Exhibit No. NES-001
Docket No. ER18-1639-000

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Constellation Mystic Power, LLC	)	Docket No. ER18-1639-000

ANSWERING TESTIMONY AND EXHIBITS OF JEFFREY W. BENTZ

ON BEHALF OF

NEW ENGLAND STATES COMMITTEE ON ELECTRICITY

AUGUST 23, 2018

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LIST OF EXHIBITS

Exhibit No.	Description
NES-001	Answering Testimony of Jeffrey W. Bentz
NES-002	Cost-of-Service Agreement Revisions
NES-003	**ISO-NE Data Responses:** ISO-NE Response to NES-ISO-1-2 ISO-NE Response to NES-ISO-1-7 ISO-NE Response to NES-ISO-2-3 ISO-NE Response to NES-ISO-2-5 ISO-NE Response to NES-ISO-2-9 ISO-NE Response to NES-ISO-2-13 ISO-NE Response to NES-ISO-2-1 ISO-NE Response to NES-ISO-2-2
NES-004	**Mystic Data Responses:** Mystic Response to NES-MYS-1-2 Mystic Response to NES-MYS-1-45 Mystic Response to NES-MYS-2-12 Mystic Response to NES-MYS-1-7
NES-005	Mystic Response to NES-MYS-1-1; CUI PRIV-HC @Mystic 89 COS 5-15-2018 (Excerpt)
NES-006	CUI/PRIV-HC Mystic Response to NES-MYS-13-1
NES-007	CUI//PRIV-HC NES-MYS-2-12; FINAL Step 1 Impairment Assessment (Mystic and EMT portion) (Excerpt)
NES-008	Mystic Response to NES-MYS-1-5; CUI__PRIV-HC NES-MYS-1-5 Mystic 7 Report (Excerpt)
NES-009	Resume of Jeffrey W. Bentz

SUMMARY

Jeffrey W. Bentz, Director of Analysis for the New England States Committee on Electricity ("NESCOE"), presents Answering Testimony and Exhibits, NES-001 through NES-009, on NESCOE's behalf. Mr. Bentz explains how the executed cost-of-service agreement ("Agreement") among Constellation Mystic Power, LLC ("Mystic"), Exelon Generation Company, LLC ("ExGen") (Mystic and ExGen are subsidiaries of Exelon Corporation ("Exelon"), and ISO New England Inc. ("ISO-NE") contains a number of changes to ISO-NE's *pro forma* cost-of-service agreement that are unclear and/or do not sufficiently protect New England consumers:

- Sections 2.2, 2.2.1, addressing termination of the Agreement;
- Section 2.2.2, setting forth the term of the Agreement;
- Section 3.9, addressing modification of the Fuel Supply Agreement ("FSA"); and
- Sections 7.1.1, 7.1.2, addressing outages.

Mr. Bentz explains how these provisions can be modified to correct these flaws. Mr. Bentz also explains the need for a "clawback" provision in the Agreement to protect against excessive costs imposed on consumers that could occur if Mystic or Constellation LNG, LLC (the soon-to-be-owner of the Everett Marine Terminal ("EMT")) end up toggling between market-based rates and cost-of-service rates.

Mr. Bentz additionally testifies that Mystic should be disallowed from recovering certain costs under the Agreement. As Mr. Bentz explains, these costs relate to three categories: (i) tax payments other than income, (ii) a rate of return based on investment rather than impaired value, and (iii) an auxiliary steam boiler project.

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AUGUST 23, 2018

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Jeffrey W. Bentz. My business address is 655 Longmeadow Street, Longmeadow, Massachusetts 01106.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?

A. I am presenting this testimony on behalf of the New England States Committee on Electricity ("NESCOE").

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by NESCOE as its Director of Analysis. NESCOE is the Regional State Committee for New England. NESCOE is governed by a board of managers appointed by the Governors of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont and is funded through a regional tariff that ISO New England Inc. ("ISO-NE") administers. NESCOE's mission is to represent the interests of the citizens of the New England region by advancing policies that will provide electricity at the lowest reasonable cost over the long-term, consistent with maintaining reliable service and environmental quality.

In my role as Director of Analysis, I provide NESCOE's board of managers with analysis of and recommendations about various proposals advanced by ISO-NE, market participants, other stakeholders, and state entities, primarily in the context of the New England Power Pool ("NEPOOL") Markets Committee. I am an active participant in the NEPOOL stakeholder process. In some cases, I develop proposals for NESCOE to advance through the regional stakeholder process and potentially to the Commission. I work closely with NESCOE managers and certain state agency staff representing each of the six New England states. Over the past several years, I have worked closely with NEPOOL stakeholders, ISO-NE personnel, and state representatives to achieve consensus where possible on a wide range of complex issues related to the Forward Capacity Market ("FCM") and the energy markets administered by ISO-NE. For example, on behalf of NESCOE, I worked on the development and implementation of a downward-sloping demand curve in the FCM and related changes, the market rules relating to most recent winter reliability programs, and have promoted efforts to improve price formation in the energy market.

Q. PLEASE OUTLINE YOUR FORMAL EDUCATION AND WORK EXPERIENCE.

A. I have a Bachelor of Science in Accounting from Central Connecticut State University. I received my certificate as a Certified Public Accountant from the State of Connecticut Board of Accountancy on July 6, 1993. Before joining NESCOE in January 2010, I was employed by various entities providing administrative services to MASSPOWER, a Massachusetts joint venture that owned a 240 megawatt combined-cycle generation facility located in Springfield, Massachusetts. Over the course of nearly 20 years, I served as Controller and General Manager of MASSPOWER. I managed the day-to-day activities on behalf of the joint venture, including operations, finance, technology, risk management, maintenance, and regulatory compliance. This included overseeing the management of five long-term power purchase agreements and several long-term gas commodity and transportation agreements. I was responsible for setting the annual strategic and business planning process, including Strengths, Weaknesses, Opportunities, and Threats analysis, operating plans, budgets, and quarterly updates. In addition, I led merger and acquisition teams and participated in various corporate teams during my tenure with companies such as J. Makowski Co., U.S. Generating Co., Pacific Gas and Electric, Cogentrix, and BG Group. Prior to my tenure with MASSPOWER, I was a Senior Accountant with Arthur Andersen and Company, performing audit activities primarily in the utility and brokerage industries. My resume is attached as Exhibit No. NES-008.

Q. HAVE YOU PARTICIPATED IN PROCEEDINGS BEFORE FERC?

A. Yes. I provided written testimony to the Commission on December 28, 2012 in connection with a NESCOE complaint proposing ISO-NE's adoption of a renewable technology resource exemption in Docket No. EL13-34-000. I participated in the Commission's August 20, 2012 Technical Conference on the Coordination Between Natural Gas and Electricity Markets, Docket No. AD12-12. I represented NESCOE and provided an accompanying statement at FERC's September 25, 2013 Technical Conference on Centralized Capacity Markets in independent system operators ("ISOs") and regional transmission organizations ("RTOs"), Docket No. AD13-7. I provided written testimony to the Commission supporting a NEPOOL proposal regarding the 2015/2016 to 2017/2018 winter reliability programs, Docket No. ER15-2208-000. Most recently, I participated as a panelist at the Commission's May 2017 Technical Conference on State Policies and Wholesale Markets Ooperated by ISO-NE and other ISOs/RTOs, Docket No. AD17-11-000. I also provided a written statement in that docket.

Q. WHAT MATERIALS DID YOU REVIEW IN PREPARING YOUR TESTIMONY IN THIS PROCEEDING?

A. I generally reviewed the application filed by Mystic on May 16, 2018 in Docket No. ER18-1639-000 ("Mystic Filing"). My review included the Cost-of-Service Agreement among Constellation Mystic Power, LLC ("Mystic"), Exelon Generation Company, LLC ("ExGen") (both subsidiaries of Exelon Corporation ("Exelon") and ISO-NE (the "Agreement"), which was included as Attachment A and Attachment B of the Mystic Filing. (Attachment A is the "clean" version of the Agreement, and Attachment B is a redline comparing Mystic's Agreement to the ISO-NE *pro forma* cost-of-service agreement.) I generally reviewed the testimony and exhibits that Mystic filed in this proceeding. I also generally reviewed responses of Mystic, ISO-NE, and ENGIE Gas & LNG LLC ("ENGLNG")/Distrigas of Massachusetts LLC ("DOMAC") to discovery requests submitted by NESCOE, other intervenors, and FERC Trial Staff in this proceeding. In addition, I reviewed tariff provisions related to "clawback" processes that are employed by the Midcontinent Independent System Operator, Inc. ("MISO"), New York Independent System Operator, Inc. ("NYISO"), and PJM Interconnection, L.L.C. ("PJM").

Q. ARE YOU SPONSORING ANY EXHIBITS TO YOUR TESTIMONY?

A. Yes. In addition to my prepared answering testimony (Exh. No. NES-001), I am sponsoring the following exhibits:

Exhibit No. NES-002	Cost-of-Service Agreement Revisions
Exhibit No. NES-003	ISO-NE Data Responses
Exhibit No. NES-004	Mystic Data Responses
Exhibit No. NES-005	Mystic Response to NES-MYS-1-1; CUI/PRIV-HC@Mystic 89 COS 5-15-2018 (Excerpt)
Exhibit No. NES-006	CUI/PRIV-HC Mystic Response to NES-MYS-13-1
Exhibit No. NES-007	CUI//PRIV-HC NES-MYS2-12; FINAL Step 1 Impairment Assessment (Mystic and EMT portion) (Excerpt)
Exhibit No. NES-008	Mystic Response to NES-MYS-1-5; CUI/PRIV-HC NES-MYS-1-5 Mystic 7 Report (Excerpt)
Exhibit No. NES-009	Resume of Jeffrey W. Bentz

II. PURPOSE AND OVERVIEW OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR ANSWERING TESTIMONY IN THIS PROCEEDING?

A. The parties to the Agreement—ISO-NE, Mystic, and ExGen—propose many changes to the *pro forma* cost-of-service agreement contained in Appendix I of the ISO-NE tariff, some of which I believe are unclear, and some of which I believe do not sufficiently protect consumers. Given the significant cost to consumers, these issues are very important to New England states, and therefore, my testimony identifies those provisions of the Agreement that I believe need to be changed. I also propose one new provision to correct a material gap in the Agreement. Additionally, I address three categories of costs for which Mystic seeks recovery under the Agreement that the Commission should disallow. Failure to address in my testimony other provisions of the Agreement or cost adjustments should not be construed as acceptance of Mystic's proposal. Moreover, as indicated below, NESCOE is sponsoring other testimony that addresses various other aspects of the proposal.

