

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

Constellation Mystic Power, LLC

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Docket No. ER18-1639-000

**PREPARED ANSWERING TESTIMONY AND EXHIBITS
OF
NANCY HELLER HUGHES

ON BEHALF OF
NEW ENGLAND STATES COMMITTEE ON ELECTRICITY**

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LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
NES-021	Answering Testimony
NES-022	Resume and Record of Testimony for Nancy Heller Hughes
NES-023	CUI__PRIV-HC NES-MYS-1-74 Membership Interest & Asset Purchase Agmt.PDF, Membership Interest and Asset Purchase Agreement by and among Exelon Generation Company, LLC as Purchaser, and ENGIE Gas & LNG Holdings LLC, and ENGIE Gas & LNG LLC as Sellers, dated March 28, 2018 (“MIPA”)
NES-024	CUI__PRIV-HC NES-MYS-1-74 Disclosure Schedules to MIPA, Schedule 2.11 Financial Statements to the MIPA
NES-025	CUI__PRIV-HC NES-MYS-2-4 000001726 2.3.1 DOMAC and ELNG Historical Financial Statement Details, ELNG Financial Statement Details for 2014-2016 and August 2017
NES-026	Excerpt from Deloitte, <i>Power Utilities, Accounting, Financial Reporting and Tax Update</i> , January 2016, Impairment Considerations
NES-027	Excerpt from ARGAs Response to ENECOS-1-17

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**SUMMARY OF
PREPARED ANSWERING TESTIMONY AND EXHIBITS OF
NANCY HELLER HUGHES**

Ms. Hughes' testimony addresses the Supplemental Testimony of Alan C. Heintz testifying on behalf of Constellation Mystic Power, LLC ("Mystic") regarding the appropriate rate base value for the Everett Marine Terminal ("EMT") to include in the Mystic 8 and 9 Cost of Service Agreement. Ms. Hughes testifies that the **[BEGIN CUI/PRIV-HC]** [REDACTED]

[REDACTED] **[END CUI/PRIV-HC]** Based on her review of the sales transaction, Ms. Hughes concludes that **[BEGIN CUI/PRIV-HC]** [REDACTED]

[REDACTED] **[END CUI/PRIV-HC]** and therefore does not meet the criteria specified in the Commission's two-prong "substantial benefits" test (*Seaway Crude Pipeline Co., LLC*, 154 FERC ¶ 61,070, at P 92 (2016)) **[BEGIN CUI/PRIV-HC]** [REDACTED] **[END CUI/PRIV-HC]**

[END CUI/PRIV-HC] Ms. Hughes recommends that the Commission approve a rate base value for EMT equal to zero dollars. If the Commission determines that EMT provides a

benefit to ratepayers, Ms. Hughes recommends the Commission approve a rate base value for EMT that is less than **[BEGIN CUI/PRIV-HC]**  **[END CUI/PRIV-HC]** taking into consideration details of the purchase agreement described in Ms. Hughes's testimony.

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1 **I. INTRODUCTION AND QUALIFICATION**

2 **II. Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND BRIEF**
3 **BUSINESS DESCRIPTION.**

4 A. My name is Nancy Heller Hughes. I am a Director at NewGen Strategies and
5 Solutions, LLC (“NewGen”). My business address is 20014 SE 19th Street,
6 Sammamish, Washington 98075. NewGen is a management and economic
7 consulting firm specializing in serving the utility industry and market by providing
8 strategy, financial, valuation, stakeholder, and sustainability services to public and
9 private clients.

10 **Q. PLEASE STATE YOUR EDUCATIONAL BACKGROUND.**

11 A. I graduated from the University of Chicago with a Bachelor’s Degree in Business and
12 Statistics in 1977. I received a Master’s Degree in Business Administration at the
13 University of Chicago in 1978.

14 **Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR PROFESSIONAL**
15 **EXPERIENCE.**

1 From 1977 through 1982, I was employed by Ernst & Ernst (now Ernst & Young),
2 working primarily on telecommunications regulatory matters before the Federal
3 Communications Commission. From 1982 through 2012, I was employed by R. W.
4 Beck, Inc. (“R. W. Beck”), an engineering and consulting firm that provided services
5 in the energy and water resources utility industries. I held positions with increasing
6 responsibilities and was an Owner in R. W. Beck until July 2009, when R. W. Beck
7 was acquired by Scientific Applications International Corporation (“SAIC”). In June
8 2012, I left SAIC to form my own independent consulting firm called Heller Hughes
9 Utility Consulting, LLC. In September 2012, I became an Owner and Director of
10 NewGen. A substantial part of my work involves valuation and depreciation.

11 **Q. HAVE YOU TESTIFIED PREVIOUSLY AS AN EXPERT WITNESS?**

12 A. Yes. I have testified before the Federal Energy Regulatory Commission (“FERC”),
13 state regulatory commissions, and courts of law. A copy of my resume and record of
14 testimony are provided as Exhibit No. NES-22.

15 **Q. DO YOU HAVE ANY PROFESSIONAL CERTIFICATIONS?**

16 A. Yes. I am an Accredited Senior Appraiser (“ASA”) of public utility property certified
17 by the American Society of Appraisers. I am also a Certified Depreciation
18 Professional (“CDP”), certified by the Society of Depreciation Professionals.

1

III. PURPOSE OF TESTIMONY

2 **Q. ON WHOSE BEHALF ARE YOU SUBMITTING THIS TESTIMONY?**

3 A. I am testifying on behalf of New England States Committee on Electricity
4 (“NESCOE”).

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

6 A. My testimony addresses the Supplemental Testimony of Alan C. Heintz testifying on
7 behalf of Constellation Mystic Power, LLC (“Mystic”) regarding the rate base value
8 for the Everett Marine Terminal (“EMT”) to include in the Mystic 8 and 9 Cost of
9 Service Agreement.

10

IV. TESTIMONY FINDINGS

11 **Q. WHAT DOCUMENTS DID YOU REVIEW WITH RESPECT TO THE**
12 **APPROPRIATE RATE BASE VALUE FOR EMT?**

13 A. I reviewed the following documents:

- 14 • Attachment D – Public Redacted Prepared Direct Testimony and Exhibits of
15 Alan C. Heintz (Exhibit No. MYS-006 through Exhibit No. MYS-009);
- 16 • CUI//PRIV-HC Attachment C, Prepared Supplemental Direct Testimony and
17 Exhibits of Alan C. Heintz (Exhibit No. MYS-020 through Exhibit No. MYS-
18 025);
- 19 • CUI__PRIV-HC NES-MYS-1-74 Membership Interest & Asset Purchase
20 Agmt.PDF, Membership Interest and Asset Purchase Agreement by and
21 among Exelon Generation Company, LLC as Purchaser, and ENGIE Gas &

1 LNG Holdings LLC, and ENGIE Gas & LNG LLC as Sellers, dated March
2 28, 2018 (“MIPA”) (Bates 000001322-000001501) (Exhibit No. NES-023);

3 • CUI__PRIV-HC NES-MYS-1-74 Disclosure Schedules to MIPA.PDF,
4 Schedule 2.11 Financial Statements (Bates 000001263-000001264) (Exhibit
5 No. NES-024)

6 • CUI__PRIV-HC NES-MYS-2-4 000001726 2.3.1 DOMAC and ELNG
7 Historical Financial Statement Details.XLSX, ELNG Financial Statement
8 Details for 2014-2016 and August 2017 (Exhibit No. NES-025);

9 • Deloitte, *Power Utilities, Accounting, Financial Reporting and Tax Update*,
10 January 2016, Impairment Considerations, pages 70-73 (Exhibit No. NES-
11 026); and

12 • Mystic responses to various data requests.

