response should not receive 100% capacity credit within the annual capacity auction. MISO did not provide a guideline for potential implementation and is requesting comments be submitted to enable a broader conversation at the November DRWG.

ERCOT

Wind Capacity Value – ERCOT's Board of Directors approved a Protocol revision which modifies the methodology for calculating the capacity value of wind for the Capacity, Demand, and Reserves Report (CDR). The new approach calculates the wind capacity value as the average historical wind availability during the top 20 system peak-load hours over a multi-year period, expressed as a percentage of installed wind capacity. Previously, ERCOT used load studies to calculate the Effective Load Carrying Capability (ELCC) for wind, which was most recently set at a value of 8.75% of installed capacity.

The Board also approved revision to calculate separate wind capacity values for the summer and winter seasons, as well as breaking out wind resources located in non-coastal and coastal wind regions. The change to wind capacity will be effective in the December 2014 report. The new methodology is expected to increase the capacity credit for wind which will make ERCOT appear to have a higher reserve margin.

Ancillary Service Market - Stakeholders at the Wholesale Market Subcommittee (WMS) and the Reliability Operations Subcommittee (ROS) endorsed an increase in ERCOT's procurement of Responsive Reserve Service (RRS) for 2015. ERCOT normally makes annual adjustments to the ancillary service procurement plan. 2015's recommended changes were based on a need for increased RRS capacity in preparation for upcoming NERC requirements and a similar recommendation that came out of studies performed during the design phase for the new ancillary service market. Those studies showed a reduction in ERCOT's ability to respond to a drop in frequency. In order to implement the 2015 changes more efficiently, stakeholders endorsed the concept of varying hourly RRS requirements calculated in six, four hour blocks per day, rather than procuring one fixed level for the entire year as has occurred in prior years.

Under the approach endorsed by both the WMS and ROS, these changes will be effective 6/1/15. This delayed start date not only offers Market Participants time to prepare their forward positions for the change but also coincides with the summer peak, which is the least impacted period of time under the new approach. ERCOT is expected to present this proposal to the Technical Advisory Committee for comment at the end of October and seek the Board of Directors' approval in December.

2013 State of the Market Report Released - ERCOT's IMM released the 2013 State of the Market Report. The report reviews and evaluates the outcomes of the ERCOT wholesale electricity market and is submitted to the PUCT and made publicly available on an annual basis. In this most recent report, the IMM states that market wide load-weighted average real-time energy price was $33.71/MWh in 2013, which is a 19% increase from 2012. The increase was primarily driven by a 37% increase in natural gas prices. 2013 peak load increased by only 1% over 2012. Overall, the IMM stated that the ERCOT market preformed competitively in 2013, but net revenues provided by market prices were not sufficient to support new generation entry, despite the fact that planning reserve margins have fallen to levels that are close to the minimum planning reserve targets. Additionally, Beth Garza was officially named as the ERCOT IMM on behalf of Potomac Economics.

SPP

Order 1000 Competitive Transmission Projects – SPP's senior stakeholder committee, the Markets and Operations Policy Committee (MOPC), approved five tariff revisions that should improve the competitive bidding process for transmission projects. The five revisions include extending the bidding window from 90 to 180 days, allowing the assignment of competitive upgrades to an affiliate, providing refunds of application fees if applications are not accepted, adjusting some of the financial requirements, and allowing multiple project owners. SPP admits that the implementation of their process has been uneven and is reviewing their competitive bidding process and plans to continue to make changes to ensure the process is more open and transparent.

SPP-MISO Seams - SPP and MISO announced that they have released a combined version of their system models and made it available to market participants. They also used the combined model to perform a Coordinated System Plan (CSP) study. The purpose of the MISO-SPP CSP study is to jointly evaluate seams transmission issues and identify transmission solutions that efficiently address the identified issues to the benefit of MISO and SPP. The CSP study identifies 12 reliability projects based on historic and projected system congestion analyses which meet the interregional guidelines to be funded by both Regional Transmission Organizations (RTOs).