Q. IS NESCOE SPONSORING OTHER TESTIMONY IN THIS PROCEEDING?

A. Yes. In addition to my testimony related solely to the provisions and issues discussed below, NESCOE is sponsoring the testimony of:

- Constance T. Cannady (Exhibit No. NES-010) ("Cannady Testimony") which addresses components of rate base, operating expense, and federal income taxes requested for inclusion in revenue requirements over the term of the Agreement and Mystic's proposed true-up process.

- Nancy Heller Hughes (Exhibit No. NES-021) ("Hughes Testimony") which addresses the appropriate rate base value for the Everett Marine Terminal ("EMT") for inclusion in the Agreement.
- James F. Wilson (Exhibit Nos. NES-028 ("Wilson Testimony"). Mr. Wilson testifies to other aspects of the Agreement including the Fuel Supply Agreement ("FSA").

Q. PLEASE PROVIDE AN OVERVIEW OF THE REMAINDER OF YOUR TESTIMONY.

A. In <u>Part III</u> below, I present my assessment regarding a number of provisions in the Agreement. I explain why I believe the changes in the attached Exhibit No. NES-002 are necessary to protect consumers.

In <u>Part IV</u> below, I explain why the Commission should disallow three categories of costs that Mystic seeks to recover under the Agreement.

In <u>Part V</u> below, I summarize my conclusions.

III. <u>ASSESSMENT OF CERTAIN PROVISIONS IN THE AGREEMENT</u>

Q. PLEASE DESCRIBE YOUR UNDERSTANDING OF THE PURPOSE OF THE AGREEMENT.

A. Mystic witness William B. Berg describes the Agreement as based on a *pro forma* cost-of-service agreement that is contained in Attachment I of the ISO-NE tariff. Exh. No. MYS-001 at 9:17-18. My understanding is that the *pro forma* cost-of-service agreement was developed to provide cost recovery to generation resources seeking to retire that ISO-NE retains for transmission security needs, but that it was not designed to address resources that ISO-NE retains for fuel security.

I understand that ISO-NE has determined that the retirement of the Mystic 8 and 9 resources presented "unacceptable fuel security risks." Petition of ISO New England Inc. for Waiver of Tariff Provisions, Transmittal Letter, Docket No. ER18-1509 (filed May 2, 2018) ("Tariff Waiver Filing"), at 3. This conclusion is based on an analysis that ISO-NE has submitted to the Commission that ISO-NE believed showed that Mystic's unavailability would result in mandatory reliability violations for depletion of ten-minute operating reserves and rolling blackouts during the winter periods of 2022-2023 and 2023-2024.[1] *See ISO New England Inc.*, 164 FERC ¶ 61,003 at P 10 (2018) (*reh'g pending*) ("Tariff Waiver Order").

ISO-NE, a counterparty to the Agreement, states that its objective in negotiating the Agreement was to "establis[h] performance incentives for the Mystic units so that the region would receive the reliability service that it was paying for, and on ensuring that Exelon operate the units as efficiently and economically as possible given the reliability requirements." Exh. No. NES-003, p. 1. ISO-NE further explains that: "Having determined that the Mystic facility

[1] NESCOE has identified concerns with the analysis. *See, e.g.*, Reply Comments of the New England States Committee on Electricity, *Grid Resilience in Regional Transmission Organizations and Independent System Operators*, Docket No. AD18-7-00 (May 9, 2018), at 10-13.

provides important fuel diversity during the winter months, ISO-NE's objectives for the agreement were to ensure that the Mystic units would have the incentive to maintain sufficient fuel on site to be available during times of critical need in the winter months." Exh. No. NES-003, p. 2. ISO-NE underscores that the "threat" to "reliable operation of the New England electric system" is "most critical during the winter months, when the region's pipelines are most constrained." Tariff Waiver Filing at 2.

Q. DO YOU HAVE ANY CONCERNS WITH THE AGREEMENT?

A. Yes. As I already noted, the Wilson Testimony, Cannady Testimony, and Hughes Testimony identify numerous flaws in how Mystic is compensated and in the proposed arrangement between Mystic and EMT. In addition to those serious shortcomings, there are several provisions of the Agreement that are unclear or risk imposing excessive costs on consumers. There is also the material omission of any clawback mechanism to ensure that, if the Mystic 8 and 9 natural gas-fired generating units (the "Mystic Units" or "Mystic 8 and 9") are able to participate as merchant generators after the Cost-of-Service Period,[2] consumers are refunded for capital expenditures made during the Cost-of-Service Period and for certain other costs that provide value to Mystic beyond the term of the Agreement.

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[2] I refer to the two-year period of the Agreement, June 1, 2022 through May 31, 2024 as the "Cost-of-Service Period.").

Q. WHICH PROVISIONS HAVE YOU IDENTIFIED AS REQUIRING MODIFICATIONS?

A. The provisions I believe should be changed are listed in Exhibit No. NES-002. These are:

- Sections 2.2, 2.2.1, addressing termination of the Agreement;
- Section 2.2.2, setting forth the term of the Agreement;
- Section 3.9, addressing modification of the FSA; and
- Sections 7.1.1, 7.1.2, addressing outages.

In Exhibit No. NES-002, I have used the strikethrough feature of MS Word to reflect language that I believe should be deleted and have bolded and underlined language I believe should be added to these provisions.

Q. WHAT ABOUT PROVISIONS THAT WERE NOT REFLECTED IN THE AGREEMENT?

A. A critical omission from the Agreement is a clawback provision to protect consumers if the Mystic Units or EMT remain in operation after the Cost-of-Service Period. I also reflected this change in Exhibit No. NES-002. I added the term "New" next to that section.

A. Term and Termination

Q. PLEASE DESCRIBE THE MODIFICATIONS YOU ARE PROPOSING TO THE TERMINATION PROVISIONS OF THE AGREEMENT.

A. Section 2.2.1, a new provision not reflected in the *pro forma* cost-of-service agreement, provides ISO-NE with the ability to extend the agreement beyond its two-year term ending on May 31, 2024. Section 2.2 accounts for this possible extension, providing that the Agreement is in effect "for *at least* two 12-month Capacity Commitment Periods and shall terminate *no sooner than* May 31, 2024." (emphasis added). I believe that these provisions together create confusion about the minimum term of the agreement and should be modified, as shown in Exhibit No. NES-002, to remove this ambiguity. Mystic has characterized the term of the agreement as "two 12-month terms." Mystic Filing, Transmittal Letter, at 22. The Commission has also described the Agreement as beginning on June 1, 2022 and ending on May 31, 2024. Hearing Order at P 1. Section 2.2 should be modified to make clear that the term is simply two years, nothing more.

Additionally, I believe that Section 2.2.1 should be deleted in its entirety. ISO-NE should not have the unilateral ability to elect to extend the Agreement. Instead, if ISO-NE identifies a continued reliability need that warrants an extended Agreement with the Mystic units—which would be after ISO-NE has implemented the fuel security-related market adjustments it is developing to file with the Commission—ISO-NE should be required to seek approval from the Commission for such an extension, with an opportunity for states and other interested entities to comment before the Agreement is extended. The consumer cost implications of an extension of the Agreement demand that such an extension not be subject solely to private negotiations among a few parties, especially since those parties do not represent consumers who are required to "foot the bill" for any extension. The Commission should ensure that there is a public process to consider any proposed extension of the Agreement and alternatives that ISO-NE evaluated before agreeing to an extension.

Q. ARE THOSE THE ONLY CHANGES TO SECTIONS 2.2 AND 2.2.1 THAT YOU ARE PROPOSING?

A. There's one additional change. The Commission instituted a separate proceeding in Docket No. EL18-182-000 related to the ISO-NE tariff. *See* Hearing Order at P 4. The Commission "directed ISO-NE to either submit interim Tariff revisions that provide for the filing of a short-term, cost-of-service agreement to address demonstrated fuel security concerns, as well as permanent Tariff revisions reflecting improvements to its market design to better address regional fuel security concerns[,]" or show cause that the ISO-NE tariff is just and reasonable and why the filing of a short and/or long-term solution is unnecessary. *Id.* (citing Tariff Waiver Order). Thus, absent a "show cause" filing, ISO-NE must file long-term, permanent tariff revisions by July 1, 2019. Tariff Waiver Order at P 55. ISO-NE has noted that its long-term proposal has yet to be developed. Exh. No. NES-003, p. 2.

I believe this means that there is the potential for ISO-NE to file tariff changes that provide a new revenue source to resources meeting the criteria for "fuel security." This could remove Mystic's need for the Agreement. That is, depending on the features of any permanent market rule changes to promote fuel security, Mystic may determine that it is advantageous to its shareholders to terminate the Agreement and pursue revenue opportunities through the ISO-NE markets. NESCOE's proposed new language in Section 2.2 is intended simply to acknowledge the ongoing process for developing permanent market rule changes and how the outcome of that process may affect Mystic's and ISO-NE's view of the usefulness and value of the Agreement. This flexibility to terminate the Agreement and seek cost recovery through the markets is key to the interests of New England consumers, whose resource adequacy requirements are largely met through a competitive market design that places the risk of investment on merchant resources rather than on consumers. In this case, the termination of the Agreement would place the Mystic Units' revenue recovery to the wholesale markets and relieve consumers from potentially hundreds of millions of dollars in costs imposed outside of those markets.

Q. DO YOU HAVE CONCERNS WITH ANY OTHER TERMINATION PROVISIONS IN THE AGREEMENT?

A. Yes. Section 2.2.2 of the Agreement allows ISO-NE to terminate the Agreement if a Mystic unit falls short of an availability metric tied to its capacity supply obligation. This termination provision is one illustration of how the *pro forma* cost-of-service agreement, developed years ago for resources retained to address local transmission security, is not suited to retaining resources for fuel security. To address this mismatch, I propose two main changes in Section 2.2.2.

First, given that ISO-NE entered the Agreement primarily to address winter fuel security concerns, this provision should allow ISO-NE to terminate the Agreement—and allow consumers to stop paying under its provisions—if the

Mystic Units are unavailable over the critical December to February winter period that ISO-NE identified. Thus, in addition to the existing 12-month evaluation period governing termination, I added a three-month winter period as an additional triggering event. Without this change, Mystic could effectively be unavailable during either of the two winter periods and still not trigger this clause. ISO-NE has noted that "setting too high a performance standard for Exelon to meet to avoid triggering a unilateral termination by the ISO would make the agreement more risky to Exelon and would likely result in Exelon raising its revenue requirement to account for such a risk of termination." Exh. No. NES-003, p. 3. While I appreciate ISO-NE's concern for costs consumers pay under the Agreement, the Agreement has little value to consumers if Mystic is unable to operate during the winter months. A twelve-month evaluation period, alone, does not meet the objective of ensuring fuel security during the critical winter stretch that ISO-NE identified. Moreover, even if the more stringent clause is triggered, it is not automatic that ISO-NE will exercise its termination right.