13 **Q. BASED ON YOUR REVIEW OF THESE DOCUMENTS WHAT ARE YOUR**
14 **CONCLUSIONS WITH RESPECT TO THE RATE BASE VALUE OF EMT?**

15 A. As discussed in my testimony, Mystic has failed to provide adequate support to
16 include [BEGIN CUI/PRIV-HC] [REDACTED]

17 [REDACTED]
18 [REDACTED] [END CUI/PRIV-HC]

19 in rate base. (Exelon is the parent company of ExGen and Mystic.)

20 **Q. WHAT IS RATE BASE?**

21 A. Rate base is the value of utility property used in providing service on which the utility
22 is permitted to earn an authorized rate of return determined by the regulatory

1 commission. Rate base is equal to the utility's net plant in service, *i.e.*, gross plant in
2 service less accumulated depreciation. Adjustments are made to rate base to subtract
3 any Accumulated Deferred Income Taxes ("ADIT") and add an allowance for Cash
4 Working Capital ("CWC").

5 **Q. WHAT AMOUNT DOES MYSTIC PROPOSE TO INCLUDE IN RATE BASE**
6 **FOR EMT?**

7 A. Mystic proposes to include \$60 million in rate base for EMT. (Exhibit No. MYS-008
8 at 15; *see also* Exhibit No. MYS-020 at 9:15). Mr. Heintz states, "(t)he Gross and
9 Net Plant for 2017 of \$60 million [BEGIN CUI/PRIV-HC] [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED] [END CUI/PRIV-HC] Exhibit No. MYS-020 at 9:15-18.

13 **Q. WHAT IS THE NET PLANT IN SERVICE VALUE FOR EMT RECORDED**
14 **ON THE PREVIOUS OWNER'S FINANCIAL STATEMENTS?**

15 A. [BEGIN CUI/PRIV-HC] [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

1
2
3

[REDACTED]

4
5
6

[REDACTED]

8

[REDACTED]

9

[REDACTED]

10

[REDACTED]

11

[REDACTED] [END CUI/PRIV-HC]

12 **Q. WHAT IS PLANT IMPAIRMENT?**

13 A. Accounting Standards Codification (“ASC”) 360-10-35 addresses financial
14 accounting and reported related to the impairment of disposal of long-lived assets. To
15 test for impairment of an asset or asset group that is held and used, a utility should
16 compare future cash flows from the use and ultimate disposal of the asset or asset
17 group with the carrying amount of the asset or asset group. Impairment exists when
18 the expected future nominal (undiscounted) cash flows, excluding interest charges,

1 are less than the carrying amount. Exhibit No. NES-027 (Deloitte, *Power and*
2 *Utilities, Accounting, Financial Reporting, and Tax Update*, January 2016.

3 **Q. WHAT FACTORS CAN CAUSE PLANT IMPAIRMENT?**

4 A. Factors which can cause plant impairment include significant changes in the
5 economic, technological, political or market environment which the entity operates;
6 decrease in demand; and decrease in fuel and energy prices.

7 **Q. WHAT IS THE PROPER ACCOUNTING FOR IMPAIRMENT FOR**
8 **REGULATED UTILITIES?**

9 A. The report published by Deloitte, *Power and Utilities, Accounting, Financial*
10 *Reporting, and Tax Update* (January 2016) (Exhibit No. NES-027) states at page 72:

11 For regulated utilities subject to the provisions of ASC 980, ASC 360-
12 10 does not specify whether an impairment loss should be recorded as
13 a reduction in the asset's original cost or as an adjustment to the
14 depreciation reserve. Adjustment to the original cost appears to be
15 consistent with the notion that recognizing an impairment establishes a
16 "new cost" for the asset. However, for enterprises that are subject to
17 cost-based regulation and apply ASC 980, original historical cost is a
18 key measure for determining regulated rates that may be charged to
19 customers. Accordingly, rate-regulated enterprises may be directed by
20 their regulators to retain original historical cost for an impaired asset
21 and to charge the impairment loss directly to accumulated
22 depreciation.

23 In addition, the loss on plant impairment recognized during the year is
24 deducted from income before taxes on the income statement for that year.

25 **Q. [BEGIN CUI/PRIV-HC]** [REDACTED]

26 [REDACTED]

1 A. [REDACTED]
2 [REDACTED]
3 [REDACTED] [END
4 CUI/PRIV-HC]

5 Q. MR. HEINTZ STATES IN HIS SUPPLEMENTAL TESTIMONY THAT
6 [BEGIN CUI/PRIV-HC] [REDACTED]
7 [REDACTED] [END CUI/PRIV-
8 HC] DO YOU AGREE?

9 A. No. The Deloitte report I quoted above (Exhibit No. NES-026) specifically refers to
10 regulated utilities recording plant impairment losses on their books. The FERC
11 Uniform System of Accounts states that, “Depreciation, as applied to depreciable
12 electric plant, means the loss in service value not restored by current maintenance, ...
13 Among the causes to be given consideration are wear and tear, decay, action of the
14 elements, inadequacy, obsolescence, changes in the art, changes in demand and
15 requirements of public authorities.” Plant impairment is a form of depreciation.

16 Q. WHAT PURCHASE PRICE DID EXGEN PAY TO ACQUIRE EMT?

17 A. [BEGIN CUI/PRIV-HC] [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED] [END CUI/PRIV-HC]

6 **Q. WHEN A UTILITY ACQUIRES PROPERTY, WHAT IS THE VALUE OF**
7 **THE PROPERTY THAT IS RECORDED IN PLANT IN SERVICE ON THE**
8 **BOOKS OF THE UTILITY?**

9 A. The value of utility property acquired is recorded at original cost less depreciation
10 including impairment. Any amount paid in excess should be recorded as a premium
11 paid on the acquisition of property. For EMT, [BEGIN CUI/PRIV-HC] [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED] [END CUI/PRIV-HC]

15 **Q. DO YOU KNOW WHY [BEGIN CUI/PRIV-HC] [REDACTED]**

16 [REDACTED]

17 [REDACTED]

18 [REDACTED] [END CUI/PRIV-HC]

19 A. No. Based on my review of the testimony and data responses, Mystic did not provide
20 any explanation or support for [BEGIN CUI/PRIV-HC] [REDACTED]

