

## PRACTICES STEERING COMMITTEE REPORT

**Synopsis:** This report covers significant Federal Energy Regulatory Commission (FERC or Commission) practice and procedural developments, including appellate court decisions, major FERC orders and rulemakings and administrative actions, from July 1, 2023 through June 30, 2024).\*

I.	Federal Court Holdings .....	2
	A. PJM Power Providers Grp. v. FERC, Case No. 23-1778 (D.C. Cir. Mar. 12, 2024) .....	2
	B. Sierra Club v. FERC, Case No. 22-1233 (D.C. Cir. Mar. 29, 2024) .....	3
	C. PJM Power Providers Grp. v. FERC, Case No. 21-3068 (3d Cir. Dec. 1, 2023).....	5
	D. SEIA v. FERC, Case No. 20-72788 (9th Cir. Sept. 5, 2023) .....	5
II.	Federal Energy Regulatory Commission Rulemakings .....	6
	A. FERC Issues New Transmission Planning and Cost Allocation Rule .....	6
	B. FERC Issues Final Rule on Rule Backstop Transmission Siting Procedures.....	8
	C. FERC Finalizes Large-Scale Reforms to Generator Interconnection Procedures.....	9
	D. FERC Directs NERC to Develop Reliability Standards for Inverter-Based Resources .....	10
	E. FERC Issues NOPR Proposed to Prohibit Transmission Providers from Being Compensated for Reactive Power Within the Standard Power Factor Range .....	11
III.	Federal Energy Regulatory Commission Notices of Inquiry .....	11
	A. FERC Opens Inquiry into Capacity Allocation on Non-Contiguous Pipeline Segments .....	11
	B. FERC Issues Notice of Inquiry into Section 203(a)(2) Blanket Authorizations.....	13
IV.	Federal Energy Regulatory Actions on Extreme Weather and Reliability .....	13
	A. FERC Issues 2023-2024 Winter Energy Market and Electric Reliability Assessment.....	13
	B. Blackstart Study Recommends Collaboration, Planning for Resilience.....	14
	C. FERC, NERC Issue Final Report on Winter Storm Elliott .....	15
	D. FERC and NERC Staff Present January 2024 Arctic Storms Review .....	15

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	E. FERC Chairman Issues Reliability Report.....	16
V.	Federal-State Task Forces and Collaborations.....	17
	A. Federal-State Task Force on Electric Transmission.....	17
	B. Federal and State Current Issues Collaborative .....	17
VI.	Other FERC Issuances .....	18
	A. FERC Establishes New Policy to Reject Hydropower Preliminary Permit Applications Based on Tribal Opposition to Projects Located on Their Tribal Lands.....	18
	B. FERC Issues Equity Action Plan .....	18
	C. FERC Issues 2023 State of the Markets.....	20
	D. FERC Office of Enforcement Releases 2023 Report.....	21
	E. FERC Conditionally Approves Extended Day Ahead Market..	21
	F. 2023 Assessment of Demand Response and Advanced Metering.....	22
	G. Office of Public Participation Reports on 2023 Efforts to Support Public Voices at FERC.....	23
VII.	Federal Energy Regulatory Commission Workshops .....	23
	A. FERC Notices Innovations and Efficiencies in Generator Interconnection Workshop.....	23
	B. Office of Public Participation WorkshOPPs .....	24

## I. FEDERAL COURT HOLDINGS

### A. *PJM Power Providers Grp. v. FERC, Case No. 23-1778 (D.C. Cir. Mar. 12, 2024)*

On March 12, 2024, the United States Court of Appeals for the District of Columbia (D.C. Circuit) vacated, in part, FERC orders that approved a PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff) amendment as retroactively applied to the 2024/25 capacity auction.<sup>1</sup> The D.C. Circuit found that FERC's orders violate the filed rate doctrine, which requires regulated entities to charge only the rates filed with FERC and forbids applying retroactive rates.<sup>2</sup>

In December 2022, PJM administered a capacity auction from June 2024 to May 2025 (Auction).<sup>3</sup> PJM ran the Auction according to the process set out in the PJM Tariff which requires that PJM must calculate and publicly post the parameters, or inputs, it will use in the Auction and the Locational Deliverability Area (LDA) requirement.<sup>4</sup> After realizing a perceived problem that would result in a high clearing price for the area south of the Chesapeake & Delaware Canal (DPL-South zone), PJM halted the Auction and sought FERC's permission to amend the

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1. PJM Power Providers Grp. v. FERC, 96 F.4th 390, 391 (3d Cir. 2024).

2. *Id.* at 394.

3. *Id.* at 395.

4. *Id.* at 396.

Tariff to adjust the LDA Reliability Requirement downward, reflecting certain resources' lack of participation in the auction.<sup>5</sup> PJM made two contemporaneous filings with FERC.<sup>6</sup> First, it proposed an amendment to the Tariff under section 205 of the Federal Power Act (FPA)<sup>7</sup> to "provide PJM the authority to adjust the LDA Reliability Requirement downward to reflect certain resources' lack of participation in the Auction."<sup>8</sup> Second, PJM filed a complaint under section 206 of the FPA (Complaint) to avail itself of FERC's discretion to fashion a just and reasonable remedy upon a finding that the existing Tariff was unjust and unreasonable.<sup>9</sup> A four-commissioner FERC panel accepted the proposed Tariff amendment in full and dismissed the Complaint as moot, finding that the application of the Tariff amendment to the pending auction was "just and reasonable" under FPA section 205.<sup>10</sup> Subsequently, FERC denied rehearing and "issued a rehearing order that reaffirmed the conclusions it reached in its initial order."<sup>11</sup> PJM and its trade associations filed petitions for review of FERC's initial and rehearing orders in the D.C. Circuit.<sup>12</sup>

In its opinion, the D.C. Circuit reasoned that the "LDA Reliability Requirement must be used in the Auction but may be adjusted under certain limited, enumerated circumstances listed in the Tariff."<sup>13</sup> However, the court deemed the Tariff amendment as retroactive because it altered the legal consequences of PJM's past actions (calculating and posting the LDA Reliability Requirement).<sup>14</sup> The D.C. Circuit found that the filed-rate doctrine prohibited retroactive Tariff changes, regardless of the equities involved.<sup>15</sup> As such, the Court vacated the portion of FERC's orders that allowed "PJM to apply the Tariff amendment to the 2024/25 capacity auction" and affirmed the filed rate doctrine's principle of predictability in electricity markets.<sup>16</sup>

*B. Sierra Club v. FERC, Case No. 22-1233 (D.C. Cir. Mar. 29, 2024)*

On March 29, 2024, the D.C. Circuit upheld two FERC orders granting natural gas pipeline developers' requests to extend their deadlines for pipeline construction projects.<sup>17</sup> The D.C. Circuit denied the Sierra Club's petitions for review

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5. *PJM Power Providers Grp.*, 96 F.4th at 396.  
6. *Id.*  
7. *Id.*  
8. *Id.*  
9. *PJM Power Providers Grp.*, 96 F.4th at 396-97.  
10. *Id.* at 397.  
11. *Id.*  
12. *Id.*  
13. *PJM Power Providers Grp.*, 96 F.4th at 399.  
14. *Id.* at 400.  
15. *Id.* at 401.  
16. *Id.* at 402.  
17. *Sierra Club v. FERC*, 97 F.4th 16 (D.C. Cir. 2024).

