

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

Constellation Mystic Power, LLC)

Docket No. ER18-1639-000

**FORMAL CHALLENGE OF THE
NEW ENGLAND STATES COMMITTEE ON ELECTRICITY**

Pursuant to Section II.4.C of Schedule 3A of the Cost of Service Agreement among Constellation Mystic Power, LLC (“Mystic”), Exelon Generation Company LLC (“ExGen”) and ISO New England Inc. (“ISO-NE”) (the “Agreement”), the New England States Committee on Electricity (“NESCOE”) submits this Formal Challenge to Mystic’s 2021 informational filing supporting the capital expenditures (“CapEx”) and costs that Mystic seeks to collect as an expense between June 1, 2022 to December 31, 2022 (“2021 Informational Filing”).¹

I. DESCRIPTION OF CHALLENGER

NESCOE is the Regional State Committee for New England. It 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-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 possible price over the long term, consistent with maintaining reliable service and environmental quality.

¹ Capitalized terms not defined in this Formal Challenge are intended to have the same meaning given to such terms in Schedule 3A of the Agreement.

II. BACKGROUND

A. The Agreement

On May 16, 2018, pursuant to section 205 of the Federal Power Act (“FPA”),² Mystic filed the executed Agreement among Mystic, ExGen, and ISO-NE. The Agreement provides cost-of-service compensation to Mystic for continued operation of the Mystic 8 and 9 natural gas-fired generating units (“Mystic 8&9” or the “Mystic Units”). On July 13, 2018, the Commission accepted the Agreement for filing, suspended it for a nominal period, to become effective June 1, 2022 as requested, subject to refund, and established hearing procedures.³ The Commission found that the record provided by Mystic was “insufficient for determining the justness and reasonableness of the amount of reported capital expenditures,” and directed participants to submit evidence regarding that issue at the hearing.⁴ The Commission further found that:

Mystic should be allowed to collect actual prudently incurred costs, 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. We find that given the inherent difficulty in projecting costs in advance of the Agreement’s effective date, and the concerns raised as to whether certain expenditures will be necessary to keep the Mystic Units operational during the proposed service period, a true-up mechanism is necessary to ensure that the rates established reflect actual costs incurred.[⁵]

² 16 U.S.C. § 824d.

³ *Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022 (2018) (“July 2018 Order”).

⁴ July 2018 Order at P 19.

⁵ *Id.* at P 20.

Accordingly, the Commission directed participants “to present evidence regarding the appropriate design of the true-up mechanism in the Agreement.”⁶

Following an expedited hearing, on December 20, 2018, the Commission issued an order accepting the Agreement, subject to condition, effective June 1, 2022.⁷ The Commission accepted, in part, Mystic’s proposed true-up mechanism—the “Protocols,” codified in Schedule 3A of the Agreement—and required certain revisions “to provide greater information sharing regarding capital expenditures.”⁸ The Commission directed Mystic to implement two revisions to Schedule 3A designed to foster greater information sharing and to require Mystic to demonstrate that it is not delaying projects until the term of the Agreement so as to recover more of the costs of those projects from ratepayers under the Agreement.⁹ The Commission also confirmed that interested parties “may challenge the prudence of the costs incurred by Mystic during the true-up process.”¹⁰

⁶ *Id.*

⁷ *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 at P 1 (2018) (“December 2018 Order”).

⁸ December 2018 Order at P 174.

⁹ *Id.* at P 180. On rehearing, the Commission agreed with Mystic and clarified that the additional language in the Protocols specifying the requirement that Mystic demonstrate the timing of capital expenditure projects is “informational; it would not necessarily preclude Mystic from recovering capital expenditures incurred prior to the term of the Mystic Agreement.” *Constellation Mystic Power, LLC*, 172 FERC ¶ 61,044 at P 87 (2020). The Commission failed to address NESCOE’s rehearing request. *Constellation Mystic Power, LLC*, 173 FERC ¶ 61,261 (2020), and this issue is pending on appeal, consolidated as *Constellation Mystic Power, LLC v. FERC*, D.C. Cir. No. 20-1343 (Sept. 8, 2020).

¹⁰ December 2018 Order at P 86.