Second, I believe that the 50% operational metric for termination of the Agreement should be increased to 75%. The current provision ties ISO-NE's termination right to "the average value over all hours in that period of the ratio of the Resource's Economic Maximum Limit (as it may be redeclared from time to time) to the Resource's or Resources' Capacity Supply Obligation" and sets that ratio to 50%. Given the heightened importance ISO-NE has placed on the Mystic Units for power system reliability, and the substantial payments Mystic is seeking from consumers to operate these resources, the Agreement should make Mystic accountable for operating at only half of its output under its Capacity Supply Obligation (as that term is defined in ISO-NE's tariff). ISO-NE noted that, while it "has not established grounds for varying from" the 50% threshold, it believes that "higher availability threshold for termination may also be warranted." Exh. No. NES-003, p. 3. ISO-NE further stated that Section 7.1.2, which addresses forced outages, could provide it with termination rights based on reduced availability. *Id.* While I appreciate that other provisions may help to address concerns about unavailability, the provision that directly relates to this issue should unambiguously set forth the performance standard and ISO-NE's rights under that standard. That is, ISO-NE should be explicitly permitted to terminate the Agreement if Mystic's average availability during the relevant period falls below 75%.

Finally, I propose one additional change for clarity. The Agreement, of course, applies to two units, Mystic 8 and 9. However, Section 2.2, adopting the *pro forma* cost-of-service agreement language, refers only to "Resource" in the singular. I have added two references to "Resources" to remove any uncertainty that ISO-NE may assess the Mystic Units' combined operations in determining whether to terminate the Agreement. In answering NES-ISO-2-5, ISO-NE confirms this interpretation. Exh. No. NES-003, p. 4.

B. Material Modifications of the FSA

Q. HAVE YOU IDENTIFIED OTHER PROVISIONS OF THE AGREEMENT THAT YOU BELIEVE REQUIRE MODIFICATION?

A. Yes. Section 3.9 of the Agreement prevents Mystic from materially modifying the FSA without providing ISO-NE with a copy of those modifications in advance and requires Mystic to make an informational filing with the Commission in this docket. The FSA is intricately tied to the costs that Mystic seeks to recover under the Agreement. An informational filing is insufficient protection against material modifications that could fundamentally alter the FSA and expose consumers to greater risk and/or cost. The provision should be revised to require Mystic to make a section 205 filing with the Commission.

In addition, Section 3.9 does not require any such filing with the Commission before Mystic can modify "the conceptual method for calculating any margin on any third-party sales of [liquefied natural gas ("LNG")] re-gasified through the LNG Facility[.]" The model used to calculate the margin on these sales is critical to the apportionment of risks to Mystic on the one hand and consumers on the other. The sale of re-gasified LNG to third-parties materially affects the Monthly Fuel Supply Cost under the structure Mystic has proposed. At minimum, Mystic should be required to submit an informational filing with the Commission before such changes can take effect. My proposed changes to Section 3.9 add this requirement, which appears to be consistent with ISO-NE's interpretation of this provision. Exh. No. NES-003, p. 5. It is important to note, however, that provisions related to such model changes are only needed if FERC fails to adopt the alternative to Mystic's proposed approach to the FSA, which is discussed in Mr. Wilson's Testimony, and is an approach that is simpler, more common, more equitable, and more transparent.

C. Outage Provisions

Q. ARE THERE OTHER PROVISIONS OF THE AGREEMENT THAT YOU BELIEVE NEED TO BE MODIFIED?

A. Yes. Continuing down the line of proposed changes contained in Exhibit No. NES-002, I have a concern with Section 7.1.1, which allows planned outages without taking into consideration the purpose of the Agreement—that consumers are paying substantial costs to retain the Mystic Units for fuel security. To fix this, my proposed change would preclude planned outages for Mystic 8 and 9 during the three-month winter period that ISO-NE has identified as critical to fuel security. Mystic would still have nine months to work with ISO-NE on planning its outages, so my proposed change would not harm Mystic, but would provide substantial fuel security protection to customers.

Q. ARE THERE ANY OTHERS?

A. Yes. I have identified two additional problems with Section 7. One is in Section 7.1.2(b) and the other is in Section 7.1.2(e).

Q. WHAT ARE YOUR CONCERNS WITH SECTION 7.1.2(b)?

A. The *pro forma* cost-of-service agreement requires the resource owner to notify ISO-NE promptly if it expects a Forced Outage to last more than ten days.

However, the Agreement ratchets down this requirement, requiring such notice only if the outage is anticipated to last for more than 25 days. I disagree with this change, which is not only contrary to ISO-NE's stated interest in executing the Agreement to address fuel security risks, but also could leave consumers paying substantial costs while the Mystic Units are out for nearly a third of the winter season.

In his supplemental direct testimony, Mystic witness Michael M. Schnitzer defends this modification. He claims that Mystic must have "the opportunity to address the failure of a supplier to deliver a cargo of LNG due to force majeure, for example." Exh. No. MYS-014 at 14:4-5. He further states:

> It is likely in that scenario that Mystic would immediately seek to purchase and arrange for a spot cargo of LNG, which could take 2-3 weeks. It would make no sense to terminate the Mystic Agreement without allowing Mystic a reasonable period of time to arrange for a replacement cargo, especially when Mystic has a very strong incentive to arrange for expedited delivery to reduce the significant penalty exposure . . . that results from its lack of fuel.

Id. at 14:5-11.

As an initial matter, Mr. Schnitzer seems to misunderstand Section 7.1.2(b). As ISO-NE confirms in its answer to NES-ISO-NE-2-13, the provision provides ISO-NE only with the "trigger" to terminate. Exh. No. NES-003, p. 6. It does not automatically trigger termination of the Agreement. Parties may elect to pursue the termination option pursuant to Section 7.1.2(c), but that choice is a matter of judgment and requires assessment of the expected Forced Outage conditions. The very scenario that Mr. Schnitzer cites to support a longer notification trigger—Mystic's attempts to arrange for a replacement cargo—could be brought to ISO-NE's attention after the Notice of Forced Outage is provided or even as part of that notice. That Mystic may likely address a supply chain failure or even has a strong incentive to do so should not delay ISO-NE's ability to manage the potential loss of the Mystic Units' output, especially in the circumstance of a catastrophic failure of one of the Mystic Units unrelated to fuel supply.

As discussed above, ISO-NE has identified the loss of Mystic 8 and 9 as presenting "unacceptable fuel security risks," characterized the units as especially critical for reliability during the winter months, and provided the Commission with analysis showing that Mystic's unavailability would result in mandatory reliability violations for depletion of ten-minute operating reserves and rolling blackouts during the winter periods of 2022-2023 and 2023-2024. Tariff Waiver Filing at 3. Extending the forced outage notice threshold in the *pro forma* cost-of-service agreement by 15 days runs counter to the purpose of the Agreement and ISO-NE's identified reliability need for Mystic 8 and 9. Moreover, to the extent ISO-NE would determine that a Forced Outage warrants termination of the Agreement, the Agreement's extension of the trigger to 25 days places consumers at risk of Mystic for an additional 15 days at the full rate when one or more of the units are not operating or are operating at a reduced capacity.

At minimum, the ten-day period reflected in the *pro forma* cost-of-service agreement should be reinstated as set forth in Exhibit No. NES-002. Indeed, given ISO-NE's stated concern about fuel security and the risk it has identified related to the loss of the Mystic Units, I believe that reducing the notice trigger to as little as three days during the winter months is a justified modification to the *pro forma* cost-of-service agreement. Again, Mystic would have the ability to discuss with ISO-NE why a Notice of Shut Down should not be issued and, as ISO-NE seems to confirm in its reply to NES-ISO-NE-2-13, it would be unlikely to terminate sooner than 25 days due to an identifiable lack of fuel due to force majeure event. *See* Exh. No. NES-003, p. 6.

Q. PLEASE EXPLAIN YOUR CONCERNS WITH SECTION 7.1.2(e).

This provision involves another need to reinstate the language in the *pro forma* cost-of-service agreement. Section 7.1.2(e) of the Agreement provides that the Commission may approve ISO-NE's payment of additional expenses to the Lead Market Participant (*i.e.*, ExGen) in connection with recovery from a forced outage or provision of substitute service. The Agreement modifies the *pro forma* cost-of-service agreement by replacing ExGen's obligation to "use its best efforts to minimize Additional expenses" with the obligation to use "commercially reasonable" efforts to minimize these expense. Mystic has provided no justification for this change, which lowers a standard that protects consumers.

D. Clawback Mechanism

Q. ARE YOU PROPOSING ANY OTHER CHANGES TO THE AGREEMENT?

A. Yes. As noted earlier, the Agreement omits a provision that is critical to guarding against Mystic's over-recovery of costs.

Q. PLEASE DESCRIBE THIS PROVISION.

A. This provision, referred to in Exhibit No. NES-002 as the Clawback Mechanism, ensures that if Mystic or EMT does not retire at the end of the Cost-of-Service Period and continue to remain in operation, Mystic will refund to consumers the cost of capital expenditures and certain repair costs recovered during the Cost-of-Service Period. Current market rules could allow Mystic to remain in service as a market participant.[3] *See* Exhibit. No. NES-003, p. 7. In addition, ISO-NE stated that "ISO-NE and stakeholders are not precluded from evaluating, as part of the market design process for a market-based fuel security solution, the potential value of the Mystic units following termination of the Mystic. . . Agreement." Exh. No. NES-003, p. 8. I also understand that there is no obligation on EMT to cease operations after the Cost-of-Service Period, thereby potentially affording EMT full recovery of millions of dollars of capital expenditures at the end of the cost-of-service agreement.

The long-term market rules that ISO-NE is in the process of developing to address fuel security in response to the Tariff Waiver Order could incentivize

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[3] *See* ISO-NE Tariff, Market Rule 1, III.13.2.5.2.5.3(a)(i) ("In the case of a Retirement De-List Bid rejected for reliability, if the reliability meed that resulted in the rejection for reliability is met, the resource, or portion thereof, will be retired coincident with the end of Capacity Supply Obligation . . . unless the Commission directs that the obligation to retire be removed . . . .").

Mystic to seek to remain in the market as a merchant generator. Exhibit. No. NES-003, p. 8. Additionally, the new market rules could provide substantial business opportunities for EMT. To the extent that Mystic and/or EMT remain in commercial operation and return to the marketplace on a merchant basis, electricity customers will have effectively paid to upgrade Mystic and EMT during the term of the Agreement, only to subsequently provide a windfall to Exelon in any following period of merchant operations.