of the extension orders because it determined that FERC's decisions were reasonable and adequately supported by the record.<sup>18</sup> The extension orders at issue involved FERC's approval of requests by National Fuel Gas Supply Corp. (National Fuel) and Cheniere Corpus Christi Pipeline, LP (Cheniere) to extend their construction deadlines.<sup>19</sup> National Fuel sought the first extension of its construction deadline from February 3, 2019 to February 3, 2022, due to ongoing litigation regarding the New York State Department of Environmental Conservation's (NYSDEC) denial of National Fuel's Clean Water Act section 401 permit.<sup>20</sup> Following resolution of the litigation between National Fuel and the NYSDEC in 2021, National Fuel requested approval from FERC to extend its construction deadline to December 31, 2024, so that it could secure additional environmental permits.<sup>21</sup> FERC concluded that there was good cause for the extension based on prior FERC precedent that "providing more time for a project applicant to obtain necessary permits can be an appropriate basis for granting such an extension."<sup>22</sup> Cheniere requested that FERC extend the construction deadline for its pipeline project from November 22, 2024 to June 30, 2027, due to delays associated with the COVID-19 pandemic.<sup>23</sup> FERC likewise granted Cheniere's request for an extension, finding that the unforeseeable impacts of the COVID-19 pandemic satisfied FERC's requirements for good cause.<sup>24</sup>

On appeal, the D.C. Circuit held that FERC reasonably granted both National Fuel and Cheniere's request for an extension of time and adequately explained its decision.<sup>25</sup> Specifically, the D.C. Circuit upheld FERC's determination that the pipeline companies demonstrated good cause for an extension of time because both made good faith efforts to advance their projects and because delays in construction were caused by litigation and the COVID-19 pandemic, respectively.<sup>26</sup> Additionally, the D.C. Circuit disagreed with the Sierra Club's contentions that FERC was required to re-evaluate the environmental and other public interest findings underlying the projects' approval, instead holding that FERC is only required to revisit such prior findings if it deems it "necessary or appropriate."<sup>27</sup> The D.C. Circuit also concluded that such determinations about changed circumstances are entitled to substantial deference.<sup>28</sup>

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18. *Id.* at 28.

19. *Id.* at 21-23.

20. *Id.* at 21.

21. *Sierra Club*, 97 F.4th at 21-22.

22. *Id.* at 22.

23. *Id.*

24. *Id.* at 22-23.

25. *Sierra Club*, 97 F.4th at 24.

26. *Id.* at 25.

27. *Id.* at 26.

28. *Id.*

*C. PJM Power Providers Grp. v. FERC, Case No. 21-3068 (3d Cir. Dec. 1, 2023)*

On September 29, 2021, PJM’s latest minimum offer price rule (Focused MOPR) took effect by operation of law, after FERC failed to act on PJM’s filing within the sixty-day statutory deadline.<sup>29</sup> Consistent with FPA section 205(g), each Commissioner also issued a statement explaining his or her view on the Focused MOPR proposal, including certain Commissioners who issued a “Joint Statement” regarding their views.<sup>30</sup> On appeal at the U.S. Court of Appeals for the Third Circuit (Third Circuit), petitioners challenged the applicable standard and scope of judicial review under FPA section 205(g) of a FERC order that takes effect by operation of law and argued that FERC’s acceptance of the Focused MOPR policy was arbitrary and capricious under the Administrative Procedure Act (APA).<sup>31</sup>

The Third Circuit declined to exercise *de novo* review, holding that where a quorum of FERC Commissioners deadlocks two-to-two on an FPA section 205 rate filing, the court’s review of the resulting order must adhere to the same standards under the APA that would govern the review of an order approved by a FERC majority, and that Congress intended the Commissioners’ statements to play an integral part in its review.<sup>32</sup> Thus, the Third Circuit explained, it was required to ensure that the Commissioners who issued the Joint Statement engaged in decision making that was reasoned, principled, and based on the record.<sup>33</sup> The Third Circuit concluded that that FERC’s authority to determine whether wholesale rates are just and reasonable is exclusive, and that FERC’s constructive acceptance of the Focused MOPR was neither arbitrary nor capricious and was supported by substantial evidence in the record.<sup>34</sup>

*D. SEIA v. FERC, Case No. 20-72788 (9th Cir. Sept. 5, 2023)*

On September 5, 2023, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) “granted in part and denied in part a petition for review brought by the Solar Energy Industries Association and several environmental organizations challenging” FERC Order Nos. 872 and 872-A (collectively, Order No. 872).<sup>35</sup> Order No. 872 is a rule promulgated by the FERC that modifies “which facilities qualify for benefits under the Public Utility Regulatory Policy Act (“PURPA”) and how those facilities are compensated.”<sup>36</sup> The Ninth Circuit rejected Petitioners’ argument that Order No. 872 was inconsistent with the directives of PURPA for FERC to “encourage” the development of Qualified Facilities (QFs). Applying

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29. PJM Power Providers Grp. v. FERC, 88 F.4th 250, 264 (3d Cir. 2023).

30. *Id.*

31. *Id.* at 266-68.

32. *Id.* at 268-69.

33. PJM Power Providers Grp., 88 F.4th at 269.

34. *Id.* at 274.

35. Solar Energy Indus. Ass’n v. FERC, No. 20-72788, slip op. at 6 (9th Cir. Sept. 5, 2023).

36. *Id.* at 6.

the two-step framework of *Chevron U.S.A. Inc. v. NRDC, Inc.*, (*Chevron*)<sup>37</sup>, the Ninth Circuit held that: (1) PURPA on its face gives FERC broad discretion to evaluate which rules are necessary to encourage QFs and which are not; and (2) FERC's interpretation was not unreasonable.

The Ninth Circuit rejected Petitioners' challenges to four specific provisions of Order No. 872.<sup>38</sup> First, it held that when it applied the *Chevron* standard to the modified Site Rule—"which modified the rules for determining when facilities are deemed to be located at the same or separate sites"—it found that FERC's decision was within its discretion and the Site Rule is neither arbitrary and capricious under the APA, nor unlawfully retroactive.<sup>39</sup> Second, the panel held that FERC's modified fixed-rate rule, when examined against the *Chevron* standard, is a reasonable interpretation of PURPA's rate-related provisions and is not arbitrary or capricious under the APA.<sup>40</sup> Furthermore, the Ninth Circuit "held that the provision allowing states to adopt a rebuttable presumption that, for the utilities located within certain organized energy markets, the locational market price represents the purchasing utility's avoided costs, is not arbitrary or capricious under the APA."<sup>41</sup> Third, "the panel held that the provision reducing the threshold that terminates an electric utility's obligation to purchase from a QF if the QF has nondiscriminatory access to certain organized markets is not arbitrary or capricious under the APA."<sup>42</sup> Finally, on merits, the Ninth Circuit held that FERC violated the National Environmental Policy Act (NEPA) by failing to prepare, at minimum, an environmental assessment. The Ninth Circuit determined that the appropriate remedy for FERC's NEPA violation was to remand to the agency without *vacatur*.<sup>43</sup>

## II. FEDERAL ENERGY REGULATORY COMMISSION RULEMAKINGS

### A. FERC Issues New Transmission Planning and Cost Allocation Rule

On May 13, 2024, FERC issued Order No. 1920 to revise the *pro forma* Open Access Transmission Tariff ("OATT") to require transmission providers to conduct Long-Term Regional Transmission Planning. In the Order, FERC requires transmission providers to plan on a 20-year horizon, using multiple planning scenarios that incorporate the following factors: federal, tribal, state, and local laws and regulations; integrated resource plans; trends in fuel costs; retirements; interconnection requests and withdrawals; and policy goals and corporate commitments. Transmission providers must conduct this planning every five years, and then assess the plans by using at least seven enumerated economic and reliability benefits for the evaluation and selection of long-term regional transmission facil-

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37. *Chevron U.S.A. Inc. v. NRDC, Inc.*, 467 U.S. 837, 843 (1984).

38. *Solar Energy Indus. Ass'n*, slip op. at 7.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Solar Energy Indus. Ass'n*, slip op. at 7.