21 [REDACTED] [END CUI/PRIV-HC]

1 **Q. WHAT IS THE COMMISSION’S POLICY REGARDING INCLUSION OF**
2 **AN ACQUISITION PREMIUM IN RATE BASE?**

3 A. Mr. Heintz quoted the following excerpt from a Commission order in his
4 supplemental testimony describing the “substantial benefits” test the Commission has
5 applied to determine whether it is appropriate to include an acquisition premium in
6 rate base:

7 The “substantial benefits” requirement for a pipeline seeking rate-base
8 treatment for an acquisition premium involves a two-prong test. First,
9 the pipeline must show that the facilities will be converted from one
10 public use to a different public use, or that the assets will be placed in
11 FERC-jurisdictional service for the first time. Second, the pipeline
12 must show clear and convincing evidence that its acquisition of the
13 facilities will provide substantial, quantifiable benefits to ratepayers
14 even if the full purchase price, including the portion above depreciated
15 original cost is included in rate base. The Commission also considers
16 whether the transaction at issue is an arm's length sale between
17 unaffiliated parties, and whether the purchase price of the asset at issue
18 is less than the cost of constructing a comparable facility. The
19 Commission allows an acquisition premium to be included in a
20 pipeline’s rate base when the purchase price is less than the cost of
21 constructing comparable facilities, the facility is converted to a new
22 use, and the transacting parties are unaffiliated.

23 *Seaway Crude Pipeline Co., LLC*, 154 FERC ¶ 61,070, at P 92 (2016).

24 **Q. DOES EXGEN’S PAYMENT OF [BEGIN CUI/PRIV-HC] [REDACTED]**
25 **[REDACTED] [END CUI/PRIV-HC] MEET THE**
26 **COMMISSION’S TWO-PRONG “SUBSTANTIAL BENEFITS” TEST?**

27 A. No, it does not. First, I disagree with Mr. Heintz that [BEGIN CUI/PRIV-HC] [REDACTED]
28 [REDACTED] [END
29 CUI/PRIV-HC] EMT will continue to operate in its present use to provide LNG fuel

1 for the Mystic 8 & 9 generating units. The Commission order states that the applicant
2 “must show that the facilities will be converted from one public use to a different
3 public use, or that the assets will be placed in FERC-jurisdictional service for the first
4 time.” *Seaway Crude Pipeline Co., LLC*, 154 FERC ¶ 61,070, at P 92 (2016). As
5 stated earlier, I do not believe that with ExGen’s acquisition of EMT, EMT is being
6 converted from one public use to a different public use. In addition, DOMAC
7 submits semi-annual operational reports for EMT to the Commission; therefore, EMT
8 is already under FERC jurisdiction.

9 The second prong of the Commission’s two-prong “substantial benefits” test
10 states that the applicant “must show clear and convincing evidence that its acquisition
11 of the facilities will provide substantial, quantifiable benefits to ratepayers even if the
12 full purchase price, including the portion above depreciated original cost is included
13 in rate base.” However, the Commission’s order goes on to state that, “The
14 Commission also considers whether the transaction at issue is an arm’s length sale
15 between unaffiliated parties, and whether the purchase price of the asset at issue is
16 less than the cost of constructing a comparable facility.” *Seaway Crude Pipeline Co.,*
17 *LLC*, 154 FERC ¶ 61,070, at P 92 (2016).

18 [BEGIN CUI/PRIV-HC] [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]¹ [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 [END CUI/PRIV-HC]

7 Finally, Mystic has presented no evidence showing that the purchase price of
8 the asset at issue is less than the cost of constructing a comparable facility.

9 **Q. WHAT DO YOU CONCLUDE REGARDING THE APPROPRIATENESS OF**
10 **INCLUDING IN RATE BASE [BEGIN CUI/PRIV-HC] [REDACTED]**
11 **[REDACTED] [END**
12 **CUI/PRIV-HC]**

13 A. For the reasons discussed above, Mystic has not met the criteria specified in the
14 Commission’s two-prong “substantial benefits” test to include the [BEGIN
15 CUI/PRIV-HC] [REDACTED] [END CUI/PRIV-
16 HC] (*Seaway Crude Pipeline Co., LLC*, 154 FERC ¶ 61,070, at P 92 (2016)). In
17 addition, [BEGIN CUI/PRIV-HC] [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED] [END CUI/PRIV-HC]. My recommendation is that the
21 Commission approve a rate base value for EMT equal to zero (\$0). If the

¹ See also Exhibit No. NES-028 at 11, n. 7.

1 Commission determines that EMT provides some benefit to ratepayers, I recommend
2 the Commission approve a rate base value for EMT that is less than [BEGIN
3 CUI/PRIV-HC] [REDACTED] [END CUI/PRIV-HC] and that takes into
4 consideration [BEGIN CUI/PRIV-HC] [REDACTED]
5 [REDACTED] [END CUI/PRIV-
6 HC].

7 V. CONCLUSION

8 Q. MS. HUGHES, PLEASE SUMMARIZE YOUR TESTIMONY FINDINGS AND
9 ANY RECOMMENDATIONS.

10 A. [BEGIN CUI/PRIV-HC] [REDACTED]
11 [REDACTED] [END
12 CUI/PRIV-HC] As discussed in my testimony, Mystic has not met the criteria in the
13 Commission's two-prong "substantial benefits" test to [BEGIN CUI/PRIV-HC]
14 [REDACTED] [END CUI/PRIV-HC]
15 Therefore, I recommend that [BEGIN CUI/PRIV-HC] [REDACTED]
16 [REDACTED] [END CUI/PRIV-HC] be included in rate base, *i.e.*, the rate base value for
17 EMT should be equal to zero (\$0). If the Commission determines that EMT provides
18 some benefit to ratepayers, I recommend the Commission approve a rate base value
19 for EMT that is less than [BEGIN CUI/PRIV-HC] [REDACTED]
20 [END CUI/PRIV-HC] taking into consideration [BEGIN CUI/PRIV-HC] [REDACTED]

1

[REDACTED]

2

[REDACTED] [END CUI/PRIV-HC].

3

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

4

A. Yes. However, depending on receipt of responses to outstanding discovery questions

5

or additional information, the views expressed in my testimony may change.

Exhibit No. NES-022

Resume and Record of Testimony
for Nancy Heller Hughes

Exhibit No. NES-022

RESUME

**NANCY HELLER HUGHES, ASA, CDP
DIRECTOR, NEWGEN STRATEGIES AND SOLUTIONS, LLC**

Nancy Heller Hughes specializes in utility rates and regulation, depreciation, and valuation. She has testified as an expert witness on these issues before federal and state regulatory commissions, city councils and courts of law and has worked in the public utility industry since 1977.

Ms. Hughes is an Accredited Senior Appraiser (ASA) of utility property and has performed appraisal studies to determine the value of a wide range of utility assets including electric, natural gas, water, wastewater, telecommunications and solid waste property. These studies have been performed in connection with the sale and acquisition of property, eminent domain cases, property tax issues, fixed asset inventory development and utility rate cases.