To prevent a windfall, the Agreement should include a clawback provision. Clawback provisions can address the potential for a resource (in this case, the Mystic Units or EMT) to reenter a future competitive market after a cost-of-service period. They are designed to prevent a resource from recovering the costs of capital expenditures and certain repairs that consumers funded during the Cost-of-Service Period and then, after that period has ended, return to a market-based rate structure. By making that resource repay these consumer-funded costs, the mechanism prevents an inequitable and inappropriate outcome for consumers. A clawback mechanism also addresses the unfair competitive advantage that a resource would have over other resources in a competitive market where other participants did not have a dedicated revenue stream for capital expenditures and repairs funded by customers. Unfortunately, as part of its development of market rules related to fuel security, ISO-NE is not developing a clawback mechanism for inclusions in its tariff. *See* Exh. No. NES-003, p. 8.

Q. WHAT IS THE BASIS FOR YOUR PROPOSED CLAWBACK PROVISION?

A. I understand that Mystic "is willing . . . to provide a 'clawback' process to refund certain capital expenditures incurred during the reliability term if the units remain in service past the termination date." Mystic Filing, Transmittal Letter, at 16. Mystic has also confirmed that "it is willing to agree to a clawback process to refund certain capital expenditures" if EMT continues to operate beyond the Agreement. Exh. No. NES-004, p. 2. The Mystic Filing cites to a MISO clawback provision, presumably as a model for developing such a process regarding Mystic 8 and 9 and EMT. Mystic Filing, Transmittal Letter at 16 (citing MISO, FERC Electric Tariff, Module C, § 38.2.7e(i)). The MISO clawback provision requires a market participant that had owned or operated a unit needed for reliability under a cost-of-service agreement and subsequently rescinded the decision to suspend or retire the unit to "refund . . . with interest at the FERC-approved rate, all costs, less depreciation, for repairs and capital expenditures that were needed to continue operation of the [resource] and to meet applicable regulations and other requirements (including environmental)" during the cost-of-service period. MISO, FERC Electric Tariff, Module C, § 38.2.7e(ii).

In addition to the MISO clawback mechanism, I also reviewed the clawback provisions in the NYISO tariff and in PJM's tariff as they relate to the clawback of capital expenditures and repairs. They employ differing formulas to determine the payback periods. For example, PJM employs a formula for refunding applicable project investment costs based on the number of months that the investment costs allows the resource to continue operating past the cost-of-service period. PJM, Open Access Transmission Tariff, Section 118. Repayment is made monthly. *Id*.

Q. PLEASE DESCRIBE HOW YOUR PROPOSED CLAWBACK MECHANISM WOULD WORK.

A. These are the basic mechanics of my proposed clawback mechanism:

- There would be a clawback mechanism for Mystic 8 and 9 and EMT in the Agreement (*see* Exh. No. NES-002).
- The clawback amount would be based on any capital expenditures made during the Cost-of-Service Period and costs for repairs that provide significant benefits beyond the end of that period. (This would be determined by the Owner or its Lead Market Participant and verified by an independent entity.)
- Mystic would calculate a refund amount equal to the sum of: (1) actual cost of capital expenditures paid, less depreciation as approved in the Agreement, plus interest at the FERC-approved rate, and (2) the actual cost of repairs that provide significant benefits beyond the Cost-of-Service Period, pro-rated for the benefit received during the Cost-of-Service Period, plus interest at the FERC-approved rate.
- No less than three months prior to the end of the Agreement term, Mystic must file with the Commission the refund amount calculation and a list of the capital expenditures and repairs included in the calculation. Mystic must also

include in the filing a list of capital expenditures and repairs made during the Cost-of-Service Period that it did ***not*** include in the refund amount calculation. (The time period is intended to be close enough to the end of the Cost-of-Service Period to ensure that the refund amount will be known prior to the Mystic Units or EMT reentering the market and would provide states, customers and other interested parties sufficient time to review the calculation.)

- The refund amount would be amortized over a four-year straight-line period (thus requiring 1/48th of the total refund for every month the triggering conditions are not met).
- The clawback termination triggering condition for Mystic 8 and 9 would be when their interconnection rights are terminated.
- The clawback termination triggering condition for EMT would be if and when the facility hasn't vaporized gas for any continuous three-month period.

Q. WHY DID YOU SELECT A 48-MONTH REPAYMENT PERIOD?

A. As noted above, in developing the clawback proposal, I reviewed clawback mechanisms in MISO, NYISO, and PJM to get a better understanding of how other regions approach the issue. One of the approaches in the NYISO clawback includes the potential to set the refund period at the shorter of 36 months or twice the duration of the term of the cost-of-service agreement. Based on my review of the proposed capital expenditures and expected lives of the facilities in connection with the Agreement, a 36-month period would be much shorter than under the

PJM formula discussed above. In this case, with a two-year Agreement in place, I recommend the repayment period be set at four years, that is, twice the duration of the term of the Agreement. While my recommended four-year repayment period is not the most aggressive approach, I believe that this approach balances consumer and resource owner interests. This approach ensures that consumers are repaid within a reasonable time frame while, at the same time, reducing barriers to market participation if a resource proves to be efficient and competitive in the marketplace.

Q. COULD THE AGREEMENT ADDRESS THE CLAWBACK ISSUE IN ANY OTHER WAY?

A. Yes. A clawback process could be integrated into the true-up process. Mystic has proposed such a true-up process in Exhibit No. MYS-022, a proposed Schedule 3A to the Agreement. The Cannady Testimony at Exhibit No. NES-010 discusses the true-up in more detail, including how a clawback provision might fit into that process.

Q. DOES THIS CONCLUDE YOUR TESTIMONY REGARDING PROVISIONS IN THE AGREEMENT?

A. Yes.

IV. COST CATEGORIES THAT THE COMMISSION SHOULD DISALLOW.

Q. ARE THERE CATEGORIES OF COSTS THAT YOU BELIEVE THE COMMISSION SHOULD DISALLOW MYSTIC FROM RECOVERING UNDER THE AGREEMENT?

A. Yes. The first issue relates to taxes other than income that Mystic proposes to recover. Mystic has indicated that, as part of the Agreement, it is seeking to recover $15.5 million in Other Taxes Exh. No. MYS-008 at 1 (Schedule A line 18), which includes **[BEGIN CUI/PRIV-HC]** [redacted] **[END CUI/PRIV-HC]** The Mystic Filing notes that the increase in property tax expense costs are a result of the retirement of Mystic 7 and the Mystic Jet. *See* Testimony of Alan Heintz, Exh. No. MYS-006 at 10:20-11:3. **[BEGIN CUI/PRIV-HC]** [redacted] **[END CUI/PRIV-HC]**

Q. DO YOU BELIEVE THIS INCREASE IS ACCEPTABLE, AND IF NOT, WHY NOT?

A It is not acceptable. Irrespective of the agreement for property taxes that Mystic entered into or renegotiates for the property as a whole, it is not appropriate to assign all of those costs to the Mystic 8 and 9 resources. Mystic should allocate the property taxes during the Cost-of-Service Period to Mystic 7, 8, and 9 in the same way it did before that period. After the retirement of Mystic 7 and the Mystic Jet, Mystic will have the ability to sell the related equipment and land. Such sale would provide Mystic with an influx of cash, which it can apply toward the share of Mystic 7 property taxes. If costs associated with property taxes are simply shifted to Mystic 8 and 9, Mystic would enjoy a windfall profit at consumers' expense.

Q HOW WOULD YOU PROPOSE TO ALLOCATE THOSE COSTS?

A At the same percentage that Mystic allocated them prior to the Cost-of-Service Period: **[BEGIN CUI/PRIV-HC]** [redacted]. [redacted] **[END CUI PRIV-HC]**

Q WHAT'S THE NEXT CATEGORY OF COSTS YOU BELIEVE SHOULD BE DISALLOWED?

A The second issue relates to whether consumers should be liable to pay an equity return on the full value that Mystic is reporting as net plant on Schedule A. Mystic's answer to NES-MYS-2-12 states that:

> When performing impairment assessments, Exelon Generation groups its assets by region. Accordingly, the impairment assessment was for the New England Asset group and not solely the Mystic assets by themselves. No impairment charge was taken because the estimated undiscounted cash flows for the New England Asset group were greater than the book value. Note that the analysis assumed that a long-term solution would be implemented in New England that would make Mystic 8 and 9 economic for its remaining useful life. As stated, in our disclosure, "failure of ISO-NE to adopt interim and long-term solutions for reliability and fuel security could potentially result in future impairments of the New England asset group."

Exh. No. NES-004, p. 3.

Thus, Mystic is taking the position that a stand-alone impairment assessment for Mystic 8 and 9 is unnecessary because it performed that assessment for all of its New England assets as a group.

Q WHAT IS AN IMPAIRMENT ASSESSMENT?

A Basically, an impairment assessment evaluates the value of an asset against the expected cash the owner would derive from that asset. It's an accounting process that ensures a company's balance sheet isn't overstated: the investment value of a plant's asset will be "written down" to conform to the cash the owner is expected to derive from that asset.

A simple example might be helpful in illustrating the difference between gross book (*i.e.*, investment) value and impairment value. A commercial real estate company buys a rental property for $1 million and depreciates it over 20 years. After ten years, let's assume the net book value of that property is $0.5 million. However, over the company's objection, during those ten years, the city installed a waste processing facility in close proximity to the property, making it impossible for the company to rent the property and substantially decreasing the expected future cash flow in relation to the asset. In this case, the property (or asset) is impaired and would be "written down" to reflect the value it is expected to derive for its owner.

The Hughes Testimony (Exhibit No. NES-021) discusses impairment in more detail. Ms. Hughes notes that impairment occurs "when the expected future nominal (undiscounted) cash flows, excluding interest charges, are less than the carrying amount." Exh. No. NES-021 at 6, citing Exh. No. NES-026. She discusses how the "value of utility property acquired is recorded at original cost less depreciation including impairment" and points to a Deloitte report as well as the FERC Uniform System of Accounts as supporting the conclusion that plant impairment **is** a form of depreciation. Exh. No. NES-021 at 7-8.

Q WHY SHOULD MYSTIC PERFORM A STAND-ALONE IMPAIRMENT ASSESSMENT FOR MYSTIC 8 AND 9?

A Mystic should perform a stand-alone impairment assessment for Mystic 8 and 9 because it is seeking approval for a cost-of-service agreement solely for those units. Mystic is not seeking recovery under a cost-of-service agreement for all of its New England assets.

Mystic has not demonstrated why it should be allowed to earn a rate of return based on the investment value of Mystic 8 and 9 rather than the impaired value of those units. **[BEGIN CUI/PRIV-HC]** [redacted] **[END CUI/PRIV-HC]**

Q HOW SHOULD MYSTIC ADDRESS THIS ISSUE?