43. *Id.* at 7, 8.

ities: “(1) avoided or deferred reliability transmission facilities and aging infrastructure replacement; (2) either reduced loss of load probability or reduced planning reserve margin; (3) production cost savings; (4) reduced transmission energy losses; (5) reduced congestion due to transmission outages;” (6) mitigation of extreme weather events and unexpected system conditions; and (7) “capacity cost benefits from reduced peak energy losses.”<sup>44</sup>

Order No. 1920 established some coordination between the regional transmission planning process and the interconnection process by requiring transmission providers to include in their transmission plans any network upgrades that have been identified in at least three interconnection cluster studies but have not been built due to interconnection project withdrawals. These identified facilities must have a voltage of at least 200 kV and an estimated cost of at least \$30 million.<sup>45</sup>

With respect to alternative transmission technologies, Order No. 1920 requires transmission providers to consider how to incorporate (1) dynamic line ratings and (2) advanced power flow control devices in both the regional transmission planning process and the long-term transmission planning process.<sup>46</sup>

Order No. 1920 requires transmission providers to file one or more *ex ante* methods to allocate the costs of long-term regional transmission facilities.<sup>47</sup> Transmission providers must establish a six-month engagement period during which state entities may provide input on cost allocation.<sup>48</sup> While the states and transmission providers *may* determine an *ex-post* cost allocation methodology, state entities’ agreement is not required.<sup>49</sup>

Order No. 1920 also found that local transmission processes are unjust and unreasonable, and unduly discriminatory or preferential because they lack transparency and opportunity for meaningful stakeholder input and are not coordinated with regional transmission planning.<sup>50</sup> To remedy this, FERC directed transmission providers to adopt enhanced transparency for local transmission planning information and identify potential opportunities to “right-size” replacement transmission facilities.<sup>51</sup>

Finally, Order No. 1920 required transmission providers “to revise their existing interregional coordination procedures” to provide for “the sharing of information regarding the respective transmission needs identified in the long-term” plans and identify and evaluation of the “interregional transmission facilities that

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44. Order No. 1920, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*, 187 FERC ¶ 61,068 at PP 387, 669 (2024) [hereinafter Order No. 1920].

45. *Id.* at P 1145.

46. *Id.* at P 1239.

47. *Id.* at P 1291.

48. Order No. 1920, *supra* note 44, at P 1354.

49. *Id.* at P 1359.

50. *Id.* at P 1571.

51. *Id.* at P 1677.

may be more efficient or cost-effective transmission facilities to address transmission needs.”<sup>52</sup>

FERC Chair Willie Phillips and then-Commissioner Allison Clements concurred, stating that this is “a pivotal moment for the electricity system” and that Order No. 1920 would allow FERC to fulfill both its reliability imperative and its affordability imperative under the FPA.<sup>53</sup> They then respond to Commissioner Mark Christie’s critiques of the rule, arguing that he misrepresented the final rule and that the rule remains consistent with FERC’s cost causation principles.<sup>54</sup> Commissioner Christie dissented, arguing that the rule was a jurisdictional overreach by FERC, enacted only to serve the interest of certain resources.<sup>55</sup>

Order No. 1920 became effective on August 12, 2024<sup>56</sup> Compliance filings from transmission providers will be due June 12, 2025, ten months from the effective date of the final rule.<sup>57</sup>

### *B. FERC Issues Final Rule on Rule Backstop Transmission Siting Procedures*

FPA Section 216(b) authorized FERC to issue permits to build or modify electric transmission facilities in national interest electric transmission corridors designated by the U.S. Department of Energy (National Corridors).<sup>58</sup> In Order No. 1977, FERC clarified that it only has authority to issue permits to construct or modify electric transmission facilities in a National Corridor if a state has denied a siting application.<sup>59</sup> FERC explained that Order No. 1977 provides additional safeguards for landowners, environmental justice communities, and Indian Tribes during the permit application process.<sup>60</sup> For example, Order No. 1977 includes a “Landowner Bill of Rights” that requires applicants in their pre-filing notification to send affected landowners information about their rights to intervene in any open FERC proceeding.<sup>61</sup> Order No. 1977 also codified the “Applicant Code of Conduct,” which FERC believes will help applicants demonstrate that they have made good faith efforts to engage with landowners early in the permitting process.<sup>62</sup> Lastly, Order No. 1977 requires applicants to develop engagement plans that describe completed and planned outreach to environmental justice communities and

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52. Order No. 1920, *supra* note 44, at P 35.

53. *Id.* at PP 1-2 (Chair Phillips & Comm’r Clements, concurring).

54. *Id.* at PP 13-28 (Chair Phillips & Comm’r Clements, concurring).

55. *Id.* at PP 1-21 (Comm’r Christie, dissenting).

56. Order No. 1920, *supra* note 44, at P 1792; *see* Order No. 1920, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*, 89 Fed. Reg. 49,280 (2024) (to be codified at 18 C.F.R. pt. 35).

57. Order No. 1920, *supra* note 44, at P 1768.

58. Order No. 1977, *Applications for Permits to Site Interstate Electric Transmission Facilities*, 187 FERC ¶ 61,069 at P 2 (2024) [hereinafter Order No. 1977].

59. *Id.* at P 15.

60. *Id.* at P 16.

61. *Id.* at P 168.

62. Order No. 1977, *supra* note 58, at P 73.



Indian Tribes to describe the impacts of the transmission project on those communities.<sup>63</sup> Order No. 1977 did not adopt the Notice of Proposed Rulemaking’s (NOPR) proposal to allow state siting proceedings and FERC’s pre-filing process to proceed simultaneously. Rather, Order No.1977 maintains the current policy of holding FERC proceeding one year after the state proceeding commences.<sup>64</sup>

### C. FERC Finalizes Large-Scale Reforms to Generator Interconnection Procedures

On July 28, 2023, FERC issued Order No. 2023, which reformed the standardized generator interconnection procedures and agreements adopted in Order No. 2003 and progeny applicable to all transmission providers.<sup>65</sup> On March 21, 2024, FERC issued Order No. 2023-A, which largely upheld Order No. 2023 and provided clarification on several aspects of the final rule.<sup>66</sup> The intent of Order No. 2023 is to reduce backlogs for projects seeking to interconnection to the transmission system, improve certainty in the interconnection queue process, and undue discrimination for new technologies.<sup>67</sup>

The final rule requires all transmission providers to implement a first-ready, first-served cluster study process — a single-phase 150-day process, preceded by a 45-calendar day customer request window and 60-calendar day customer engagement window — to evaluate interconnection requests.<sup>68</sup> The new rule also replaced the “reasonable efforts” standard with a penalty structure imposed on transmission providers for study delays.<sup>69</sup>

Order No. 2023 also requires increased information access to interconnection customers, including requiring transmission providers to maintain publicly available “heatmaps” of available transmission capacity.<sup>70</sup> The changes include new cost allocation procedures, increased financial commitments and readiness requirements, withdrawal penalties, and higher affected systems coordination.<sup>71</sup> The final rule further requires transmission providers to allow co-location of one or more generating facilities, offer surplus service, and use operating assumptions that reflect the proposed charging behavior of electric storage resources.<sup>72</sup> The final rule also requires transmission providers to evaluate certain transmission

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63. *Id.* at PP 109, 329.

64. *Id.* at P 53.

65. Order No. 2023, *Improvements to Generator Interconnection Procedures and Agreements*, 184 FERC ¶ 61,054 (2023) [hereinafter Order No. 2023].

66. Order No. 2023-A, *Improvements to Generator Interconnection Procedures and Agreements*, 186 FERC ¶ 61,199 (2024) [hereinafter Order No. 2023-A].

67. *See id.* at P 37.

68. *Id.* at P 324, 327-28; *see id.* at app. C, § 7.4.

69. Order No. 2023, *supra* note 65, at P 965.

70. Order No. 2023-A, *supra* note 66, at PP 94, 135.

71. Order No. 2023, *supra* note 65, at PP 416, 457 (cost allocation for cluster study costs); *id.* at PP 453-54 (cost allocation for network upgrades); *id.* at PP 690-93 (financial commitments and readiness requirements); *id.* at P 791 (withdrawal penalties); *id.* at P 1112 (affected systems coordination).