B. Relevant Provisions of the Agreement

Schedule 3A provides that “[c]apital expenditures that will be incurred during the Term will be supported prior to their incurrence and are subject to a true-up adjustment to the actual costs in accordance with the protocols....”¹¹

The Protocols require Mystic to “file”¹² on or before April 1, 2021:

appropriate support for the capital expenditures and costs that will be collected as an expense during the Term in calendar year 2022 (June 1, 2022 to December 31, 2022). . . . The Annual Fixed Revenue Requirement, the Maximum Monthly Fixed Cost Payment, and the Fixed O & M/Return on Investment component of the Monthly Fuel Cost Charge for the relevant period of the Term in Schedule 3 will be updated in accordance with the Methodology....^[13]

Schedule 3A describes what Mystic needs to do to support CapEx projects:

If the Filing will support the capital expenditures that will be incurred during the Term it shall:

1. Provide an explanation of need that explains why the capital expenditure is necessary in order to meet the obligations of the Agreement;
2. Demonstrate that the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
3. Include a description of the project(s), the need for the project(s), the alternatives considered with respect to the least-cost alternatives, the expected start and completion date(s), and the project costs.

¹¹ Schedule 3A, Section I.

¹² Although the Protocols use the term “file,” Mystic is required to submit the Filing by April 1, 2021 to ISO-NE, rather than file it with the Commission. Schedule 3A, Section II.2. For sake of clarity, NESCOE refers to the April 2021 “Filing” Mystic submitted to ISO-NE as the “2021 Informational Posting.”

¹³ Schedule 3A, Section I.B.1.i.

4. Identify whether either of the following occurred for projects that it is proposing to expense over the term of the Agreement, and if so explain why: (a) the project was scheduled for before the Term but delayed into the Term, or (b) the project was scheduled for during the Term but should have been completed prior to the Term.^[14]

Section II.3 of the Protocols provides for Information Exchange Procedures, and Section II.4 specifies the Challenge Procedures.

Mystic's burden under the Protocols is as follows:

In any proceeding initiated by FERC concerning the Filing or in response to a Formal Challenge, the Owner shall bear the burden, consistent with section 205 of the Federal Power Act, of proving that (i) it has correctly applied the terms of the Methodology consistent with these protocols, and (ii) in the case of capital expenditures that are expensed during the Term of the Agreement, that the capital expenditure is necessary in order to meet the obligations of the Agreement, and that the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement. Nothing herein is intended to alter the burdens applied by FERC with respect to prudence challenges.^[15]

Section III of Schedule 3A sets forth the true-up methodology template to calculate both the Mystic 8&9 Annual Fixed Revenue Requirement ("AFRR") and the Everett Marine Terminal ("Everett or "EMT") AFRR (the "Methodology").

¹⁴ Schedule 3A, Section II.2.A. As noted above, aspects of this section of the Protocols are pending on appeal at the D.C. Circuit.

¹⁵ Schedule 3A, Section II.4.G.

C. The 2021 Informational Filing

Mystic submitted its 2021 Informational Posting to ISO-NE on April 1, 2021,¹⁶ and submitted an errata to its 2021 Informational Posting on April 27, 2021.¹⁷

Mystic’s April 2021 Informational Posting included, as relevant here:

- Attachment A, a list of 2022 CapEx projects related to the Mystic Units (the “Mystic 8&9 Template”), and related to the Everett (the “EMT Template”); and
- Attachment C, which Mystic described as “[a] version of the Methodology including the total costs of the 2022 CapEx Projects[.]”¹⁸

NESCOE participated in the Annual Meeting that Mystic held on April 28, 2021, and in the Technical Session that Mystic held on May 20, 2021. NESCOE submitted two sets of information and document requests to Mystic in April 2021.¹⁹ NESCOE’s information requests related to both Attachment A—the Mystic 8&9 Template and the EMT Template—and Attachment C—the updated Methodology. Following the Technical Session, NESCOE submitted its third set of information and document requests to Mystic on May 25, 2021.

NESCOE submitted its Informal Challenge on August 2, 2021.²⁰ Following receipt of Mystic’s response to the Informal Challenge, NESCOE submitted a fourth set of information

¹⁶ Constellation Mystic Power, LLC, 2021 CapEx Informational Posting (Apr. 1, 2021), available at https://www.iso-ne.com/static-assets/documents/2021/04/2021_mystic_cap_ex_posting_2021.zip.