A Mystic should perform an impairment assessment for Mystic 8 and 9 on a stand-alone basis and set its net plant for rate base purposes to that amount. If Commission does not direct Mystic to take this action, then the Commission must disallow any recovery based on the net plant value Mystic submitted in this filing for Mystic 8 and 9 and require Mystic to perform the stand-alone impairment assessment and adjust the net plant value accordingly.

Q WHAT'S THE FINAL CATEGORY OF COSTS YOU BELIEVE SHOULD BE DISALLOWED?

A It relates to costs that Mystic is seeking to recover to "relocate or replace" an auxiliary steam boiler.

Q PLEASE EXPLAIN.

A In MYS-005, Mystic lists $12 million in capital expenditures to "Move/Replace the Auxiliary steam boiler" from the retired Mystic 7 for installation in Mystic 8 and 9. Mystic provides no explanation for the $12 million price tag.

Q DOES MYSTIC OFFER SUPPORT FOR THE $12 MILLION COST?

A No. Mystic states generally in NES-MYS-1-2 that "[e]ach of the capital expenditures listed in Exh. No. MYS-005 are necessary for Mystic to perform its obligations to ISO-NE under the [Agreement], and their costs are based on inspections, known service-duty wear, historical need and amounts, manufacturer requirements, and the age of the units and components. Further, each of these expenditures are necessary to ensure the reliable operation of the units in accordance with Good Utility Practice . . . ." Exh. No. NES-004, p. 1.

Mystic also provides in NES-MYS-1-5 a copy of a report **[BEGIN CUI/PRIV-HC]** [redacted] **[END CUI/PRIV-HC]**. *See* Exh. No. NES-008. Mystic does not, however, explain why it is seeking $12 million for the project.

Q HAS MYSTIC PROVIDED ANY INFORMATION REGARDING THE TIMING OF THE AUXILIARY BOILER PROJECT?

A Yes. In response to NES-MYS-1-7, Mystic stated that [**BEGIN CUI/PRIV-HC]** [redacted] **[END CUI/PRIV-HC]** Exh. No. NES-004, p. 4.

Q WHY IS THE DEADLINE FOR THE AUXILIARY BOILER PROJECT IMPORTANT?

A To the extent that any of the capital improvements are completed prior to June 1, 2022, the revenue requirement recovery during the term of the Agreement is based on the more traditional rate-based approach with recovery of the expenditures over a normal useful life. For any project completed after the beginning of the Agreement period, Mystic proposes full recovery of the total capital expenditure in the year that asset is placed into service.

Q WHAT IS YOUR RECOMMENDATION WITH RESPECT TO MYSTIC'S PROPOSED COST OF THE AUXILIARY BOILER PROJECT?

A I have two recommendations. First, the Commission should require Mystic to [**BEGIN CUI/PRIV-HC]** [redacted] **[END CUI/PRIV-HC.]** At minimum, the Commission should disallow any costs related to the project unless Mystic justifies the $12 million figure. Second, [**BEGIN CUI/PRIV-HC]** [redacted] **[END CUI/PRIV-HC]**

V. CONCLUSIONS

Q. PLEASE SUMMARIZE THE CONCLUSIONS YOU HAVE REACHED THROUGH THE ANALYSES DESCRIBED ABOVE.

A. I have concluded that a number of provisions in the Agreement should be modified. As discussed above, as written, these provisions are unclear and do not sufficiently protect consumer cost interests. The blacklined changes reflected in Exhibit No. NES-002 seek to revise the identified provisions accordingly. In addition, I propose one new section to the Agreement to implement a clawback process in the event the Mystic Units and/or EMT operate beyond the Cost-of-Service Period. The clawback mechanism provides important consumer protections that are currently, and conspicuously, absent from the Agreement. Finally, I explain why the Commission should disallow three categories of costs that Mystic has included in its revenue requirement pursuant to the Agreement.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

<u>Exhibit No. NES-002</u>

Cost of Service Agreement Revisions

Section 2.2 Termination

2.2. This Agreement may be terminated as follows:

Once this Agreement is effective, it shall remain in effect for ~~at least~~ two 12-month Capacity Commitment Periods and shall terminate **on** ~~no sooner than~~ May 31, 2024. Owner or Lead Market Participant shall provide timely notice of any such termination of this Agreement to the Commission. **Nothing in this Agreement shall limit the ability of the Owner or Lead Market Participant, by mutual consent of the Parties prior to the commencement of the Term, to seek to terminate this Agreement by making a filing with the Commission in accordance with the Federal Power Act.**

Section 2.2.1 Extension

~~2.2.1. In order to meet a reliability need, ISO-NE may elect to continue this Agreement beyond its two-Capacity Commitment Period term for subsequent Capacity Commitment Periods upon written notice given no later than the March 1 that is 39 months prior to the start of the subsequent Capacity Commitment Period. Owner shall confirm within 15 days of receipt of ISO-NE's notice that it is willing and able to extend the term.~~

Section 2.2.2 Termination

2.2.2. Upon 30 days' notice to the Owner and Lead Market Participant, the ISO may unilaterally terminate this Agreement if, over the twelve (12) month period preceding the notice **or during any three (3) month period from December-February**, the ISO determines that the average value over all hours in that period of the ratio of the Resource's **or Resources'** Economic Maximum Limit (as it may be redeclared from time to time) to the Resource's **or Resources'** Capacity Supply Obligation is less than **seventy-five** ~~fifty~~ percent (**75**~~50~~%). Owner and Lead Market Participant shall retain all of their existing rights to challenge the ISO's calculation of the aforementioned ratio under the ISO Billing Policy.

Section 3.9 Fuel Supply Management

3.9 Fuel Supply Management and Third-Party Sales. The Owner, Lead Market Participant and their affiliates shall exercise Good Utility Practice with respect to the fuel supply arrangements for the Resources. Owner, which is a party to a Fuel Supply Agreement with Constellation LNG, LLC for the supply of fuel to Mystic 8 & 9, shall not modify any material term of that Agreement without providing ISO with a copy of the proposed modification and submitting **a request under Section 205 of the FPA with the Commission** ~~an informational filing to the Commission, in the docket in which this Cost of Service Agreement is approved, that shows the proposed modifications at least 15 days in advance of the modification's effective date~~**.** ~~and, w~~ **W**ith respect to any modification to the conceptual method for calculating any margin earned on any third-party sales of LNG re-gasified through the LNG Facility, **such modification shall not take effect until** Owner ~~must~~ obtains ISO's prior written consent **and submits an informational filing to the Commission, in the docket in which this Cost of Service Agreement is approved, that shows the proposed modifications at least 15 days in advance of the modification's effective date**. Owner and Lead Market Participant and/or their affiliates shall meet with ISO (i) prior to the commencement of the Term of this Agreement to discuss the fuel supply plan for the first twelve months of the Term, and (ii) prior to September 1 of each year of the Term to discuss the overall fuel supply plan (i.e., the number of cargos scheduled for both Mystic and third-party sales) for the Winter months of December through March. To the extent that the fuel supply plan is modified after the meeting with ISO (such as through the addition or subtraction of a scheduled LNG cargo), Owner or Lead Market Participant will provide timely notice of same to ISO.

Section 7.1.1 Planned Outages

7.1.1. Planned Outages. **Except during the period from December to February,** Lead Market Participant shall be entitled to take one or both of the Resources out of operation or reduce the net capability of one or both of the Resources during Planned Outages, in accordance with the schedule for Planned Outages as established and implemented pursuant to the ISO New England System Rules, the Transmission, Markets and Services Tariff and the MPSA.

Section 7.1.2 (b) Notice of Forced Outages

7.1.2(b) Notice of Forced Outage. In the event of a Forced Outage that is anticipated to last for more than **ten (10)** ~~twenty-five (25)~~ days **(or more than three (3) days during the months December – February)**, in addition to any other notification obligation arising under ISO New England System Rules, the Transmission, Markets and Services Tariff and the MPSA, Lead Market Participant shall promptly notify ISO in writing of its occurrence, estimated duration, and whether Additional Expenses are expected to be required to return the Resource(s) to service (a "Notice of Forced Outage"). Lead Market Participant shall also inform ISO of the availability of any previously retired unit (the "Substitute Unit") and the costs and time required to bring the Substitute Unit back into service and to retire the Resource(s) on Forced Outage.

Section 7.1.2 (e) Option to Approve Additional Expenses

7.1.2(e) Option to Approve Additional Expenses. With respect to a Notice of Shut-down made by Lead Market Participant, if within thirty (30) days of receipt of Lead Market Participant's Notice of Shut-down ISO provides written notice to Lead Market Participant that it is willing to pass through for payment by the Participants in the Monthly Settlement process of the New England Markets such Additional Expenses (a "Notice of Additional Expenses") that may be required to recover from such Forced Outage, Lead Market Participant agrees that it will, with reasonable dispatch, take the action requested by ISO, i.e., not Shut-down the Resource(s) and make such Additional Expenses as paid to it by the Participants to return the Resource(s) to service from such Forced Outage, or make such expenditures as paid to it by the Participants to bring the Substitute Unit into service and retire the Resource(s) on Forced Outage. The Parties agree that a Notice of Additional Expenses shall be immediately effective, and Lead Market Participant shall be entitled to begin receiving payments from ISO pursuant thereto, as of the day following the date the Owner or Lead Market Participant files a request under Section 205 of the FPA with the Commission to recover from ISO the Additional Expenses identified in the Notice of Additional Expenses. Payments will be made subject to refund pending the approval of such

Additional Expenses by the Commission. The Parties further agree that Lead Market Participant is obligated to use ~~commercially reasonable~~ **its best** efforts to minimize Additional Expenses and that the amounts approved under the Notice of Additional Expenses are subject to offset by any proceeds from any and all third-party sources, including insurance proceeds, paid to Lead Market Participant to return the Resource(s) from the Forced Outage. Lead Market Participant shall make a subsequent reconciliation ("true-up") filing with the Commission and refund any payments for Additional Expenses paid to Lead Market Participant that are disallowed by the Commission, or that exceed the amount actually expended by the Lead Market Participant, after offsets.

(NEW) Section xx Clawback Mechanism

Refund of Certain Capital Expenditures and Repair Expenses

Subject to the Operational Trigger, in the event one or more Resources or the LNG Terminal remain operational beyond the termination date of the Agreement, Owner and/or Lead Market Participant shall refund to ISO any capital expenditures or repair expenses collected in connection with this Agreement in accordance with the following Refund Amount:

Refund Amount = (A + B) + Interest at the FERC-approved rate

A = actual cost of capital expenditures paid, less depreciation as approved in the Agreement

B = (the actual cost of repairs that provide significant benefits beyond the cost-of-service commitment period) * ((Number of months the repairs permit the Resource or LNG Terminal to operate less the number of months the repair was in place during the term of the Agreement) / (Number of months the repairs permit the Resource or LNG Terminal to operate))

Where:

The capital expenditures depreciation schedule is consistent with those covered under the Agreement and the number of months of repairs that permit the Resource or LNG Terminal to operate is determined by the Owner or its Lead Market Participant and verified by an independent entity.