72. *Id.* at P 1346 (co-location of generating facilities); *id.* at PP 1436-37 (surplus service); *id.* at P 1509 (storage resources operating assumptions).

technologies during the study process.<sup>73</sup> The final rule became effective on November 6, 2023.

*D. FERC Directs NERC to Develop Reliability Standards for Inverter-Based Resources*

On October 19, 2023, FERC issued Order No. 901, which directed the North American Electric Reliability Corporation (NERC) “to develop new or modified Reliability Standards that address reliability gaps related to inverter-based resources” (IBR) in data sharing; model validation; planning and operational studies; and performance requirements.<sup>74</sup> For data sharing, FERC directed NERC:

to develop new or modified Reliability Standards that require registered IBR generator owners and operators to provide IBR-specific modeling data and parameters . . . that accurately represent the registered IBRs to their planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities that are responsible for planning and operating the Bulk-Power System.<sup>75</sup>

The new or modified standard would also require “IBR generator owners to install disturbance monitoring equipment at their buses and elements” and to provide that disturbance monitoring data to bulk-power system planners and operators.<sup>76</sup>

For model validation, FERC directed NERC “to develop new or modified Reliability Standards that require the use of approved industry generic library IBR models that accurately reflect the behavior of IBRs during steady state, short-circuit, and dynamic conditions when developing planning, operations, and interconnection-wide models.”<sup>77</sup> Generator owners would be required to provide models that represent the dynamic behavior of their resources to bulk-power system planners and operators for validation and studies.<sup>78</sup> NERC would need “to develop new or modified Reliability Standards that require planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities to establish for each interconnection a uniform framework with modeling criteria, a registered modeling designee, and necessary data exchange requirements.”<sup>79</sup>

NERC would also need to develop new or modified Reliability Standards that would require planning coordinators and transmission planners to include IBR performance data in their planning models.<sup>80</sup> Finally, the order charged NERC with developing performance requirements for IBRs. The standards would direct registered IBR generator owners and operators “to ride through frequency and

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73. *Id.* at P 1578.

74. Order No. 901, *Reliability Standards to Address Inverter-Based Resources*, 185 FERC ¶ 61,042 (2023) [hereinafter Order No. 901].

75. *Id.* at P 76.

76. *Id.* at P 85.

77. *Id.* at P 122.

78. Order No. 901, *supra* note 74, at PP 140, 156.

79. *Id.* at P 161.

80. *Id.* at P 174.

voltage system disturbances” and “to continue to inject current and perform frequency support during a Bulk-Power System disturbance.”<sup>81</sup>

FERC directed NERC to submit to FERC an informational filing within 90 days of the issuance of the order that included a “detailed, comprehensive standards development plan and explanation of how NERC will prioritize the development of new or modified Reliability Standards.”<sup>82</sup> NERC submitted this informational filing on January 17, 2024.<sup>83</sup>

#### *E. FERC Issues NOPR Proposed to Prohibit Transmission Providers from Being Compensated for Reactive Power Within the Standard Power Factor Range*

On March 21, 2024, FERC issued a NOPR to address compensation for reactive power within the standard power factor range.<sup>84</sup> The proposed rule would revise Schedule 2 of the *pro forma* OATT to prohibit transmission providers from including in the transmission rates any charges associated with the supply of reactive power within the standard power factor range<sup>85</sup> from generating facilities.<sup>86</sup> FERC further proposed to “remove from the *pro forma* generator interconnection agreements the requirement that a transmission provider pay an interconnection customer for reactive power within the standard power factor range if the transmission provider pays its own or affiliated generators for the same service.”<sup>87</sup> Under the proposal, “transmission providers would be required to pay an interconnection customer for reactive power only when the transmission provider asks the interconnection customer to operate its facility outside the standard power factor range set forth in its interconnection agreement.”<sup>88</sup> The deadline for comments on the NOPR was May 28, 2024.

### III. FEDERAL ENERGY REGULATORY COMMISSION NOTICES OF INQUIRY

#### *A. FERC Opens Inquiry into Capacity Allocation on Non-Contiguous Pipeline Segments*

On March 21, 2024, FERC issued a Notice of Inquiry (NOI) seeking additional information on whether it should continue to allow interstate pipelines to package “high value” capacity with non-contiguous and operationally unrelated

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81. *Id.* at P 190.

82. Order No. 901, *supra* note 74, at P 223.

83. *Informational Filing Regarding the Development of Reliability Standards Responsive to Order No. 901*, FERC Docket No. RM22-12 (Jan. 17, 2024).

84. Notice of Proposed Rulemaking, *Compensation for Reactive Power Within the Standard Power Factor Range*, 186 FERC STATS & REGS. ¶ 61,203, 89 Fed. Reg. 21454 (2024) [hereinafter NOPR].

85. Operating “inside the standard power factor range” refers to a generating facility providing reactive power within the power factor range set forth in the generating facility’s interconnection agreement when the unit is online and synchronized to the transmission system.

86. NOPR, *supra* note 84, at P 1.

87. *Id.*

88. *Id.*

parcels of capacity in a single auction or open season, thus requiring interested bidders to bid on both segments of capacity.<sup>89</sup> According to current FERC regulations, a pipeline is required to post any available firm capacity on its website as soon as it becomes available.<sup>90</sup> This capacity is sold in a variety of ways, including on a first-come, first-served basis or through an auction.<sup>91</sup> Under this approach, pipelines, in accordance with their FERC gas tariffs, can conduct an open season where they announce available capacity along with the criteria for an acceptable bid, the method for determining the best bid, and the bid closing date.<sup>92</sup> During the open season, pipelines evaluate the bids for capacity based on their net present value.<sup>93</sup> On June 2, 2022, a group of gas associations and shippers petitioned FERC to initiate a rulemaking proceeding regarding interstate pipelines' use of these so called "junk and jewel" auctions and open seasons, which they believe distort market pricing and ultimately lead to higher prices for natural gas consumers.<sup>94</sup> The petitioners are particularly concerned that these "junk and jewel" packages effectively deny them access to needed capacity and, in practical terms, result in undue discrimination and unjust and unreasonable rates.<sup>95</sup> In the NOI, FERC seeks comments from industry participants on what, if any, policy changes it should implement regarding interstate pipelines packaging high value capacity with non-contiguous and operationally unrelated parcels of capacity in a single auction or open season, as well as the potential impacts of any such policy changes.<sup>96</sup> Specifically, FERC is soliciting comments on:

1. Additional information and data on interstate natural gas pipeline posting practices related to the packaging of non-contiguous and/or operationally unrelated segments of capacity in a single auction or open season;
2. Relevant information that bears on whether FERC should reconsider its policy, including the impact of bid aggregation on pipeline rates and whether certain shippers are effectively prevented from bidding on packages of capacity that include segments for which they do not have an operational need; and
3. What regulatory, economic, or policy goals would, or would not, be achieved by modifying the current policy.<sup>97</sup>

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89. Notice of Inquiry, *Petition for Rulemaking to Update Commission Regulations Regarding Allocation of Interstate Pipeline Capacity*, 186 FERC ¶ 61,197 at P 1 (2024) [hereinafter Interstate Pipeline NOI].

90. *Id.* at P 2.

91. *Id.*

92. *Id.* at P 3.

93. Interstate Pipeline NOI, *supra* note 89, at P 3.

94. *Id.* at P 6.

95. *Id.* at P 7.

96. *Id.* at P 10.