In addition, Ms. Hughes is a recognized expert on depreciation issues and has performed and critically evaluated depreciation studies for utilities across the U.S. She has also evaluated the appropriateness of decommissioning cost estimates and funding methodologies for nuclear and non-nuclear generating units. Ms. Hughes is a Certified Depreciation Professional (CDP) designated by the Society of Depreciation Professionals.

In 2012, Ms. Hughes became a founding member of NewGen Strategies and Solutions, LLC (NewGen). Prior to joining the firm, she worked for R. W. Beck and its successor firm, SAIC, for 30 years.

EDUCATION

- Master of Business Administration in Finance and Accounting, University of Chicago
- Bachelor of Arts in Business and Statistics, University of Chicago

PROFESSIONAL CERTIFICATIONS

- Accredited Senior Appraiser (ASA), Public Utility Discipline, American Society of Appraisers
- Certified Depreciation Professional (CDP), Society of Depreciation Professionals

PROFESSIONAL EXPERIENCE

Appraisal Experience

- Appraisal Review Reports of Wansley, Scherer and Spruce Generating Stations – Exelon Corporation

- Appraisal of Electric Substation and Transmission Line Tap Facilities – Public Service Company of New Mexico
- Appraisal of Electric Distribution System Facilities – South San Joaquin Irrigation District, California
- Appraisal of Water System – City of Claremont, California
- Appraisal of Water System – City of Visalia, California
- Appraisal of Transmission and Distribution System at Wright-Patterson Air Force Base – Dayton Power & Light
- Appraisal of Linden Wind Energy Project – Southern California Public Power Authority
- Appraisal of Tieton Hydroelectric Project – Southern California Public Power Authority
- Appraisal of Southeastern Louisiana Water & Sewer Co. – St. Tammany Parish, Louisiana
- Appraisal Study of Kaua‘i Electric – County of Kaua‘i, Hawai‘i
- Appraisal of Douglas-Hayfork 60-kV Electric Transmission Line – Trinity Public Utilities District, California
- Appraisal of Electric Distribution Facilities – Lafayette Utilities System
- Appraisal of Trans-Alaska Pipeline System – North Slope Borough, Alaska
- Appraisal of Electric Generating Plants – Duquesne Light Company, Pittsburgh, Pennsylvania
- Appraisal of Domestic Water, Irrigation and Wastewater Systems, City of Bend, Oregon
- Appraisal of Electric Distribution System – Kanab City, Utah
- Valuation of Lake Tapps Municipal Water Rights – Cascade Water Alliance, Washington
- Appraisal of Electric Distribution Facilities – City of Lakewood, Washington
- Appraisal of Martins Creek and Sunbury Power Blocks – Access Leasing Corporation and Cypress Leasing Corporation
- Appraisal of Electric Distribution Property – City of Hermiston, Oregon
- Appraisal of Gas and Electric Utility Assets – Potomac Electric Power Company, Washington, D.C.
- Appraisal of Electric Transmission and Distribution Property – Clatskanie People’s Utility District, Eugene, Oregon
- Appraisal of Electric Distribution Plant – City of Azusa, California
- Appraisal of Blackstone Station Steam Plant – Cambridge Electric Light Company, Cambridge, Massachusetts

- Appraisal of Electric Distribution Property – Eugene Water and Electric Board and Springfield Utility Board, Oregon
- Appraisal of Electric Distribution Property – Emerald People’s Utility District, Eugene, Oregon
- Appraisal of Electric Distribution Property – Truckee-Donner Public Utility District, California
- Appraisals of Natural Gas and Electric Utility Property – City of Meriden, Connecticut
- Appraisal of Solid Waste Landfill – Arkansas State Highway Department

Depreciation Experience

- Depreciation Rate Study – Los Angeles Department of Water and Power, California
- Depreciation Rate Study – CPS Energy, San Antonio, Texas
- Expert Testimony, Depreciation – Confederated Salish and Kootenai Tribes, arbitration case
- Expert Testimony, Non-nuclear Power Plant Dismantlement Costs – City of Austin, Texas
- Depreciation Rate Studies – Homer Electric Association, Alaska
- Depreciation Rate Studies – Kaua‘i Island Utility Cooperative
- Depreciation Rate Study – Tri-State Generation and Transmission Association, Inc., Westminster, Colorado
- Depreciation Rate Study – Golden Valley Electric Association, Alaska
- Depreciation Rate Study – Department of Water, County of Kaua‘i
- Expert Testimony, Depreciation – Lloyd, Gosselink, Blevins, Rochelle, Baldwin & Townsend, P.C. representing Texas Cities
- Depreciation Rate Study – Garland Power & Light, Garland, Texas
- Expert Testimony, Depreciation – Kaye Scholer, L.L.P., representing Connecticut Department of Public Utility Control
- Depreciation Rate Study – Freeport Electric, Freeport, New York
- Depreciation Rate Study – Salem Electric, Salem, Oregon
- Expert Testimony, Depreciation – Alaska Electric Generation and Transmission Cooperative, Inc.
- Expert Testimony, Depreciation and Fossil Dismantlement Study – Florida Municipal Power Agency
- Depreciation Rate Study, City Electric System – Key West, Florida

- Expert Testimony, Depreciation and Decommissioning – City Council of New Orleans, Louisiana
- Expert Testimony, Depreciation – North Carolina Municipal Power Agency No. 1 and Piedmont Municipal Power Agency
- Expert Testimony, Depreciation – Fayetteville Public Works Commission

**Record of Testimony Submitted by
Nancy Heller Hughes, ASA, CDP**

Utility	Proceeding	Subject of Testimony	Before	Client	Date
1. United Power, Inc	Case No. 17CV107	Just Compensation - Service Territory	District Court, Adams County, Colorado	United Power, Inc.	3/18
2. Southwest Power Pool, Inc.	ER18-985-000	Depreciation Study	Federal Energy Regulatory Commission	Tri-State Generation and Transmission Association, Inc	3/18
3. Duke Energy Progress	Docket No. E-2, Sub 1142	Depreciation	North Carolina Utility Commission	Fayetteville Public Works Commission	10/17
4. Los Angeles Department of Water and Power (LADWP)	2017 Reform of Electric Transmission Tariff and Electric Transmission Rates	Depreciation Study	LADWP Open Access Transmission Tariff (OATT) Stakeholder Proceeding	Los Angeles Department of Water and Power	1/17
5. Southwest Power Pool, Inc.	ER16-204-001	Transmission Plant Depreciation Rates	Federal Energy Regulatory Commission	Tri-State Generation and Transmission Association, Inc.	9/16
6. Golden State Water Company	Case No. BC566125	Eminent Domain, Right to Take Phase - Financial Feasibility	Superior Court of the State of California, County of Los Angeles	City of Claremont, CA	7/16
7. Golden Valley Electric Association	U-15-104	Depreciation Study	Regulatory Commission of Alaska	Golden Valley Electric Association	8/15
8. Public Service Company of Colorado	Docket No. 15AL-0233E	LED Street Light Tariff	Colorado Public Utilities Commission	Municipal Intervenor Group	8/15
9. Exelon Corporation	Docket Nos. 29183-13 and 29184-13	Appraisal Review Reports Regarding Value of Power Plants in Sale and Leaseback Transactions	United States Tax Court	Exelon Corporation	5/15, 7/15