Owner or Lead Market Participant shall make payments to ISO in the amount of one-forty-eighth (1/48th) of the Refund Amount each month for forty-eight (48) months unless (i) in the case of the Resource or Resources, the interconnection rights under the ISO-NE tariff are terminated, or (ii) in the case of the LNG Terminal, it ceases to vaporize gas for any continuous three-month period (each, the "Operational Trigger").

The months that a Resource or the LNG Terminal continue to operate past the termination date of the Agreement need not be continuous, and the requirement of this section will continue regardless of ownership of the Resource or LNG Terminal.

No less than three (3) months prior to the end of the Agreement term, the Owner or Lead Market Participant shall file with the Commission the Refund Amount calculation and a list of the capital expenditures and repairs included in the calculation. Owner or Lead Market Participant must include in the filing a list of capital expenditures and repairs made during the term of the Agreement period that it did not include in the refund amount calculation.

Exhibit No. NES-003

ISO-NE Data Responses

NES-003, p. 1	ISO-NE Response to NES-ISO-1-2
NES-003, p. 2	ISO-NE Response to NES-ISO- 1-7
NES-003, p. 3	ISO-NE Response to NES-ISO-2-3
NES-003, p. 4	ISO-NE Response to NES-ISO-2-5
NES-003, p. 5	ISO-NE Response to NES-ISO-2-9
NES-003, p. 6	ISO-NE Response to NES-ISO-2-13
NES-003, p. 7	ISO-NE Response to NES-ISO-2-1
NES-003, p. 8	ISO-NE Response to NES-ISO-2-2

NES-ISO-1-2. Please provide all other analysis that ISO-NE conducted or analysis and materials reviewed to inform its discussions with Mystic about means to reduce costs to consumers of the Mystic Cost of Service Agreement.

<u>Response:</u>

ISO-NE did not perform a formal analysis of the means to reduce costs of the Mystic Cost of Service Agreement to consumers. ISO-NE has taken no position on the components of the agreement that address Exelon's revenue requirements and expected this aspect of the agreement to be resolved in this proceeding. In negotiating the agreement, ISO-NE focused on establishing performance incentives for the Mystic units so that the region would receive the reliability service that it was paying for, and on ensuring that Exelon operate the units as efficiently and economically as possible given the reliability requirements. Concerns for protecting consumers are reflected in several provisions of the agreement, including in Section 3.5, which includes a requirement that Mystic choose the least-cost-to-consumers means of unloading excess fuel; Section 3.4, which requires that Mystic's supply offers in the energy market be no greater than the Internal Market Monitor-determined Reference Levels for the Mystic units, as determined using the marginal cost-based method for calculating Reference Levels; Section 6.2 affording the ISO audit rights for third-party LNG sales; Section 3.9 obligating Mystic to use good utility practice with respect to fuel supply arrangements and obligating Mystic to meet with ISO-NE prior to each year of the agreement to discuss Mystic's plans for procuring LNG for the upcoming winter; Section 3.10 obligating Mystic to cooperate with ISO-NE in good faith to minimize the market impacts of reliability commitments in the energy market; and the provisions in the Mystic affiliate fuel agreement providing for revenue sharing on third-party LNG sales, with the remaining revenues to be used to offset costs to consumers under the Mystic Cost of Service Agreement.

Prepared by or Under the Supervision of:

Robert Ethier, Vice President, Market Operations

This response is true and accurate to the best of the preparer's knowledge, information, and belief after reasonable inquiry.

NES-ISO-1-7. Regarding Schnitzer MYS-014 page 18 (July 31): Please explain ISO-NE's (a) "fuel security objectives" (page 18, line 17), (b) "fuel security plans" (page 18, line 19) and (c) "ISO-NE's new winter security product" (page 25, line 15-16).

Response:

While ISO-NE is not certain what Mr. Schnitzer had in mind with respect to these references, ISO-NE's objectives and plans with respect to fuel security and Mystic 8 and 9's role in helping to meet those objectives are addressed in detail in its May 2, 2018 waiver petition in Docket No. ER18-1509-000 and its response to protests in that docket filed on June 7, 2018. Having determined that the Mystic facility provides important fuel diversity during the winter months, ISO-NE's objectives for the agreement were to ensure that the Mystic units would have the incentive to maintain sufficient fuel on site to be available during times of critical need in the winter months. Though, again, ISO-NE does not know what Mr. Schnitzer intended, his words, "new winter security product," may refer to any or all of (i) the matters that ISO-NE will address in its August 31, 2018 compliance filing in Docket Nos. ER18-1509-000 and EL18-182-000; (ii) any further proposal ISO-NE may make with respect to fuel security specifically for Forward Capacity Auctions 14 and 15 (any such proposal has yet to be developed), and/or (iii) the proposal for a long term fuel security solution that ISO-NE must file by July 1, 2019 to comply with the Commission's July 2, 2018 order in Docket Nos. ER18-1509-000 and EL18-182-000 (which proposal has yet to be developed).

Prepared by or Under the Supervision of:

Robert Ethier, Vice President, Market Operations

This response is true and accurate to the best of the preparer's knowledge, information, and belief after reasonable inquiry.

NES-ISO-2-3. With respect to Section 2.2.2 of the Cost-of-Service Agreement, which provides for a termination right based on the resource's operational performance, (a) please explain why a twelve-month period was selected; (b) please explain why a performance level of 50% was selected; and, (c) given the winter fuel security need identified by the ISO, please explain why this provision does not include a termination right for operational performance during the December to February period.

Response:

(a) Section 2.2.2 is a termination right based on the availability of the resources, and not based on their performance. The 12-month evaluation period is included in the pro forma cost-of-service agreement accepted by the Commission, and is appropriate because the Mystic units are to provide capacity in all 12 months of the year.

(b) The 50% availability level (it is not a performance level) is included in the pro forma cost-of-service agreement and ISO-NE has not established grounds for varying from that level. While a higher availability threshold for termination may also be warranted, the provisions in Section 7.1.2 addressing termination in the event a forced outage cover the likely scenarios that will produce a reduction in availability, and provide the ISO with reasonable termination rights in the event of an outage lasting more than 25 days.

(c) The ISO considered two types of poor operational performance when negotiating the agreement. First was an extended outage of one or both Mystic units. This is addressed by Section 7.1.2, which does allow for termination for lack of performance over a relatively short period of time. The other was what might be considered intermittent or poor performance, which would encompass several short-term outages or reductions in capability. This is addressed in 2.2.2 as noted above. Because the Mystic units will have a year-round capacity obligation, not just a winter obligation, termination of a year round commitment based on poor performance during only three months was deemed inappropriate. The ISO was also aware that setting too high a performance standard for Exelon to meet to avoid triggering a unilateral termination by the ISO would make the agreement more risky to Exelon and would likely result in Exelon raising its revenue requirement to account for such a risk of termination.

Prepared by or Under the Supervision of:

Robert Ethier, Vice President, Market Operations

This response is true and accurate to the best of the preparer's knowledge, information, and belief after reasonable inquiry.

NES-ISO-2-5. Regarding Section 2.2.2. of the Cost-of-Service Agreement, under which ISO-NE may terminate the Agreement only if the "Resource" falls short of an availability metric, based on a twelve-month period, indicating capability to provide capacity supply services: (a) Does ISO-NE believe that this metric is appropriate in the context of fuel security, including use of a twelve -month period when the winter months may present the greatest fuel security challenges? Please explain your response. (b) Please confirm that the "Resource" covers both Mystic 8 &9 and allows for partial termination regarding one unit. (c) Please confirm whether ISO-NE can terminate the Agreement due to an extended outage resulting from a *force majeure* event.

<u>Response:</u>

(a) Please see the response to NES-ISO-2-3 above.

(b) "Resource" is intended to cover both Mystic 8 and 9, so that the calculation is done on an aggregated basis (the Economic Maximum Limit value of both resources together relative to the Capacity Supply Obligation of both resources together. In negotiating the Agreement, ISO-NE did not contemplate the potential for a partial termination.

(c) Section 7.1.2 and Section 8.2.1, together, permit termination of the agreement due to an extended outage (lasting more than 25 days) resulting from a force majeure event.

Prepared by or Under the Supervision of:

Robert Ethier, Vice President, Market Operations

This response is true and accurate to the best of the preparer's knowledge, information, and belief after reasonable inquiry.

NES-ISO-2-9. Section 3.9 of the Cost-of-Service Agreement, which is not contained in the pro forma, states that "any modification to the conceptual method for calculating any margin on any third-party sales of LNG" would require the prior written consent of ISO-NE. Is it ISO-NE's position that the Federal Energy Regulatory Commission ("FERC") would also need to accept any such changes before they become effective? Please explain your response.

Response:

The conceptual method for calculating any margin earned on third-party sales is a term in the affiliate "Fuel Supply Agreement" referenced in Section 3.9 of the Cost of Service Agreement and included as Exhibit MYS-004 in Mystic's initial filing in this proceeding. In accordance with Section 3.9, a material modification to the conceptual method would require prior written consent by ISO-NE and must be filed by Mystic with the Commission in an information filing. Section 3.9 requires that such filing be made at least 15 days in advance of the effective date of any such modification, but does not require that the Commission accept the change before it becomes effective.

Prepared by or Under the Supervision of:

Robert Ethier, Vice President, Market Operations

This response is true and accurate to the best of the preparer's knowledge, information, and belief after reasonable inquiry.

NES-ISO-2-13. The Cost-of-Service Agreement modifies the pro forma's Tariff's requirement in Section 7.1.2(b) to provide prompt notification to ISO-NE if a Forced Outage is anticipated to last for more than ten days. The revised Agreement changes the requirement from ten days to 25 days. (a) Please explain why 25 days is an appropriate modification to the pro forma language.

Response:

(a) The notification requirement in Section 7.1.2(b) serves as the trigger for ISO-NE's right to terminate the agreement in the event of an extended Forced Outage. This trigger was changed from 10 days to 25 days to account for Exelon's claim that it will take approximately two weeks to receive a shipment of LNG on an emergency basis if a scheduled delivery fails to arrive due to force majeure event. While it is possible that other unexpected events could cause a Forced Outage and generally preferable for the ISO to have a shorter notification period, the pro forma's 10 day notification trigger is not based on any stated factor, and the ISO believed that, given the fuel delivery timeframes, it would be unlikely to terminate sooner than 25 days. Accordingly, the ISO believed that linking the trigger to an identifiable type of event (lack of fuel due to force majeure event) that is of particular importance given the purpose of the agreement is reasonable.