97. Interstate Pipeline NOI, *supra* note 89, at P 1.

*B. FERC Issues Notice of Inquiry into Section 203(a)(2) Blanket Authorizations*

On December 19, 2023, FERC issued a NOI to examine whether and how to revise its policy on providing blanket authorizations for holding companies, including investment companies, to acquire securities in electric utilities and their upstream owners pursuant to section 203(a)(2) of the FPA.<sup>98</sup> FERC's NOI sought comments in response to various questions related to whether, and if so, how FERC should revise its current policy on providing blanket authorizations for investment companies.<sup>99</sup> In addition, FERC sought comments in response to questions regarding whether FERC should consider the size of an investment company in evaluating a request for blanket authorization and what factors FERC should consider when evaluating control over public utilities as part of a request for blanket authorization.<sup>100</sup> Commissioner Christie concurred in a separate statement, stating that there is a potential conflict between the interests of investment companies and an electric utility's public service obligations.<sup>101</sup> Commissioner Christie noted that while Congress has directed FERC to streamline regulations to facilitate greater investments in the utility industry, this should not come at the expense of protecting consumers.<sup>102</sup> Commissioner Christie further stated that it is FERC's task to balance these responsibilities and continually evaluate this balance.<sup>103</sup>

IV. FEDERAL ENERGY REGULATORY ACTIONS ON EXTREME WEATHER AND RELIABILITY

*A. FERC Issues 2023-2024 Winter Energy Market and Electric Reliability Assessment*

On November 16, 2023, FERC staff released the 2023-2024 Winter Energy Market and Electric Reliability Assessment report (Report), which forecasts trends and considerations for energy markets and electric reliability for the upcoming winter season (December through February).<sup>104</sup> The Report highlights a projected increase in temperatures in the northern half of the country, which is expected to lower demand for natural gas and electricity.<sup>105</sup> Consequently, natural gas production is anticipated to slow, exerting downward pressure on electricity prices, particularly in the western United States.<sup>106</sup> The report also integrates data from NERC's forthcoming Winter Reliability Assessment and Long Term Reliability

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98. Notice of Inquiry, *Federal Power Act Section 203 Blanket Authorizations for Investment Companies*, 185 FERC ¶ 61,192 at P 1 (2023) [hereinafter FPA NOI].

99. *Id.* at P 10.

100. *Id.* at P 11.

101. FPA NOI, *supra* note 98, at P 1 (Comm'r Christie, concurring).

102. *Id.* at P 4.

103. *Id.*

104. *Winter Energy Market and Electric Reliability Assessment*, FERC 1 (Nov. 16, 2023), <https://ferc.gov/news-events/news/report-2023-2024-winter-energy-market-and-electric-reliability-assessment>.

105. *Id.* at 4.

106. *Id.* at 57.

Assessment, indicating that all six NERC regions will have sufficient generation to meet expected demand and reserve requirements under normal conditions, though some may need to implement mitigation measures during extreme winter conditions.<sup>107</sup>

The report also examines lessons learned from Winter Storm Uri and Winter Storm Elliott, outlining steps utilities and regional operators are taking to better prepare for extreme weather.<sup>108</sup> These measures include developing site-specific generator winter preparedness plans, installing situational awareness tools, and reviewing fuel supply arrangements and communication protocols.<sup>109</sup> NERC recommends additional cold weather preparations, such as conducting fuel surveys, monitoring fuel supplies, and taking early action to mitigate reserve shortfalls.<sup>110</sup> NERC also urges state regulators and policymakers to grant environmental waivers for reliability reasons and to appeal to the public to reduce energy use during extreme conditions.<sup>111</sup>

#### *B. Blackstart Study Recommends Collaboration, Planning for Resilience*

On December 19, 2023, staff from FERC, NERC, and a collection of regional reliability entities issued a joint study<sup>112</sup> evaluating the availability of blackstart resources in the Texas Interconnection during extreme cold weather conditions. The study was recommended by the 2021 report on 2021 Winter Storm Uri, which caused blackouts for nearly 10 million consumers. The study identified instances where blackstart resources were rendered unavailable. Among other things, the study recommended that relevant electric and natural gas entities develop and implement blackstart system restoration plans and work collaboratively across multiple jurisdictions to effectively restore the blackstart system.<sup>113</sup> The report states that such a plan should prioritize the natural gas infrastructure required to supply natural gas to the blackstart, next-start, and other essential resources.<sup>114</sup> The study also recommends that grid operators “examine the diversity of fuel, single points of failure, fuel arrangements, and other limitations of each blackstart resource,” and consider a wide variety of options into entities’ blackstart system restoration plans.<sup>115</sup> These considerations, the report concludes, could add diversity and resilience, particularly in instances where natural gas to black start and next-start resources is limited or unavailable.<sup>116</sup>

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107. *Id.* at 2.

108. *Winter Energy Market and Electric Reliability Assessment*, *supra* note 104, at 2.

109. *Id.* at 51.

110. *Id.* at 37-38.

111. *Id.* at 53-56.

112. *Blackstart and Next-Start Resource Availability in the Texas Interconnection*, FERC 4 (Dec. 19, 2023), <https://www.ferc.gov/media/ferc-nerc-regional-entity-joint-blackstart-and-next-start-resource-availability-study-texas>.

113. *Id.* at 24.

114. *Id.* at 31.

115. *Id.* at 15.

116. *Blackstart and Next-Start Resource Availability in the Texas Interconnection*, *supra* note 112, at 22.

C. *FERC, NERC Issue Final Report on Winter Storm Elliott*

On November 7, 2023, staff from FERC, NERC, and a collection of regional reliability entities released a final report<sup>117</sup> on lessons learned following Winter Storm Elliott, the December 2022 storm that contributed to power outages for millions of electricity customers across the eastern half of the United States. The report analyzes the performance of the electric generating fleet in the Eastern Interconnection and provides eleven recommendations for maintaining grid reliability during challenging weather conditions. For example, the report (1) suggests comprehensive monitoring of how the industry is implementing cold weather Reliability Standards;<sup>118</sup> (2) states that congressional and state legislation “is needed to establish reliability rules for natural gas infrastructure” to ensure reliability;<sup>119</sup> (3) recommends the North American Energy Standards Board convene a meeting of grid operators and companies to identify any needed communications improvements;<sup>120</sup> and (4) states that an independent research group should conduct studies to analyze the necessity of additional natural gas infrastructure.<sup>121</sup> Chair Phillips hoped the recommendations provided in the report will educate grid operators and stakeholders on steps to take to avoid similar outages following winter storms in the future.<sup>122</sup>

D. *FERC and NERC Staff Present January 2024 Arctic Storms Review*

At FERC’s April 25, 2024 open meeting, FERC and NERC staff presented a system performance review of the January 2024 arctic storms, which examined weather conditions, natural gas performance, planning and operations practices, and generator performance, focusing on progress since the completion of the joint inquiries into Winter Storms Uri and Elliott and the December 2023 Blackstart Availability Study.<sup>123</sup> Key takeaways from the review include:

(1) during Winter Storms Getti and Heather, there was *zero* system operator initiated load shed; (2) natural gas and electric entities shared positive steps taken to improve preparation for extreme cold weather, highlighting improved communication and coordination; (3) generators reported fewer derates and outages as compared to past winter storms, potentially attributable to improved winter preparedness, proactive generator commitment, improved gas generator stability, and the incorporation of op-

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117. See generally *Inquiry into Bulk-Power System Operations During December 2022 Winter Storm Elliott*, FERC (Oct. 2023), <https://www.ferc.gov/media/winter-storm-elliott-report-inquiry-bulk-power-system-operations-during-december-2022>.

118. *Id.* at 131.

119. *Id.* at 137.

120. *Id.* at 143.

121. *Inquiry into Bulk-Power System Operations During December 2022 Winter Storm Elliott*, *supra* note 117, at 144.

122. *FERC, NERC Release Final Report on Lessons from Winter Storm Elliott*, FERC 1 (Nov. 7, 2023), <https://ferc.gov/news-events/news/ferc-nerc-release-final-report-lessons-winter-storm-elliott>.