In order to be identified in the CSP study, the reliability based project had to be identified previously in either RTO's individual system studies but also met additional criteria that would provide benefit to both RTOs. In addition to the reliability based projects, SPP and MISO have asked stakeholders to use the publicly available model to identify and submit potential economic based projects. Projects submitted must address an issue identified in the joint study and must be expected to provide value to both SPP and MISO. The deadline for project submission is 12/8.

EPA Compliance - At the SPP Regional State Committee earlier this month, SPP discussed its EPA impact assessment. SPP explained that the assessment is not intended to be a transmission planning study but rather a cursory look at transmission needs and system reliability based on potential gas and coal retirements expected as a result of 111(d). SPP used the expectations that the EPA has between now and 2020 to model the impacts to the transmission system and the reserve margin. The most significantly affected states are Texas, Oklahoma and Kansas. SPP explained that without any new generation infrastructure or new transmission, the results are indicative of very serious issues resulting in loss of load events and violations of NERC standards.

When modeling replacement capacity, SPP observed that almost 40 facilities would be overloaded absent any additional transmission infrastructure. Some facilities were overloaded so severely that SPP models showed cascading outages could occur. Using load forecast information provided by SPP members and including the projected retirements from EPA, SPP said that by 2020 the reserve margin would be 4.7% (4600 MW). By 2024, SPP predicted a reserve margin of -4% (10,000 MW shortage). Out of the 14 SPP members impacted, 9 would be deficient in 2020 and 10 by 2024. In summary, SPP stated that it will need both transmission and generation development and expects it to take 8.5 years to build everything that would be needed (SPP didn't say whether the 8.5 was based on 2020 or 2024 data).

▶ NYISO

Buyer Side Mitigation Exemption – In May 2014, NYISO proposed several exemptions to its Buyer Side Mitigation rules. Buyer Side Mitigation is intended to mitigate the impact of uneconomic new entry on prices in the ICAP Market. The proposed exemptions included Repowering, Replacement and Increased Capacity Resource Interconnection Service (CRIS).

These proposed exemptions were defeated by the Business Issues Committee and the Management Committee. NYISO is opting to return to stakeholders with Increased CRIS exemption from Buyer Side Mitigation as a stand-alone proposal. This exemption would provide NYISO with rules to evaluate additional CRIS requests from capacity suppliers. Of the three proposals included in the original package, Increased CRIS was the least controversial.

If approved by the Business Issues Committee and Management Committee, CRIS would apply to new projects in Class Years subsequent to Class Year 2012. It appears that Class Year 2012 will likely be concluded sometime in November 2014. The next Class Year would then commence on March 1, 2015.

Order No. 745/Demand Response - The NYISO Management committee met on 9/30 and gave an update on FERC Order No. 745 issues. To date, NYISO has not received an implementation order from FERC regarding its Order No. 745 compliance filing and has not implemented any aspects of Order No. 745 due to the recent DC Circuit Court's decision. The NYISO is concerned that while the D.C. Circuit opinion narrowly addresses the appropriateness of Order No. 745's compensation scheme for ISO/RTO energy markets, the Court's rationale could extend to demand side ICAP resources in the ICAP market.

NYISO stated that until it receives an order from the FERC or the Courts, it will continue to administer its energy markets and ICAP auctions to include demand response as required by their tariff. NYISO staff is analyzing the potential effects of the order and will continue to keep stakeholders apprised of any developments.

NYISO's Implementation of CTS with PJM Targeted for November 2014 - Coordinated Transaction Scheduling (CTS) is the new spread-bid option that will be available at the PJM/NYISO border targeted for a November 2014 implementation.

▶ ISO-NE

Forward Capacity Market and Footprint Power – A proposed 670 MW combined cycle unit in the NEMA zone, filed an application to defer its Capacity Supply Obligation (CSO) by one year, pursuant to the tariff changes approved by FERC on 9/12. Under the tariff changes, ISO-NE must first conclude that Footprint is needed for reliability in the Capacity Commitment Periods (CCP) associated with FCA 7 (i.e., the auction in which Footprint cleared) and FCA 8 (i.e., the year into which Footprint requests to defer), which ISO-NE did in August.