Prepared by or Under the Supervision of:

Robert Ethier, Vice President, Market Operations

This response is true and accurate to the best of the preparer's knowledge, information, and belief after reasonable inquiry.

NES-ISO-2-1. With respect to Section 2.2 of the Cost-of-Service Agreement, (a) please confirm that under Market Rule 1 of the ISO-NE tariff, Mystic 8 and 9 will be retired after the operating hour beginning at 11:00 p.m. on May 31, 2024. (b) Are there any circumstances under which Mystic 8 and 9 would not be retired at that time? If so, please explain. (c) Please also confirm that, (i) pursuant to ISO-NE tariff rules, the interconnection agreement for Mystic 8 and 9 will also be terminated after May 31, 2024 and (ii) that Mystic 8 and 9 will no longer be able to participate in any ISO-NE wholesale market. If you do not so confirm, please explain.

Response:

With reference to the currently-effective Tariff, the statements in (a) and (c) are confirmed, with two exceptions. First, Section 2.2.1 of the Agreement permits its extension beyond May 31, 2024 in order to meet a reliability need, including fuel security. The extension language is consistent with the current provisions in the ISO-NE Tariff addressing the retirement of a resource retained for reliability (and was drafted specifically to comport with that language). *See* Tariff, Market Rule 1, Section III.13.2.5.2.5.3(a)(i). Second, the Commission may approve a request from Exelon to continue operation as is contemplated under Tariff, Market Rule 1, Section III.13.2.5.2.5.3(a)(i) and Section III.13.2.5.2.5.2.

Prepared by or Under the Supervision of:

Robert Ethier, Vice President, Market Operations

This response is true and accurate to the best of the preparer's knowledge, information, and belief after reasonable inquiry.

NES-ISO-2-2. Are there any circumstances under which Mystic 8 and 9 could participate in any ISO-NE wholesale market after May 31, 2024? If yes, please (a) describe under what circumstances this could occur and (b) describe any "clawback" mechanism ISO-NE is developing to refund to customers capital expenditures and other categories of expenditures made by Mystic during the term of the Cost-of-Service Agreement.

Response:

In addition to the circumstance in which the COS Agreement is extended as discussed in response to NES-ISO-2-1, the only circumstance in the current Tariff pursuant to which the Mystic units could be re-entered into the markets is if they repower as new capacity resources (as opposed to existing resources) per Tariff, Market Rule 1, Section III.13.1.1.1.2. Furthermore, ISO-NE and stakeholders are not precluded from evaluating, as part of the market design process for a market-based fuel security solution, the potential value of the Mystic units following termination of the Mystic COS Agreement.

As of this time, the ISO is not developing any tariff provisions to refund to customers capital expenditures and other categories of expenditures made by Mystic during the term of the Cost-of-Service Agreement

Prepared by or Under the Supervision of:

Robert Ethier, Vice President, Market Operations

This response is true and accurate to the best of the preparer's knowledge, information, and belief after reasonable inquiry.

<u>Exhibit No. NES-004</u>

Mystic Data Responses

NES-004, p. 1	Mystic Response to NES-MYS-1-2
NES-004, p. 2	Mystic Response to NES-MYS-1-45
NES-004, p. 3	Mystic Response to NES-MYS-2-12
NES-004, p. 4	Mystic Response to NES-MYS-1-7

NES-MYS-1-2: Regarding Mystic 8 & 9 Capital Additions, please provide the operating assumptions (2018-2024), rationale and documentation for each of the proposed capital investments listed below during the period 2018 – 2024, as well as alternatives considered for each investment. Further, please provide the basis for how it was determined that such investments are clearly required to extend operations on a yearly basis, considering the potential variability of power production, operating hours and starts:

a. Mystic 8

   i. GT SFC Refresh – $3,500,000

   ii. Inlet Air Filter & Evap Cooling – $1,226,630

   iii. Inlet Air Screens for each GT – $1,942,164 each

b. Mystic 9

   i. GT SFC Refresh – $3,500,000

   ii. GT CRI for each GT – $9,000,000 each

c. Common to both Units

   i. Auxiliary Boiler Move/Replacement – $12,000,000

   ii. NERC CIP Capital Expenditures -- $8,752,629

OBJECTION: Mystic objects to this request as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. 18 C.F.R. § 385.402. The Commission ordered that prudently incurred capital expense, operations and maintenance expense, and administrative and general expense be recovered on a formulary basis subject to true-up, with the prudence of such costs to be reviewed in a future Commission proceeding when the costs are actually known. Accordingly, the Commission directed the participants to present evidence regarding the appropriate design of a true-up mechanism. Mystic proposed in supplemental direct to update the projected amount for capital expense, operations and maintenance expense, administrative and general expense, and taxes other than income taxes prior to the Term. The information requested does not seek information regarding the appropriate design of a true-up or requests information related to the prudence of the costs before they are incurred, and therefore, is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection, Mystic responds as follows:

RESPONSE: Each of the capital expenditures listed in Exhibit NO. MYS-005 are necessary for Mystic to perform its obligations to ISO-NE under the Mystic Agreement, and their costs are based on inspections, known service-duty wear, historical need and amounts, manufacturer requirements, and the age of the units and components. Further, each of these expenditures are necessary to ensure the reliable operation of the units in accordance with Good Utility Practice and are contained in ExGen's long term planning budget materials for Mystic 8&9 with one exception: expenditures related to NERC's enhanced critical infrastructure protection ("CIP") requirements that directly result from Mystic 8&9's designation as cost of service units have been added.

No alternatives were considered; these projects are deemed to be the most appropriate solution to address expected material condition deficiencies.

Prepared by or under the supervision of William Berg
Jul 31, 2018

NES-MYS-1-45: Regarding Everett, please confirm that Everett is scheduled to be retired upon termination of the Agreement. Please provide a true-up mechanism for post- May 2024 valuation of investment and how the remaining value will be returned to ratepayers. If Everett is not to be retired, please provide recalculation of investments on a depreciable basis and proposed credit to be provided to the ratepayers.

OBJECTION: Mystic objects that this request is vague, unduly burdensome, irrelevant, and is not proper discovery in that it does not request information but requests that Mystic create an analysis it does not have. 18 C.F.R. §§ 385.402, 385.406, 385.407.

RESPONSE: Mystic does not yet own the Everett facility and it would be premature to make a decision about the facility's future at this time. Exelon is hopeful that ISO-NE's new fuel security product will enable the continued operation of the Everett facility. Exelon confirms that it is willing to agree to a clawback process to refund certain capital expenditures if Everett continues in service after the Mystic Agreement terminates.

Prepared by or under the supervision of William Berg
July 31, 2018

NES-MYS-2-12: With respect to the May 2, 2018 news release, "Exelon Reports First Quarter 2018 Results," and excerpted below:

> Mystic Generating Station Early Retirement: On March 29, 2018, based on ISO-NE capacity auction results for the 2021 - 2022 planning year in which Mystic Unit 9 did not clear, Generation announced it had formally notified grid operator ISO-NE of its plans to early retire its Mystic Generating Station assets on June 1, 2022 absent any interim and long-term solutions for reliability and regional fuel security. The ISO-NE recently announced that it would take a three- step approach to fuel security. First, ISO-NE will make a filing soon to obtain tariff waivers to allow it to retain Mystic 8 and 9 for fuel security for the 2022 - 2024 planning years. Second, ISO-NE will file tariff revisions to allow it to retain other resources for fuel security in the capacity market if necessary in the future. Third, ISO-NE will work with stakeholders to develop long-term market rule changes to address system resiliency considering significant reliability risks identified in ISO-NE's January 2018 fuel security report. Changes to market rules are necessary because critical units to the region, such as Mystic Units 8 and 9, cannot recover future operating costs including the cost of procuring fuel. As a result of these developments, Generation completed a comprehensive review of the estimated undiscounted future cash flows of the New England asset group during the first quarter of 2018 and no impairment charge was required. Further developments with Generation's intended use of the Mystic Generating Station assets or failure of ISO-NE to adopt interim and long-term solutions for reliability and fuel security could potentially result in future impairments of the New England asset group, which could be material.
>
> http://www.exeloncorp.com/company/Documents/Press%20Release-Earnings%20Tables/Q1%202018%20Press%20Release%20and%20Earnings%20Release%20Attachments%20FINAL.pdf

a. Please provide the "comprehensive review of the estimated undiscounted future cash flows of the New England asset group" performed during the first quarter of 2018, referenced at page 5.

b. Please explain why no impairment charge was required.

RESPONSE:

a. Please see attached "CUI//PRIV-HC FINAL Step 1 Impairment Assessment (Mystic and EMT portion).xlsx" [Bates No. 000001671].

b. When performing impairment assessments, Exelon Generation groups its assets by region. Accordingly, the impairment assessment was for the New England Asset group and not solely the Mystic assets by themselves. No impairment charge was taken because the estimated undiscounted cash flows for the New England Asset group were greater than the book value. Note that the analysis assumed that a long-term solution would be implemented in New England that would make Mystic 8 and 9 economic for its remaining useful life. As stated, in our disclosure, “failure of ISO-NE to adopt interim and long-term solutions for reliability and fuel security could potentially result in future impairments of the New England asset group.”

Prepared by or at the direction of William Berg
July 31, 2018

NES-MYS-1-7: For the following estimated capital expenditures shown in Mr. Berg's Attachment C, Exhibit MYS-5, pages 6-7, please provide why these estimated expenditures are necessary for delivery of vaporized LNG to meet the Mystic capacity obligation.

	in MUSD	
CAPEX	2018-21	2022-24
Replace Ryan 71, 72, 73 controls	0.300	
MP water system upgrade	0.300	
LP/MP/HP vaporizer replacement		3.000

OBJECTION: Mystic objects to this request as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. 18 C.F.R. § 385.402. The Commission ordered that prudently incurred capital expense, operations and maintenance expense, and administrative and general expense be recovered on a formulary basis subject to true-up, with the prudence of such costs to be reviewed in a future Commission proceeding when the costs are actually known. Accordingly, the Commission directed the participants to present evidence regarding the appropriate design of a true-up mechanism. Mystic proposed in supplemental direct to update the projected amount for capital expense, operations and maintenance expense, administrative and general expense, and taxes other than income taxes prior to the Term. The information requested does not seek information regarding the appropriate design of a true-up or requests information related to the prudence of the costs before they are incurred, and therefore, is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection, Mystic responds as follows:

RESPONSE: As discussed in the response to NES-MYS-1-6 and NES-MYS-1-64, the LNG Terminal is operated as an integrated facility, with each of its separate vaporization systems interconnected so that multiple systems are capable, and are normally operated in a manner, of delivering LNG to multiple delivery points. These capex are needed, consistent with Good Utility Practice to maintain the facility.