123. See *January 2024 Arctic Storms Review Finds No Major Gas-Electric Performance Problems*, FERC (Apr. 25, 2024), <https://ferc.gov/news-events/news/january-2024-arctic-storms-review-finds-no-major-gas-electric-performance-problems>.

erating limitations into operating plans; and (4) there is need for continued implementation of recommendations from the Winter Storms Uri and Elliott reports as well as the Blackstart Availability Study.<sup>124</sup>

Updates to the implementation of these recommendations include a joint FERC and NERC website dashboard to track the status of the recommendations and substantial progress towards the thirty-nine recommendations to improve grid reliability during extreme cold weather.<sup>125</sup> Progress has been made on two-thirds of the recommendations from the Winter Storms Uri and Elliott reports, including the completed development of the generator cold weather reliability standards initially recommended by the Uri report.<sup>126</sup> The remaining recommendations still need additional attention to improve natural gas cold weather preparedness and gas-electric coordination.<sup>127</sup>

#### *E. FERC Chairman Issues Reliability Report*

On December 20, 2023, FERC Chair Phillips posted the “Chairman’s Reliability Report—A Year in Review.”<sup>128</sup> The report highlights several key regulatory measures including Order No. 887 for enhanced network security monitoring of high-impact and certain medium-impact Bulk Electric System Cyber Systems, and the introduction of Reliability Standard CIP-003-9 which extends security controls by mandating methods to disable vendor remote access for low-impact facilities.<sup>129</sup> Further, Order No. 893 encourages utility investments in advanced cybersecurity through incentive-based rate treatments.<sup>130</sup> Physical security was also a major concern, evidenced by a review of the Physical Security Reliability Standard and discussions at a joint technical conference focused on protecting the bulk-power system.<sup>131</sup>

Additionally, the report reviews measures to bolster extreme weather resilience, prompted by vulnerabilities exposed by Winter Storm Elliott in December 2022, leading to FERC directing NERC to draft new reliability standards by December 2024 and requiring transmission providers to assess weather vulnerabilities.<sup>132</sup> The evolution of the resource mix and its impact on grid reliability were addressed through the approval of NERC’s IBR Registration Work Plan and new reliability standards for inverter-based resources to integrate clean energy technologies effectively.<sup>133</sup> Order No. 2023 targeted reforms in generator interconnection

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124. *System Performance Review of the January 2024 Arctic Storms*, FERC 2 (Apr. 25, 2024), <https://ferc.gov/news-events/news/presentation-system-performance-review-january-2024-arctic-storms>.

125. *Id.* at 28.

126. *Id.*

127. *Id.*

128. See generally Willie L. Phillips, *Chairman’s Reliability Report: A Year in Review*, FERC (Dec. 20, 2023), <https://ferc.gov/news-events/news/chairmans-reliability-report-year-review>.

129. *Id.*

130. *Id.* at 2.

131. *Id.*

132. Phillips, *supra* note 128, at 2-3.

133. *Id.* at 3-4.



procedures to alleviate interconnection queue backlogs.<sup>134</sup> Collectively, Chair Phillip’s report emphasized that these initiatives underscored FERC’s stance in maintaining grid reliability given evolving cybersecurity threats, physical security concerns, and the integration of new energy resources.

## V. FEDERAL-STATE TASK FORCES AND COLLABORATIONS

### A. *Federal-State Task Force on Electric Transmission*

On July 16, 2023, the Joint Federal-State Task Force on Electric Transmission (Task Force) held its seventh meeting at which it discussed Grid-Enhancing Technologies and heard from one guest speaker: Dr. Andrew Phillips, Vice President of Transmission & Distribution Infrastructure Sector, Electric Power Research Institute.<sup>135</sup> On February 28, 2024, the Task Force held its eighth meeting at which it discussed transmission siting and heard from two guest speakers from the Department of Energy Grid Deployment Office: Gretchen Kershaw, Senior Advisor for Transmission, and Jeffrey Dennis, Deputy Director for Transmission.<sup>136</sup> The February 28, 2024 meeting was the final meeting of the Task Force.<sup>137</sup>

### B. *Federal and State Current Issues Collaborative*

Given the success of the Task Force, FERC established the Federal and State Current Issues Collaborative (Collaborative).<sup>138</sup> The Collaborative will be comprised of all sitting FERC Commissioners and representatives from ten state commissions to be nominated by the National Association of Regulatory Utility Commissioners (NARUC), with two state nominees from each NARUC region.<sup>139</sup> The Collaborative is intended to provide a venue “for federal and state regulators to share perspectives, increase understanding, and, where appropriate, identify potential solutions regarding challenges and coordination on matters that impact specific state and federal regulatory jurisdiction”<sup>140</sup> and explore where coordination is needed.<sup>141</sup> Possible topic areas include: “electric reliability and resource adequacy; natural gas-electric coordination; wholesale and retail markets; new technologies and innovations; and infrastructure.”<sup>142</sup> The Collaborative is expected to

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134. *Id.* at 4.

135. *See generally* *Seventh Meeting of the Joint Federal-State Task Force on Electric Transmission*, FERC, <https://www.ferc.gov/news-events/events/seventh-meeting-joint-federal-state-task-force-electric-transmission-07162023> (last updated July 17, 2023).

136. *Meeting of the Joint Federal-State Task Force on Electric Transmission*, FERC, <https://cms.ferc.gov/news-events/events/joint-federal-state-task-force-electric-transmission-02282024> (last updated Mar. 5, 2024).

137. Order Establishing the Federal and State Current Issues Collaborative, *Joint Fed.-State Task Force on Elec. Transmission*, 186 FERC ¶ 61,189 at P 3 (2024).

138. *Id.* at P 4.

139. *Id.* at P 6.

140. *Id.* at P 5.

141. 186 FERC ¶ 61,189, at P 5.

142. *Id.*

convene its first meeting in the Fall of 2024 with an agenda expected to be issued at least two weeks before the meeting.<sup>143</sup>

## VI. OTHER FERC ISSUANCES

### A. *FERC Establishes New Policy to Reject Hydropower Preliminary Permit Applications Based on Tribal Opposition to Projects Located on Their Tribal Lands*

FERC established a new policy governing its issuance of preliminary permits under section 4(f) of the FPA, pursuant to which it will not issue preliminary permits for projects located on Tribal lands if the Tribe on whose land the project is proposed to be located opposes the permit.<sup>144</sup> FERC explained that this policy change is based on the agency's commitment to ensuring that Tribal concerns and interests are considered whenever FERC's actions or decisions have the potential to adversely affect Tribes or Tribal trust resources.<sup>145</sup> To avoid future permit denials, FERC emphasized that potential applicants should fully inform Tribes about proposed projects on their lands before filing the permit application.<sup>146</sup>

### B. *FERC Issues Equity Action Plan*

On June 6, 2024, FERC staff released the Equity Action Plan 2024 Update (Plan).<sup>147</sup> The Plan is the second of its kind and is response to President Biden's Executive Order 13985: *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*.<sup>148</sup> The Plan highlighted the following strategies intended to advance equity in the context of FERC's mission and goals.<sup>149</sup>

1. Enhance Awareness of Commission Activities and Opportunities for Public Participation;
2. Strengthen Tribal Consultation and Engagement;
3. Ensure Project Certification and Siting Policies and Processes are Consistent with Environmental Justice;
4. Foster Staff Equity Readiness; and
5. Advance Equity in Federal Procurement.

The Plan acknowledged that environmental justice communities, including some minority and low-income populations, face barriers to meaningfully engaging in FERC's processes.<sup>150</sup> In response, the Plan notes that FERC has expanded

143. *Id.* at PP 7-8.

144. *See, e.g., Nature and People First Arizona PHS, LLC*, 186 FERC ¶ 61,117 at P 14 (2024).