Utility	Proceeding	Subject of Testimony	Before	Client	Date
10. PPL Montana, LLC	AAA No. 77-198-00416-12	Kerr Hydroelectric Project Conveyance Price - Depreciation	American Arbitration Association	Confederated Salish and Kootenai Tribes of the Flathead Reservation	1/14
11. Austin Energy	Docket No. 40627	Non-Nuclear Generation Plant Dismantlement Cost	Public Utility Commission of Texas	Austin Energy	2/13
12. Public Service Company of Colorado	Docket No. 11AL-768E	Streetlight Tariff Issue	Public Utilities Commission of Colorado	Local Government Intervenors (12 Colorado cities and towns)	1/12
13. Chugach Electric Association, Inc.	Docket No. U-09-097	Depreciation	Regulatory Commission of Alaska	Homer Electric Association	2/10
14. Public Service Company of Colorado	Docket No. 09AL-299E	Streetlight Rates	Public Utilities Commission of Colorado	Local Government Intervenors (16 Colorado cities and towns)	10/09
15. AmerenCILCO, AmerenCIPS and AmerenIP	Docket Nos. 09-0306 thru 09-0311 Cons.	Streetlight Rates	Illinois Commerce Commission	City of Champaign and the Town of Normal, Illinois	9/09
16. Kaua'i Island Utility Cooperative	Docket No. 2009-0050	Depreciation Study	Hawai'i Public Utilities Commission	Kaua'i Island Utility Cooperative	6/09
17. Garland Power & Light	Docket No. 36439	Depreciation Study	Public Utility Commission of Texas	City of Garland, Texas, d/b/a Garland Power & Light	11/08
18. AmerenCILCO, AmerenCIPS and AmerenIP	Docket Nos. 07-0585 thru 07-0590 Cons.	Streetlight Rates	Illinois Commerce Commission	Cities of Champaign, Urbana, Decatur and Bloomington, and the Town of Normal, Illinois	3/08
19. Alyeska Pipeline Company (Trans-Alaska Pipeline System)	OAH No. 07-SARB-TAX	Property Tax Value	Alaska State Assessment Review Board	North Slope Borough, Fairbanks North Star Borough, City of Valdez	5/07
20. Chugach Electric Association, Inc.	Docket No. U-06-134	Depreciation	Regulatory Commission of Alaska	Homer Electric Association	3/07

Utility	Proceeding	Subject of Testimony	Before	Client	Date
21. AEP Texas Central Company	Docket 33309	Depreciation	Texas Public Utilities Commission	Cities Served by AEP Texas Central Company	3/07
22. AEP Texas North Company	Docket 33310	Depreciation	Texas Public Utilities Commission	Cities Served by AEP Texas North Company	3/07
23. Alyeska Pipeline Company (Trans-Alaska Pipeline System)	OAH No. 06-SARB-TAX	Property Tax Value	Alaska State Assessment Review Board	North Slope Borough, Fairbanks North Star Borough, City of Valdez	5/06
24. Entergy Gulf States, Inc.	Docket No. 00994490	Expropriation of Electric Distribution Facilities	15 th Judicial District Court, Parish of Lafayette, Louisiana	Lafayette Utilities System	4/06
25. Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	Case No. ER-2005-0436	Combustion Turbine Valuation	Missouri Public Service Commission	Aquila, Inc.	12/05
26. PSEG Power Connecticut, LLC	Case No. ER05-231-003	Depreciation	Federal Energy Regulatory Commission	Connecticut Department of Public Utility Control	9/05
27. Chugach Electric Association, Inc.	Docket No. U-04-102	Depreciation	Regulatory Commission of Alaska	Homer Electric Association	5/05
28. Alyeska Pipeline Company (Trans-Alaska Pipeline System)	OAH No. 05-0307-TAX	Property Tax Value	Alaska State Assessment Review Board	North Slope Borough, Fairbanks North Star Borough, City of Valdez	5/05
29. Qwest Corporation	Docket Nos. T-01051B-03-0454 and T-00000D-00-0672	Reproduction Cost New Less Depreciation Study	Arizona Corporation Commission	Qwest Corporation	5/04, 12/04
30. AEP Texas Central Company	PUC Docket No. 28840	Depreciation	The Public Utility Commission of Texas	Cities served by AEP Texas Central Company	2/04

Utility	Proceeding	Subject of Testimony	Before	Client	Date
31. Chugach Electric Association, Inc.	Docket No. U-01-108	Depreciation	Regulatory Commission of Alaska	Homer Electric Association, Inc.	7/02
32. Connecticut Light & Power Company and Yankee Gas Services Company	Docket No. (X07) CV-95-0072561-S	Property Tax Value	Superior Court of the State of Connecticut, Judicial District of Tolland	City of Meriden, Connecticut	1/01
33. Pennsylvania Power & Light, Inc.		Fair Market Value of Two Power Blocks	Arbitration Panel	Access Leasing Corp. and Cypress Leasing Corp.	1/99
34. U S WEST Communications, Inc.	Docket No. T-1051B-99-105	Reproduction Cost New Less Depreciation Study	Arizona Corporation Commission	U S WEST Communications, Inc.	1/99, 6/00
35. Chugach Electric Association, Inc.	Docket No. U-97-107	Depreciation	Alaska Public Utilities Commission	Alaska Electric Generation & Transmission Cooperative	11/97
36. Municipal Electric Authority of Georgia	Docket No. 7967-U	Authority to Provide Telecommunications Services	Public Service Commission State of Georgia	Municipal Electric Association of Georgia	11/97
37. Southern California Edison	Case No. BC 093 146	Condemnation of Electric Distribution Plant	Superior Court of the State of California, County of Los Angeles	City of Azusa, California	2/95
38. Waste Management of Arkansas, Inc.	Case No. 93-0234	Landfill Condemnation	Circuit Court of Pulaski County, Arkansas	Arkansas State Highway Department	8/94
39. Chugach Electric Association	Docket No. U-93-15	Depreciation	Alaska Public Utilities Commission	Homer Electric Assn., Matanuska Electric Assn., and Alaska Electric Generation & Transmission Cooperative	8/93
40. U S WEST Communications, Inc.	Docket No. T-1051-93-183	Reproduction Cost New Less Depreciation Study	Arizona Corporation Commission	U S WEST Communications, Inc.	7/93
41. Jess Ranch Water Company	Application 92-01-034	Certificate of Public Convenience and Necessity	California Public Utilities Commission	Town of Apple Valley, California	4/93