By making the filing, Footprint is stating that the project cannot be built without the deferral. If the deferral request is rejected by FERC, the ISO will have to decide whether or not to terminate the project. Under the tariff, a resource owner has two years beyond its original in-service date to become commercial so long as the resource owner is showing progress and the ISO believes the project will be completed.

Forward Capacity Market and Import Mitigation – The Participants Committee approved the Market Monitor's proposed changes to the mitigation of capacity offers from new imports. Under the proposed changes, all participants offering imports into an FCA will be required to provide justification for their capacity offers to the Market Monitor; however, only those from pivotal importers will be reviewed. Based on that review, the Market Monitor may approve the offer or replace it with an offer he deems appropriate (in which case the importer can challenge this determination at FERC).

Pivotal importers will be required to offer into the auction at the approved offer price. Non-pivotal importers will be assigned an offer floor of zero (meaning they can offer into the auction at prices anywhere between zero and the starting price). These changes are being proposed for compliance with the FERC Order that was issued as a result of concerns about the exercise of market power in FCA #8 (2017/18). Under the proposal, imports have the ability to withdraw up to 1/16/15.

Demand Response D.C. Circuit Court Order on Demand Response - As a reminder, the D.C. Circuit overturned Order No. 745 and found that FERC does not have jurisdiction over demand response in the energy market. (FERC's Order No. 745 required full LMP payments to demand response in the energy market). On 9/17, the Court rejected requests for rehearing of its order overturning Order No. 745. Thereafter, FERC requested that the order be stayed until a decision was made on whether to submit an appeal to the Supreme Court. ISO-NE is considering how to deal with demand response in the wake of the Court's order, similar to the other RTOs.

At the ISO-NE Demand Response Working Group, the ISO stated that due to the uncertainty of the outcome of the Order, the ISO is postponing work on large DR projects, and projects related to markets/programs that aren't in place today. However, it noted that it will continue to work on projects that deal with markets or programs that are already in place. Additionally, the ISO stated that it believes that the Court's order creates significant issues around demand response participation in FCA #9 (2018/19), the February 2015 Auction, and the capacity market in general and that demand response providers need to be cognizant of these issues.

The ISO noted that although the Court's order deals with DR in the energy market, it is difficult to separate the capacity market from the energy market since the rules that will be in effect once demand response is fully integrated into the market require demand response capacity resources to submit offers into the energy market.

▶ CAISO

CAISO Initiates Review of Nodal Pricing - Since 2006, when CAISO initiated its Market Redesign and Technology Update, load has been settled at three different load aggregation points (LAPs) that corresponded to the footprint of each investor owned utility – Southern California Edison, Pacific Gas & Electric, and San Diego Gas & Electric. At the time, FERC ordered CAISO to further disaggregate prices within two years, but in 2008, CAISO sought and was granted an extension. As the extension ran out, CAISO sought a permanent waiver of the requirement to go to more granular pricing, noting that its preliminary studies showed no meaningful price dispersion from changing from the established LAPs to more granular LAPs, and because market participants were opposed to any changes.

Opposition is because (i) the estimated costs to implement further pricing granularity at the CAISO and for market participants would be high, and (ii) retail rate structure under the jurisdiction of the California Public Utilities Commission would not correspond to the CAISO settlement, such that further pricing granularity might lead to "cherry-picking" of customers at the lower priced nodes, causing higher prices for the utility load. FERC denied the request for a permanent waiver, and has instructed the CAISO to further study costs and benefits of further disaggregation, and present FERC with a disaggregation plan by mid- 2015, unless they can prove that the costs of such disaggregation would outweigh the benefits.   The stakeholder process began this week, with market participants and the CPUC voicing opposition to any changes.

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