145. *Id.* at PP 13-15.

146. *Id.* at P 15 n.34.

147. *Equity Action Plan 2024 Update*, FERC (2024), <https://www.ferc.gov/equity> [hereinafter Equity Action Plan].

148. *Id.* at 1; *see* Exec. Order No. 13985, 89 Fed. Reg. 7,009 (Jan. 25, 2021).

149. Equity Action Plan, *supra* note 147, at 1.

150. *Id.* at 3.

its strategy beyond what was identified in the 2022 Equity Action Plan, and will now focus on enhancement of engagement and public participation efforts Commission-wide.<sup>151</sup> The Plan also outlines efforts to enhance consultation and engagement with Tribal governments.<sup>152</sup> Further, in continuation of FERC's first Equity Action Plan, the updated Plan consolidates efforts to equitable processes and outcomes in natural gas certificate and hydroelectric licensing practices and establish actions intended to address those concerns.<sup>153</sup> Additionally, the Plan seeks to establish equity in federal procurement by (1) exploring ways to enhance stakeholder engagement with businesses from underserved and/or underrepresented communities; (2) increasing opportunities for underserved communities and/or underrepresented communities through facilitation of programmatic acquisition forecasting, acquisition planning and requirements; and (3) exploring ways to reduce the burden on businesses from underserved communities and/or underrepresented businesses and communities concerning locating opportunities.<sup>154</sup>

Next, the Plan provided a progress update on the 2022 Action Plan. The Plan showed progress on building the office of public participation, strengthening Tribal consultation and engagement, ensuring natural gas certification and siting policies and process are consistent with environmental justice, ensuring hydro-power licensing policies and processes are consistent with environmental justice, and fostering FERC staff readiness.<sup>155</sup> Finally, the Plan provides five strategies to advance equity in fiscal year 2024.<sup>156</sup> First, FERC seeks to enhance awareness of FERC activities and opportunities through public participation.<sup>157</sup> To address the identified barriers to public participation, FERC seeks to build relationships with communities potentially affected by FERC actions through effective communications and meaningful engagement.<sup>158</sup> Second, FERC seeks to strengthen Tribal consultation and engagement.<sup>159</sup> To do this, FERC plans to explore opportunities to enhance communication efforts and develop targeted information resource assistance to Tribal governments.<sup>160</sup> Third, FERC seeks to ensure infrastructure project review policies and processes are consistent with environmental justice.<sup>161</sup> To address this, FERC plans to development guidance regarding environmental justice in the context of infrastructure proceedings.<sup>162</sup> Fourth, FERC seeks to foster FERC Staff equity readiness.<sup>163</sup> The Plan provides that FERC will develop inter-

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151. *Id.*

152. *Id.* at 4.

153. Equity Action Plan, *supra* note 147, at 4.

154. *Id.* at 5.

155. *Id.* at 6-8.

156. *Id.* at 10-19.

157. Equity Action Plan, *supra* note 147, at 10.

158. *Id.*

159. *Id.* at 12.

160. *Id.*

161. Equity Action Plan, *supra* note 147, at 14.

162. *Id.*

163. *Id.* at 16.

nal “guidance regarding environmental justice concerns in the context of infrastructure proceedings” and will increase staff knowledge and expertise on environmental justice and equity matters.<sup>164</sup> Lastly, FERC seeks to advance equity in federal government procurement.<sup>165</sup> To achieve this, FERC, among other things will: (1) challenge FERC program offices to conduct and participate in agency outreach events that help ensure that underserved and underrepresented communities and businesses understand FERC’s mission; and (2) “facilitate programmatic acquisition forecasting, acquisition planning, and requirements development to eliminate ambiguity and increase opportunities for underserved communities and underrepresented businesses.”<sup>166</sup>

### C. FERC Issues 2023 State of the Markets

On March 21, 2024, FERC issued its State of the Markets Report, developed by the Office of Energy Policy and Innovation’s Division of Energy Market Assessments.<sup>167</sup> The annual report provided an update on market conditions and emerging issues in the natural gas and electricity markets within FERC’s jurisdiction.<sup>168</sup> This report differed from “previous reports, with significant market trends and fundamentals for the year 2023 being presented first and the underlying data presented in an Energy Fundamentals Almanac at the end of the report.”<sup>169</sup> This year’s report also described “emerging issues in electricity and natural gas markets, including transformations in market structures” as well as electricity and natural gas infrastructure.<sup>170</sup>

The key findings of the 2023 report include: (1) natural gas prices decreased from the prior year for most regions of the United States due to increased production and a mild winter; (2) these lower gas prices resulted in lower electricity prices because gas-fired generators typically set the market price as the marginal resource type; (3) the generation mix continued to see retirements of coal plants and additions of natural gas, wind, and solar generation facilities; (4) certain regional transmission organizations/independent system operators (RTOs/ISOs) implemented market reforms that reflected these trends and addressed system needs, including the system need for operational flexibility; (5) solar led the way in terms of new capacity, doubling the new capacity provided by wind, battery, or natural gas; (6) nevertheless, natural gas continued to represent the largest share of the United States’ installed capacity, followed by coal, wind, and nuclear; (7) similarly, natural gas generation represented the largest share of electricity generated in 2023, with the next largest shares represented by nuclear, coal, wind, hydro, and utility-

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164. *Id.*

165. Equity Action Plan, *supra* note 147, at 17.

166. *Id.* at 18-19.

167. See generally *2023 State of the Markets Staff Report*, FERC (Mar. 21, 2024), <https://www.ferc.gov/media/2023-state-markets-report>.

168. *Id.*

169. *Id.*

170. *Id.*

scale solar resources; (8) hot summer temperatures contributed to higher electricity consumption in the Electric Reliability Council of Texas, Inc., Midcontinent Independent System Operator, Inc., and Southwest Power Pool, Inc. compared to each RTO/ISO's ten-year average; and (9) "in natural gas markets, increased exports and demand from natural gas power plants drove total demand to historically high levels even though natural gas demand in the residential and commercial sector was lower year-over-year."<sup>171</sup>

#### *D. FERC Office of Enforcement Releases 2023 Report*

On November 16, 2023 FERC's Office of Enforcement (OE) issued its 2023 Report on Enforcement (2023 Report).<sup>172</sup> In Fiscal Year 2023, FERC's Division of Investigations opened nineteen new investigations, closed nine pending investigations without further action, and negotiated twelve settlements approved by FERC, nine of which resolved eight investigations for a total of \$33.39 million, split between \$11.72 million in civil penalties and \$21.67 million in disgorgement.<sup>173</sup> The remaining three "settlements resolved one district court litigation matter for \$4 million in disgorgement, one Order to Show Cause" proceeding for a \$4.4 million civil penalty, and one U.S. Court of Appeals matter for a \$10.75 million civil penalty.<sup>174</sup> The Division of Audits and Accounting completed nine audits of public utility, natural gas, and oil companies, resulting in sixty eight findings of noncompliance, 332 recommendations for corrective action, and directing approximately \$33 million in refunds and other recoveries.<sup>175</sup> Division of Analytics and Surveillance staff conducted enhanced surveillance related to Winter Storm Elliott and the Winter 2022/2023 Western Energy Price Spike, with continued monitoring and referrals made to OE investigators.<sup>176</sup>

#### *E. FERC Conditionally Approves Extended Day Ahead Market*

On December 20, 2023, FERC conditionally accepted California Independent System Operator Corp.'s (CAISO) Extended Day Ahead Market (EDAM) tariff filing.<sup>177</sup> On August 22, 2023, CAISO filed proposed revisions to its Open Access Transmission Tariff (Tariff) to implement its Day-Ahead Market Enhancements (DAME) and EDAM proposals. Under the DAME proposal, CAISO proposed to revise its Tariff to establish two new day-ahead market products—Imbalance Reserves and Reliability Capacity. The DAME proposal would update CAISO's existing day ahead market to implement and accommodate EDAM func-

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171. *2023 State of the Markets Staff Report*, *supra* note 167, at 23.