Utility	Proceeding	Subject of Testimony	Before	Client	Date
42. Washington Natural Gas Company	Docket No. UG-920840	Revenue Attrition	Washington Utilities and Transportation Commission	Commission Staff	4/93
43. Pacific Gas and Electric Company	Case No. 213069	Street Light Condemnation	Superior Court of the State of California, County of Kern	City of Bakersfield, California	3/92
44. Pacific Gas and Electric Company	Case No. 393325-6	Street Light Condemnation	Superior Court of the State of California, County of Fresno	City of Fresno, California	9/91
45. Georgia Power Company	Docket No. 4007-U	Depreciation, Nuclear Decommissioning, Cost Allocation and Rate Design	Georgia Public Service Commission	U.S. Department of Defense	8/91
46. El Paso Electric Company	Docket No. 9945	Cost Allocation and Rate Design	Public Utilities Commission of Texas	U.S. Department of Defense	5/91
47. U S WEST Communications, Inc.	Docket No. T-1051-91-004	Reproduction Cost New Less Depreciation Study	Arizona Corporation Commission	U S WEST Communications, Inc.	1/91
48. System Energy Resources, Inc.	Docket No. ER89-678	Nuclear Decommissioning	Federal Energy Regulatory Commission	City of New Orleans	11/90 1/91
49. Alascom, Inc.	Docket No. U-87-25	Cost Allocation and Rate Design	Alaska Public Utilities Commission	U.S. Department of Defense	11/88
50. United Cities Gas Company	Docket No. 3799-U	Rate of Return and Capital Structure, Rate Design	Georgia Public Service Commission	U.S. Department of Defense	10/88
51. Louisiana Power & Light Company	Docket No. CD-86-11	Depreciation	City Council of New Orleans	City Council of New Orleans	12/87 3/88
52. Duke Power Company	First Proceeding in Arbitration	Depreciation, Purchased Capacity Rate	Mecklenberg County, North Carolina	North Carolina Municipal Power Agency No. 1, et al.	11/87 2/88
53. Sierra Pacific Power Company	Docket No. 86-557	Depreciation	Public Service Commission of Nevada	Commission Staff	3/87

Utility	Proceeding	Subject of Testimony	Before	Client	Date
54. System Energy Resources, Inc.	Docket No. ER82-616-030	Depreciation	Federal Energy Regulatory Commission	City Council of New Orleans	3/87
55. El Paso Electric Company	Docket No. ER86-368	Depreciation	Federal Energy Regulatory Commission	Imperial Irrigation District	8/86
56. Washington Natural Gas Company	Cause No. U-84-60	Revenue Attrition	Washington Utilities and Transportation Commission	Commission Staff	12/84
57. Anchorage Telephone Utility	Docket No. U-80-42	Access Charge Cost of Service and Rate Design	Alaska Public Utilities Commission	Municipality of Anchorage	3/81

Exhibit No. NES-023

**NES-MYS-1-74 Membership Interest & Asset Purchase Agmt.PDF,
Membership Interest and Asset Purchase Agreement by and among
Exelon Generation Company, LLC as Purchaser, and ENGIE Gas
& LNG Holdings LLC, and ENGIE Gas & LNG LLC as Sellers,
dated March 28, 2018 (“MIPA”)**

REDACTED

Exhibit No. NES-024

**NES-MYS-1-74 Disclosure Schedules to MIPA,
Schedule 2.11 Financial Statements to the MIPA**

REDACTED

Exhibit No. NES-025

**Mystic Response to NES-MYS-2-4 000001726 2.3.1 DOMAC and
ELNG Historical Financial Statement Details, ELNG Financial
Statement Details for 2014-2016 and August 2017**

REDACTED

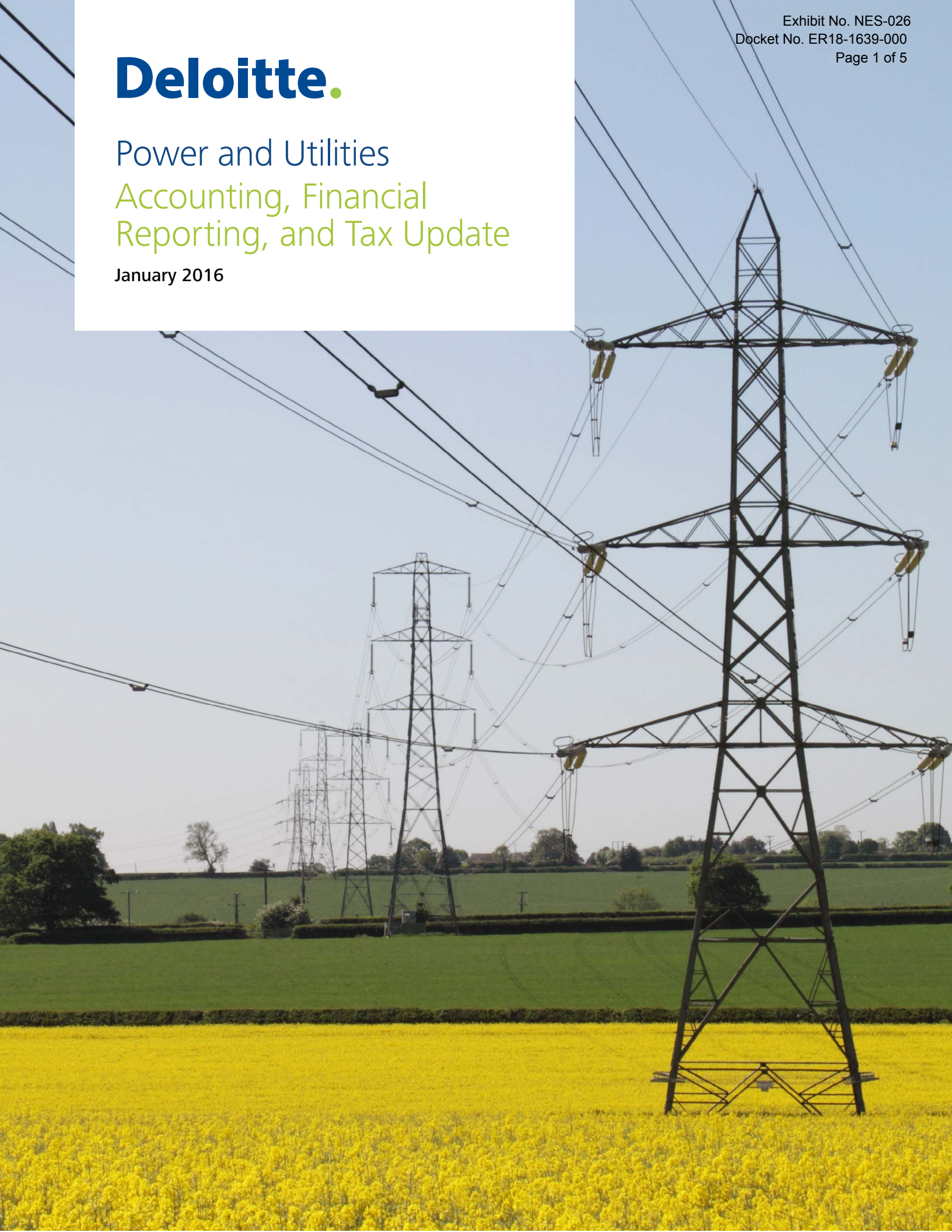
Exhibit No. NES-026

**Excerpt from Deloitte, *Power Utilities, Accounting,*
Financial Reporting and Tax Update,
January 2016, Impairment Considerations**