Prepared by or under the supervision of William Berg
July 31, 2018

Exhibit No. NES-005

Mystic Response to NES-MYS-1-1;

CUI PRIV-HC @Mystic 89 COS 5-15-2018 (Excerpt)

NES-MYS-1-1. Please provide electronic spreadsheet files for the following exhibits to Mystic's testimony, with all formulas and links intact:

a. MYS-005 William B. Berg Capital Costs of Mystic 8 & 9 and Everett
b. MYS-008 Alan C. Heintz Cost-of-Service Study
c. MYS-009 Alan C. Heintz Workpapers supporting Cost-of-Service Study.

RESPONSE: See attached spreadsheets "CUI PRIV-HC @EMT COS 5-15-2018" and "CUI PRIV-HC @Mystic 89 COS 5-15-2018" for Alan C. Heintz's Cost-of-Service Study and supporting workpapers.

Prepared by Alan C. Heintz
July 20, 2018

REDACTED

<u>Exhibit No. NES-006</u>

Mystic Response to NES-MYS-13-1

[redacted]

NES-MYS-13-1. [redacted]

[redacted] [redacted]

[redacted] [redacted]

RESPONSE:

[redacted]

[redacted]

Prepared by or under the supervision of Alan C. Heintz and Greg Bondi
August 22, 2018

<u>Exhibit No. NES-007</u>

NES-MYS2-12; FINAL Step 1 Impairment Assessment (Mystic and EMT portion) (Excerpt)

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Exhibit No. NES-008

Mystic Response to NES-MYS-1-5;

CUI__PRIV-HC NES-MYS-1-5 Mystic 7 Report (Excerpt)

NES-MYS-1-5: Regarding Mystic 8 & 9 Capital Additions, please provide the basis for inclusion of $12,000,0000 to "move/replace auxiliary boiler from retired Mystic Unit 7" for installation (Exhibit MYS 005, page 5 of 7).

a. Please provide a comparison of this cost estimate to the cost of installation of a new auxiliary boiler.

b. Please indicate whether this cost estimate includes tear-down costs associated with the remaining Unit 7 plant.

OBJECTION: Mystic objects to this request as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. 18 C.F.R. § 385.402. The Commission ordered that prudently incurred capital expense, operations and maintenance expense, and administrative and general expense be recovered on a formulary basis subject to true-up, with the prudence of such costs to be reviewed in a future Commission proceeding when the costs are actually known. Accordingly, the Commission directed the participants to present evidence regarding the appropriate design of a true-up mechanism. Mystic proposed in supplemental direct to update the projected amount for capital expense, operations and maintenance expense, administrative and general expense, and taxes other than income taxes prior to the Term. The information requested does not seek information regarding the appropriate design of a true-up or requests information related to the prudence of the costs before they are incurred, and therefore, is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection, Mystic responds as follows:

RESPONSE:

a. As detailed in the attached April 20, 2018 Stantec report titled "CUI//PRIV-HC Mystic Report 7" [Bates Nos. 000000001-000000065], Mystic's evaluation of costs focused on isolating the auxiliary boiler in place at Mystic 7 or moving the auxiliary boiler, which is relatively new, to Mystic 8 and 9. The option of isolating the auxiliary boiler at Mystic 7 was determined not to be a viable option because the parcel on which Mystic 7 is located is expected to be sold.
b. The cost estimate to move/replace auxiliary boiler from retired Mystic Unit 7 does not include demolition costs.

Prepared by or under the supervision of William Berg
July 31, 2018

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

<u>Exhibit No. NES-009</u>

Resume of Jeffrey W. Bentz

JEFFREY W. BENTZ

EXPERIENCE & RESULTS

Director of Analysis
New England States Committee on Electricity • 2011 to Present

***NESCOE** is New England's Regional State Committee, a not-for-profit organization reporting to a board of Managers appointed by each of the six New England Governors that represents the collective interests of the six New England States on regional electricity matters.*

Develop analysis about New England's wholesale markets' operations, as well as ISO-NE and market participants' proposals to modify those markets. Working closely with state officials and their staffs, develop proposals to modify the markets and advance them through the regional stakeholder process and subsequent regulatory processes.

- ✓ Participate actively in the NEPOOL stakeholder process.
- ✓ Develop proposals for NESCOE to advance through the regional stakeholder process and provide technical support as those proposals are considered by the Federal Energy Regulatory Commission, and the courts, as appropriate.
- ✓ Served as Chair of NEPOOL FCM short-term working group.
- ✓ Lead negotiations in the FCM NEPOOL settlement agreement related to FCA7 and FCM redesign efforts for FCA8.
- ✓ Provided testimony on behalf of NESCOE to FERC in a complaint related to ISO-NE's renewable resource exemption and technical support during subsequent litigation in the D.C. Circuit Court.
- ✓ Testified and participated at several FERC technical conferences on capacity markets and other matters.
- ✓ Work collaboratively with all industry sectors and the six New England states to advance policies to maintain reliable electric service at the lowest possible cost.

Provide strategy and leadership foundation to the six New England states on various non-market related issues including, for example, issues related to Gas-Electric industry coordination and the New England Governors' direction in connection with a first of its kind effort at regionally coordinated procurement.

MASSPOWER – Indian Orchard, MA • 1992 to 2010

Power generation facility that was owned by up to 6 partners (such as El Paso Energy, AIG, General Electric, Goldman Sachs, Pacific Gas and Electric and BG group to financial firms like Energy Investor Group, ArcLight Capital and Silverpoint).

GENERAL MANAGER • 1997 to 2010

Promoted to GM based on strategic vision, financial acumen and in-depth understanding of business drivers to restructure the business in preparation for upcoming industry changes. Recruited, trained and supervised 4 direct reports (Controller, Plant Manager, EH&S Manager, Administrative Assistant) and 35 indirect reports.

Held P&L responsibility, set strategic direction and managed day-to-day business activities, including operations, finance, technology, risk management, maintenance and regulatory compliance. Steered the annual strategic and business planning process, including SWOT analysis, operating plans, budgets and quarterly updates. Negotiated contract terms, including gas and energy swap agreements. **Led merger and acquisition teams.**

Represented company as chief spokesperson. Presented annual business plan, budget and financial outlook to Board. Established and maintained relationships with board members, customers, community officials, business leaders and regulatory agencies. Supported project development related to engineering, operations and environmental activities.

Achievements

Provided necessary strategy and change leadership to steer company and teams through significant structural changes following New England's wholesale electric market deregulation, numerous ownership changes, and intense contract terminations/renewals/renegotiations:

- Transitioned facility to the wholesale electric market following deregulation and positioned it for profitability in an environment with significantly lower revenue streams.
- Reduced nearly $1 million in ongoing operational costs by better matching the new deregulated marketplace and streamlining staff from 35 to 22 employees through cross training.
- Spearheaded plant's sale in 2005 from selecting an investment banker and managing due diligence through closing and transfer of assets, providing massive tax benefits to equity partners. Led competitive auction process for plant's sale again in 2007 for $150 million, resulting in a large gain.
- Brought forward $500+ million of value in restructure of extremely complex, long-term energy and natural gas contracts. Protected $40+ million of profit without requiring short-term equity infusions through expert navigation of the yearlong process while mitigating risk and obtaining regulatory approvals.

Delivered vital cost savings/avoidance through expert analysis, negotiations and risk mitigation:

- ✓ Realized $2 million in savings, as well as long-term price security, through financial analysis and negotiation of a $20 million maintenance/parts purchasing agreement.
- ✓ Played key role in the successful outcome of 2 judge trials, one which preserved $50 million in revenues.
- ✓ Negotiated elimination of $2 million in expediting fees during a crisis with parts supplier (GE) and $800,000 in lower annual costs (35% parts discount) and more contract flexibility.
- ✓ Recovered repair costs and $2.7 million in lost profits from insurance carriers.
- ✓ Lowered costs 30% in property and casualty insurance for the plant.

Additional Operational and General Management Wins:

- ✓ Added $600,000 in annual revenue by challenging the output rating with regional system operator.
- ✓ Drove plant and personnel safety to zero lost-time accidents and OSHA Voluntary Protection Program (VPP) certification.
- ✓ Involved in plant's implementation of Six Sigma processes during its operation by a GE division.

CONTROLLER • 1992 to 1997

Hired at Greenfield stage to start up and manage the accounting/finance department for two facilities as the senior finance executive. Maintained stringent financials control, including analyzing and implementing financial and internal processes; developing long-term financial plans, budgets and forecasts; monitoring actual vs. budget; coordinating financial statement preparation; monitoring cash flow; ensuring compliance with bank covenants, SOX and GAAP; managing finance/accounting MIS systems; preparing for external audits by Big 4 firms; and driving risk control initiatives, including insurance and interest rate and foreign currency swaps. Educated and trained staff and managers at all levels on business metrics and the financial impacts of their decisions.

Achievements

Established sound, scalable finance and accounting processes, controls and systems that supported smart growth:

- ✓ Established accounting procedures, billing requirements, systems, policies, purchasing workflow, A/P, A/R, budgeting, asset management and internal controls.
- ✓ Created plant's first annual budget, as well as a long-term proforma, standardized across all other assets.
- ✓ Leveraged both accounting skills and knowledge of manufacturing output principles to classify properly a $2 million upgrade to machinery, allowing for capitalization and depreciation rather than expensed under FASB rules. Increased output and amortized expense over 20 years.
- ✓ Participated on corporate-wide team to evaluate and select a new maintenance/general ledger system.
- ✓ Led implementation of inventory, purchasing, A/P and cash disbursements modules of the new financial and management information systems.
- ✓ Managed smooth transition of systems and internal controls upon all ownership changes.

ARTHUR ANDERSEN AND COMPANY – Hartford, CT • 1989 to 1992

SENIOR ACCOUNTANT, AUDIT DEPARTMENT

Completed audit engagements in the utility, brokerage and insurance industries. Planned and executed audit procedures and prepared complex corporate financial statements. Trained and supervised 2-7 accountants per engagement.

Prior manufacturing experience: Printing Press Operator in the corrugated paper industry.

EDUCATION | CERTIFICATION

Bachelor of Science, Accounting • Central Connecticut State University – New Britain, CT
Connecticut Certified Public Accountant (1992)

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I, Jeffrey W. Bentz, state under penalty of perjury that the foregoing testimony is true and correct to the best of my knowledge, information and belief.

Jeffrey W. Bentz

Executed this 22nd day of August, 2018