172. *See generally* *2023 Report on Enforcement*, FERC Docket No. AD07-13-017 (Nov. 16, 2023).

173. *Id.* at 6-7.

174. *Id.* at 7.

175. *Id.*

176. *2023 Report on Enforcement*, *supra* note 172, at 7.

177. *California Independent System Operator Corporation*, 185 FERC ¶ 61,210 at P 2 (2023).

tions, as well as address supply and load forecast differences, or imbalances, between the day-ahead and real-time markets.<sup>178</sup> CAISO proposed to offer participation in the day-ahead market to external balancing authority areas in the western states.<sup>179</sup>

FERC accepted CAISO's proposed DAME Tariff revisions, subject to condition, effective as of the actual implementation date,<sup>180</sup> subject to CAISO notifying FERC of the actual implementation date within five business days after CAISO's actual implementation date.<sup>181</sup> Additionally, FERC accepted in part and rejected in part, subject to condition, CAISO's proposed EDAM Tariff revisions, effective December 21, 2023, and accepted the rest of the EDAM Tariff revisions effective as of the actual implementation date, as requested, subject to CAISO notifying FERC of the actual implementation date within five business days after CAISO's actual implementation date.<sup>182</sup> FERC directed CAISO to submit a compliance filing within sixty days of the date of the Order.<sup>183</sup> CAISO submitted the compliance filing on February 16, 2024, and FERC accepted that filing via letter order on April 30, 2024.<sup>184</sup>

#### *F. 2023 Assessment of Demand Response and Advanced Metering*

In December 2023, FERC issued its eighteenth annual report on demand response and advanced metering.<sup>185</sup> FERC reports that, from 2020 to 2021, the number of advanced meters increased by about eight million in the United States, a 7.9 percent annual increase and an estimated advanced meter penetration rate nationwide for each of the residential, commercial, and industrial customer classes over 60 percent in 2021.<sup>186</sup> FERC also reports that "demand response resource capacity in U.S. wholesale markets increased by approximately 817 MW to a total of 32,920 MW, representing a 2.5 percent increase."<sup>187</sup> However, the percentage of peak demand that demand response resources represent "fell slightly from 6.6 percent in 2021 to 6.5 percent in 2022 due to the increase in peak demand outpacing the increase in demand response."<sup>188</sup>

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178. *Id.* at P 1.

179. *Id.*

180. *Id.* at P 207 (CAISO did not propose a set implementation date. Balancing authorities seeking to join EDAM must enter into an implementation agreement that will the implementation date for their participation. The implementation date will be between six and 24 months after the date when the implementation agreement becomes effective).

181. 185 FERC ¶ 61,210, at P 2.

182. *Id.*

183. *Id.*

184. *California Independent System Operator Corporation*, FERC Docket No. ER23-2686-001 (Apr. 30, 2024).

185. *See generally 2023 Assessment of Demand Response and Advanced Metering*, FERC (Dec. 2023), <https://www.ferc.gov/sites/default/files/2023-12/2023%20Assessment%20of%20Demand%20Response%20and%20Advanced%20Metering.pdf>.

186. *Id.* at 2.

187. *Id.*

188. *Id.*

*G. Office of Public Participation Reports on 2023 Efforts to Support Public Voices at FERC*

In February 2023, FERC’s Office of Public Participation (OPP) issued its 2023 Annual Report, detailing that, since its inception, it has fielded over 900 inquiries from constituents, including members of the public, organizations, and industry representatives.<sup>189</sup> In 2023, the most common inquiries were about jurisdictional FERC processes, including requests regarding filing comments, due dates, and clarification of proceeding contents.<sup>190</sup> OPP also received detailed technical questions and informal comments regarding energy issues, to which the OPP responded with its prepared education materials and meeting with the individual either virtually or in-person.<sup>191</sup>

OPP’s Energy Infrastructure team also worked to strengthen relationships and maintain engagement with people and communities, with an aim to increase public participation in natural gas and hydroelectric proceedings since such proceedings affect the natural environment and land use, raising concerns and questions for local citizens, landowners, and non-governmental organizations.<sup>192</sup> The Energy Infrastructure team’s key initiatives include priority and direct outreach, development of educational materials, and engagement with stakeholders.<sup>193</sup> OPP’s Energy Markets team focused on improving accessibility of markets-related proceedings, including by addressing topics such as energy market rules, transmission and interconnection rulemakings, and RTO/ISO stakeholder processes.<sup>194</sup>

VII. FEDERAL ENERGY REGULATORY COMMISSION WORKSHOPS

*A. FERC Notices Innovations and Efficiencies in Generator Interconnection Workshop*

On May 13, 2024, FERC noticed a staff-led workshop on September 10 and 11, 2024.<sup>195</sup> The purpose of this workshop was to provide a public forum for the presentation and discussion of opportunities for further innovation and increased efficiency in the generator interconnection process. The workshop brought together experts from diverse backgrounds including project developers, transmission owners and providers, government, research centers, and academia.<sup>196</sup> The

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189. *Office of Public Participation 2023 Annual Report*, FERC (Feb. 5, 2024), <https://www.ferc.gov/media/opp-2023-annual-report> [hereinafter FERC OPP 2023 Annual Report]; see *id.* at 9 (providing a map of in-person events, a list of WorkshOPP videos, a list of presentations and speaking engagements, a list of explainers, guides and informational handouts, and OPP’s social media engagement).

190. *Id.*

191. *Id.* at 5.

192. FERC OPP 2023 Annual Report, *supra* note 189, at 5.

193. *Id.* at 6.

194. *Id.* at 7-8.

195. See generally *Notice of Staff-Led Workshop*, FERC Docket No. AD24-9-00 (May 13, 2024).

196. *Id.*

Day 1 Innovation Panels discussed enhancements to current generator interconnection processes that may build upon the reforms in Order No. 2023. The Day 2 Efficiencies Panels discussed incremental changes to current generator interconnection processes that may build upon the reforms in Order 2023. FERC issued a supplemental notice on June 27, 2024, which provided additional detail as to the planned content of the workshop and the self-nomination process for interested panelists.<sup>197</sup>

*B. Office of Public Participation WorkshOPPs*

In 2023, OPP released three WorkshOPPs. February 23, 2023, OPP hosted a virtual workshop featuring former-Commissioner James Danly and directors from the Office of Energy Projects, the Office of Energy Market Regulation, and the Office of Energy Policy and Innovation to discuss the role of comments in FERC decision-making, and tips for writing powerful comments.<sup>198</sup> On July 13, 2023, OPP hosted a virtual workshop to “discuss public participation in the natural gas and liquefied natural gas pre-filing review process.”<sup>199</sup> On October 25, 2023, OPP released an educational video explaining “how and why a member of the public may choose to intervene in a FERC proceeding.”<sup>200</sup>

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197. *Supplement Notice of Staff-Led Workshop*, FERC Docket No. AD24-9-000 (June 27, 2024).

198. *See WorkshOPP on “Tips for Powerful Comments,”* FERC (Feb. 23, 2023), <https://www.ferc.gov/news-events/events/workshopp-tips-powerful-comments-englishespanol-02232023>.

199. *See Virtual Workshop: WorkshOPP on “Public Participation in the Natural Gas Pro-Filing Review Process,”* FERC (Jul. 13, 2023), <https://www.ferc.gov/news-events/events/virtual-workshop-workshopp-public-participation-natural-gas-pre-filing-review>.

200. *See WorkshOPP on “Fundamentals of Intervention in FERC Matters,”* FERC (Oct 25, 2023), <https://www.ferc.gov/news-events/events/workshopp-fundamentals-intervention-ferc-matters-10252023>.