Power and Utilities
Accounting, Financial
Reporting, and Tax Update

January 2016



Determining the appropriate accounting for a settled rate case can sometimes be challenging when the extent of the information included in the settlement agreement is limited. A settlement agreement may include little more than the approved revenue requirement. It may not include any information about the types of currently incurred costs that are to be recovered or about the recovery of previously incurred costs that are deferred as regulatory assets. Utility companies must therefore exercise significant judgment to determine the appropriate accounting for a settled rate case. When making this determination, utility companies should take the following considerations into account:

- A utility company should consider preparing a calculation of the hypothetical settled revenue requirement on the basis of the initially filed rate case, filed testimony and responses to intervenor requests, discussions with intervenors and the regulator, and the settlement agreement. This detailed calculation, which is based on the agreed-to revenue requirement, may help the utility company understand the components (e.g., those related to rate base, cost of service, and return on rate base) of the settled revenue requirement and the accounting implications of the settlement. To perform this calculation, the utility company may need input from various departments at the company, including regulatory, accounting, and legal, and will need to use significant judgment depending on the level of detail in the settlement agreement. The calculation of the hypothetical settled revenue requirement should be sufficiently detailed for parties to understand the significant judgments and the allocations made.
- Specific considerations may include (1) the estimated capital structure ratio and cost of capital components, (2) a determination of how previously deferred costs will be recognized for both the amount of costs and the duration of recovery, and (3) whether any regulatory assets should be written off because they are no longer collectible.

The judgments about the capital structure ratio and cost of capital components will affect the amount of allowance for funds used during construction (debt and equity) that are capitalized to utility plant for the periods after the rate-case settlement is approved. The judgments regarding the regulatory assets may be significant for both the current period (deferral of costs incurred or a write-off of costs previously incurred) and future periods for costs recovered in future rates.

In exercising its professional judgment, a utility company may consider weighting the evidence used to calculate the hypothetical settled rate requirement similarly to how it weights the evidence used to determine whether it is probable that a regulatory asset will be recovered. Such judgments will be based on the facts and circumstances of each settlement agreement. The SEC staff has unofficially suggested that evidence that could support future recovery of regulatory assets includes:

- Rate orders from the regulator specifically authorizing recovery of the costs in rates.
- Previous rate orders from the regulator allowing recovery for substantially similar costs.
- Written approval from the regulator approving future recovery in rates.
- Analysis of recoverability from internal or external legal counsel.

Impairment Considerations

ASC 360-10-35 addresses financial accounting and reporting related to the impairment or disposal of long-lived assets. In accordance with ASC 360-10-35, an entity must recognize an impairment loss only if the carrying amount of a long-lived asset is not recoverable from its undiscounted cash flows and must measure an impairment loss as the difference between the carrying amount and fair value of the asset.

Asset Grouping and Identifiable Cash Flows for Impairment Recognition and Measurement

In applying ASC 360-10-35, an entity must determine the asset grouping for long-lived assets. ASC 360-10-35-23 states that “[f]or purposes of recognition and measurement of an impairment loss, a long-lived asset or assets shall be grouped with other assets and liabilities at the lowest level for which identifiable cash flows are largely independent of the cash

flows of other assets and liabilities.” An entity should determine the level at which assets are grouped on the basis of the entity’s facts and circumstances. An important consideration may be whether the entity is regulated or nonregulated. For many rate-regulated utilities, the entire generating fleet, as well as power purchase agreements, is used to meet the utility’s obligation to serve and the revenues from regulated customers cannot be identified with respect to any subset of assets. Accordingly, many utilities have concluded that the lowest level of identifiable cash flows is related to the entire regulated generating fleet or a larger group of regulated assets.

One example of a grouping concept could be an electric utility that is subject to traditional, cost-based rate regulation and uses various sources of generation to fulfill its service obligation. An electric utility’s generating mix could range from high-cost nuclear power plants and peaking units to lower-cost fossil fuel units and inexpensive hydroelectric, solar, or wind facilities. Because this collection of plant assets is used together to meet the electric utility’s service obligation and produce joint cash flows (generally based on system-wide average costs), such plant assets are interdependent and are typically grouped for recognition and measurement of an impairment loss under ASC 360-10-35.

By contrast, unregulated power plant businesses may be able to identify cash flows at a lower level than the entire generating fleet, such as by region or individual plant.

When performing the asset grouping assessment, an entity may consider the following factors:

- *The presence and extent of shared costs* — Generally, individual plants have certain discrete costs that are directly attributable to the plant. However, a portion of the cost structure may also be shared. These shared costs may include legal; accounting; trading; marketing; and, in certain circumstances, fuel and hedging contracts. The degree of shared costs could serve as evidence of the interdependence of cash flows between plants.
- *The extent to which the entity manages its business at various levels, such as by state, ISO, or region* — An entity may manage its generation fleet as individual assets or as an asset group. For example, an entity may manage a group of assets within an ISO territory and plan to make the assets available for dispatch to the operator. Depending on the territory, each plant within the ISO may receive similar prices; in this case, management may operate the assets on a fleet basis. The determination would also depend on whether management makes operating decisions on a plant basis or maintains a diversified mix of generating assets to take advantage of various economic environments. An entity should also consider how the results of operations are reported to the executive team and those charged with governance as well as how employees are compensated. For example, employee compensation plans that are based on the profit of an individual plant may be a strong indicator that the plant’s cash flows represent the lowest level of identifiable cash flows that are largely independent of other assets.
- *The entity’s distribution characteristics, such as regional distribution centers, local distributors, or individual plants* — The entity may consider how it manages outages and maintenance for its various assets. If management adjusts output at one plant to compensate for an outage at another, interdependent cash flows may exist. By contrast, if each plant is managed individually and there is little coordination throughout the group, an asset grouping method may not be appropriate.
- *The extent to which purchases are made by an individual location or on a combined basis* — The assessment of this criterion may show that certain costs are incurred for the benefit of individual plants while certain purchases may be for the use of more than one plant. For example, fuel for plants may be purchased from a common fuel source and may be allocated by a central function. This may depend, among other things, on the similarity of the plants as well as their proximity to each other.
- *The interdependence of assets and the extent to which such assets are expected or required to be operated or disposed of together* — The entity may consider how it operates its assets. The more an entity enters into plant-specific commitments to provide power, for example, the more independent the plant may be. On the other hand, if an entity has an overall aggregate commitment, such as a portfolio of retail customer requirements contracts, and management has the ability to dispatch its fleet depending on market conditions, cash flows may



be considered interdependent. Likewise, if a group of plants is committed to serve an ISO and dispatch decisions are controlled by the ISO, there may be a greater interdependence among the assets. Another consideration would be whether an entity is able to dispose of or deactivate an individual plant and whether this would affect the operation of other plants.

