

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Vistra Corp.)	
Dynegy Marketing and Trade, LLC)	
NextEra Energy Resources, LLC)	
NRG Power Marketing LLC)	
LS Power Associates, L.P.)	
FirstLight Power Inc.)	
Cogentrix Energy Power Management, LLC)	
)	
v.)	Docket No. EL20-67-000
)	
Constellation Mystic Power, LLC)	
Exelon Generation Company, LLC)	
Exelon Corporation)	

**COMMENTS OF THE
NEW ENGLAND STATES COMMITTEE ON ELECTRICITY**

Pursuant to the Notice of Complaint issued by the Federal Energy Regulatory Commission (“Commission” or “FERC”) in this proceeding on August 26, 2020, the New England States Committee on Electricity (“NESCOE”)¹ respectfully submits comments generally supporting the complaint filed by the New England Generators² against Constellation Mystic Power, LLC (“Mystic”), Exelon Generation Company, LLC (“Exelon Generation”) and Exelon Corporation (“Exelon Corp.”) (collectively, “Exelon”) in this docket on August 25, 2020 (“Complaint”).

¹ NESCOE filed a doc-less motion to intervene in this proceeding on September 2, 2020.
² The New England Generators consist of Vistra Corp. (formerly known as Vistra Energy Corp.), Dynegy Marketing and Trade, LLC, NextEra Energy Resources, LLC, NRG Power Marketing LLC, LS Power Associates, L.P., FirstLight Power Inc., and Cogentrix Energy Power Management, LLC.

II. COMMENTS

The Complaint notes at the outset that the New England Generators requested relief through a request for clarification and rehearing filed on August 17, 2020, in Docket Nos. ER18-1639-001, -002, and -003. The Complaint asks that to the extent the Commission does not grant the New England Generators all of the relief sought therein, the Commission should find that information regarding Exelon’s new queue positions that was not considered in the Commission’s orders in the Mystic cost-of-service proceeding renders the existing rate unjust and unreasonable.³ Specifically, the Complaint asks the Commission to modify the reliability must-run agreement pursuant to which Mystic is receiving cost-of-service rates (the “Mystic Agreement”) to “(i) apply the clawback provision to the resources that would use the two new queue positions; (ii) delete or give no meaning to the words ‘that were expensed;’ and (iii) condition the recovery of Mystic fuel costs on the inclusion of undepreciated capital expenditures and repair costs for the Everett Marine Terminal liquefied natural gas (‘LNG’) facility (‘Everett’) into the clawback provision.”⁴

On December 20, 2018, the Commission accepted the Mystic Agreement, subject to certain conditions.⁵ On January 22, 2019, NESCOE requested clarification, and in the alternative, rehearing, that the December 2018 Order required a clawback provision applicable to

³ Complaint at 2.

⁴ *Id.*

⁵ *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 (2018) (“December 2018 Order”).

not only the Mystic 8 and 9 generating units (“Mystic 8 and 9” or “Mystic Units”) but to Everett as well.⁶ As detailed in its Rehearing Request, NESCOE stated:

As the Commission explains, the purpose of a clawback mechanism—and in mandating one in this proceeding—is to prevent toggling between market-based and cost-of-service rates and to ensure that a resource owner does not inequitably recover investments and repairs that consumers funded during the cost-of-service period that would “benefit the resource for years after the contract ends.” The Commission’s rationale applies equally to the Mystic Units and to Everett. Under the Agreement, Mystic may seek cost recovery for capital expenditures and repairs not only for Mystic 8 and 9 but also for Everett. It would be an unjust and unreasonable outcome, and inconsistent with Commission precedent, for Exelon to reap the benefits of operating Everett as a merchant facility after the term of the Agreement or benefit from the sale of the facility without reimbursing consumers for the upgrades they funded.^[7]

On July 17, 2020, the Commission denied rehearing of NESCOE’s request.⁸ The Commission stated:

In the December 2018 Order, the Commission did not require a clawback provision for expenditures made to keep the Everett plant in service, even if Everett remains in service after the term of the Mystic Agreement. The clawback mechanism for Everett’s capital costs suggested by NESCOE would not apply to payments that Mystic received under a jurisdictional rate, but rather would apply to payments that Everett received under the non-jurisdictional Everett Agreement. As noted above, even though Mystic included the Everett Agreement as an attachment to the Mystic Agreement transmittal, the Everett Agreement is not on file with the Commission and is not a jurisdictional rate because Everett is not a jurisdictional entity. Thus, we find that the Commission lacks jurisdiction to require a clawback, true-up, and/or refund of Everett’s costs. Additionally, if Mystic 8 and 9

⁶ Request for Clarification or, in the Alternative, Rehearing of the New England States Committee on Electricity, Docket No. ER18-1639-000 (filed Jan. 22, 2019) (“NESCOE Rehearing Request”).

⁷ NESCOE Rehearing Request at 4 (quoting December 2018 Order at P 210) (additional citations omitted).

⁸ *Constellation Mystic Power, LLC*, Order on Clarification, Directing Compliance, and Addressing Arguments Raised on Rehearing, 172 FERC ¶ 61,044 (2020) (“July 2020 Order”).

retire but Everett does not, the Mystic Agreement would be terminated; therefore, there would be no rate within the jurisdiction of the Commission through which to order a refund.[⁹]

For the reasons articulated in its Rehearing Request, NESCOE agrees with the Complaint’s argument that allowing Mystic to recover the costs of the fuel it acquires from Everett without subjecting those costs to the clawback provision would be unjust and unreasonable.¹⁰

While the relief sought in the Complaint is different than that sought in NESCOE’s Rehearing Request, NESCOE generally supports the relief requested—namely that Exelon cannot evade “the Commission’s anti-toggling rules and inequitably profit[] from costs paid for by ratepayers by reverting from cost-based back to market-based compensation and receiving market-based rates charged once again to those same ratepayers.”¹¹ NESCOE reserves the right to refine its position on other aspects of the Complaint, and its silence on other aspects of the Complaint should not be construed as support for or disagreement with those aspects of the Complaint.

II. CONCLUSION

For the reasons discussed above, NESCOE respectfully requests that the Commission take its Comments into consideration in addressing the Complaint.

⁹ July 2020 Order at P 43.

¹⁰ Complaint at 22-26.

¹¹ *Id.* at 2.

Respectfully Submitted,

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September 11, 2020

CERTIFICATE OF SERVICE

In accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served by electronic mail a copy of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this 11th day of September, 2020.

/s/ Phyllis G. Kimmel

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