An entity should consider each of the relevant characteristics and make an informed judgment about its asset grouping. In determining the lowest level of identifiable cash flows, an entity must exercise significant judgment as well as identify and assess all relevant facts and circumstances. The determination should be revisited when there are changes to the entity, its operation strategy, and the environment in which it operates.

Asset Group Impairment and Measurement

When events or changes in circumstances, such as significant changes in the regulatory environment or losses of major customers, indicate that the carrying amount of an asset or asset group may not be recoverable, the utility should review its assets for impairment.

To test for impairment of an asset or asset group that is held and used, a utility should compare future cash flows from the use and ultimate disposal of the asset or asset group (i.e., cash inflows to be generated by the asset or asset group less cash outflows necessary to obtain the inflows) with the carrying amount of the asset or asset group. Impairment exists when the expected future nominal (undiscounted) cash flows, excluding interest charges, are less than the carrying amount. ASC 360-10 suggests that if a test for impairment is necessary, a utility may need to review its depreciation policies even if it finds that the asset is not impaired.

If an impairment is found to exist, the impairment loss to be recorded is the amount by which the asset's carrying amount exceeds its fair value. Determining the appropriate fair value for an asset requires considerable judgment based on the relevant facts and circumstances. Quoted market prices represent strong evidence of fair value. In the absence of quoted market prices for a particular asset, market comparables may provide relevant evidence for the fair value of the asset under consideration. Discounted cash flows (discounted at a rate commensurate with the risks involved) are another data point for fair value and are commonly used in the valuation of regulated utility property. A combination of some or all of these estimates is often used to represent a fair value for an asset under consideration.

For regulated utilities subject to the provisions of ASC 980, ASC 360-10 does not specify whether an impairment loss should be recorded as a reduction in the asset's original cost or as an adjustment to the depreciation reserve. Adjustment to the original cost appears to be consistent with the notion that recognizing an impairment establishes a "new cost" for the asset. However, for enterprises that are subject to cost-based regulation and apply ASC 980, original historical cost is a key measure for determining regulated rates that may be charged to customers. Accordingly, rate-regulated enterprises may be directed by their regulators to retain original historical cost for an impaired asset and to charge the impairment loss directly to accumulated depreciation. Regulation S-X, Rule 5-02(13)(b), states:

Tangible and intangible utility plant[s] of a public utility company shall be segregated so as to show separately the original cost, plant acquisition adjustments, and plant adjustments, as required by the system of accounts prescribed by the applicable regulatory authorities. This rule shall not be applicable in respect to companies which are not required to make such a classification.

In addition, abandonments and disallowances of plant costs accounted for under ASC 980-360 are outside the scope of ASC 360-10. Companies subject to cost-based regulation should follow the provisions of ASC 980-360 when recording an impairment loss in those situations.

Required Disclosures

ASC 360-10 requires disclosures about impairments, including:

- A description of any impaired assets and the facts and circumstances leading to the impairment.

- The amount of the impairment loss and how fair value was determined.
- The caption in the income statement in which the impairment is recorded, if not shown separately on the face of the statement.
- The business segment affected (if applicable).

Further, because an impairment accounted for under ASC 360-10 results in an asset (or asset group) carrying value equal to fair value at the time of impairment, additional disclosures related to nonrecurring fair value measurements are required by ASC 820-10.

Master Limited Partnerships and Yieldcos

MLPs and yieldcos are financing vehicles that can lower the cost of capital for P&U companies without requiring the P&U companies to give up the benefit of control of assets transferred to the MLPs and yieldcos.

MLPs are publicly traded partnerships that allow investors to purchase units on a securities exchange similarly to how they purchase common stock. Because MLPs are classified as partnerships, they do not pay corporate tax and avoid double taxation on dividends. Income from the MLP flows through to the partners and is taxed at the partners' individual tax rate. The established legislation for MLP structures, IRC Section 7704, requires that 90 percent of the revenue from the partnership be derived from activities related to natural resources, commodities, or real estate. Typically, midstream assets (e.g., gas transmission and storage facilities) meet the requirements for qualifying income.

There are two types of partners in a typical MLP structure: the GP and the LPs. The GP is responsible for managing the operations of the partnership and shares in the periodic cash distributions at varying levels. As the performance of the entity and the associated cash available for distribution increase, the GP's portion of the cash distribution often increases. This structure appropriately compensates and rewards the GP for growth and performance. The LPs provide capital to the entity in exchange for the right to collect periodic cash distributions.

Yieldcos are publicly traded companies that also pay periodic cash distributions to investors. One advantage of yieldcos is that they do not have to meet the qualifying income requirements of IRC Section 7704. Yieldcos typically include capital-intensive renewable energy assets underpinned by long-term power purchase agreements that support stable and predictable cash flows. Although these financing vehicles generally take the legal structure of a corporation, much of their income is shielded by net operating losses, carryforwards, and significant amounts of depreciation. On an after-tax basis, yieldcos and MLPs offer very similar tax advantages to investors. One important distinction is that whereas MLP income is permanently exempt from federal income taxes at the partnership level if the requirements of IRS Section 7704 are met, yieldcos' tax shields are limited to the amount of net operating losses and carryforwards attributable to the entity (i.e., to shield income for 5–10 years). However, yieldcos have the ability to extend the tax shield by acquiring new assets after their IPO.

Yieldco structures will generally include a public corporation with two classes of equity. The public will generally be offered Class A shares that offer the ability to participate in distribution with limited, if any, voting interest. The sponsor will generally retain Class B shares that offer the majority voting interests as well as the right to participate in distributions, albeit generally in a lesser capacity.

Industry Considerations

Many P&U companies are further exploring MLPs and yieldcos since these financing vehicles have become useful for lowering the cost of capital. MLPs and yieldcos need stable cash flows to consistently fund the periodic cash distributions. To increase the amount of cash available for distribution, these financing vehicles need to grow their asset base

Exhibit No. NES-027

ENC-CM-1-17 4.6.1.1.1 ARGGA (1 of 2)

(Excerpt)

REDACTED

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

Constellation Mystic Power, LLC

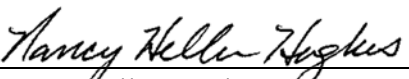
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Docket No. ER18-1639-000

**VERIFICATION
OF
NANCY HELLER HUGHES**

Pursuant to 28 U.S.C. §1746 (2012), I state under penalty of perjury that the foregoing Prepared Answering Testimony and Exhibits of Nancy Heller Hughes is true and correct to the best of my knowledge, information, and belief.

Executed this 22nd day of August 2018.



Nancy Heller Hughes, ASA, CDP