¹⁷ Constellation Mystic Power, LLC, Errata to 2021 CapEx Informational Posting (Apr. 27, 2021), available at https://www.iso-ne.com/static-assets/documents/2021/04/errata_2021_cap_ex_info_posting.zip.

¹⁸ 2021 Informational Posting at 1.

¹⁹ Mystic’s objections and responses to NESCOE’s first set of information and document requests are attached as Appendix A.

²⁰ NESCOE’s Informal Challenge is attached as Appendix B, and Mystic’s response to NESCOE’s Informal Challenge is attached as Appendix C.

requests on September 9, 2021, in an effort to narrow the scope of issues. Mystic provided responses on September 29, 2021.²¹

Mystic submitted its 2021 Informational Filing to the Commission on September 15, 2021.²²

III. FORMAL CHALLENGE

A. Summary

This is the first in several years of annual informational filings that are supposed to furnish Interested Parties with the ability to understand the charges that will be imposed on ratepayers—in this case, for the period of June 1, 2022 to December 1, 2022. Mystic has failed to provide this transparency across many categories of costs and inputs to the rate. Relying on an interpretation of Schedule 3A that does not comport with its plain language, Mystic has not updated the Methodology, the formula rate template that contains the AFRR among other things. When NESCOE and others asked information requests aimed at understanding the AFRR that Mystic would be recovering beginning June 1, 2022, Mystic insisted that it was under no obligation to update this information in the current period.

Although Mystic did provide information about the one aspect it agreed it had an obligation, the 2022 CapEx Projects, there were many projects (improvements to both the Mystic Units and Everett) for which Mystic provided insufficient information to determine whether Mystic met its burden of demonstrating that the projects were the least-cost commercially

²¹ NESCOE appreciates Mystic’s response to NESCOE’s fourth set of information requests, which obviated the need to include the issue raised in those requests as part of this Formal Challenge.

²² Constellation Mystic Power, LLC, 2021 Informational Filing, Docket No. ER18-1639-000 (filed Sept. 15, 2021).

reasonable options and are necessary in order to meet the obligations of the Agreement. Mystic explained that this is because its internal project review process did not sync up with the Schedule 3A process. While NESCOE is understanding of the internal coordination involved in project reviews, NESCOE and other Interested Parties should not lose the ability to review costs because of this timing disconnect. Indeed, it begs the question of why Mystic proposed a set of procedures that were incompatible with its project planning review process.

In responses to information requests about the updated Methodology and the 2022 CapEx Projects, Mystic said it would not object to future information requests and challenges based on timing. That time lag is problematic. First, Interested Parties may lose the right to review and challenge costs prior to Mystic recovering them beginning June 1, 2022, a right that was expressly provided by the Protocols. Second, and more foundationally, it recasts the Protocols process as subject to Mystic's unilateral change and without the need to seek Commission approval in revising the timeline for providing information to Interested Parties. The Commission should not allow Mystic to avoid its obligations under the Agreement, particularly the showing that capital expenditures incurred are the least-cost commercially reasonable option and are necessary to meet the obligations during the term of the Agreement.

B. Mystic Has Not Supported—Let Alone Provided—Costs That It Intends to Collect as Expense During 2022 or Components of its Annual Fixed Revenue Requirements.

1. Mystic Did Not Provide Information about Its Updated AFRRs.

The Protocols require Mystic to update the components of its AFRRs for calendar year 2022. Mystic included the updated AFRRs with its 2021 Informational Posting, but it refused to respond to information requests about them. Subsequently, in the 2021 Informational Filing, Mystic chose not to include the updated AFRRs at all.

During the course of the information exchange period, it became clear that NESCOE and Mystic have different understandings of Mystic’s obligations under the Agreement. As noted above, the Protocols provide that for the 2021 Informational Filing:

Owner shall file on or before April 1, 2021, in accordance with the Informational Exchange and Challenge Procedures detailed below, appropriate support for the capital expenditures *and costs* that will be collected as an expense during the Term in calendar year 2022 (June 1, 2022 to December 31, 2022) as detailed below. The *Annual Fixed Revenue Requirement*, the Maximum Monthly Fixed Cost Payment, and the Fixed O & M/Return on Investment component of the Monthly Fuel Cost Charge for the relevant period of the Term in Schedule 3 *will be updated in accordance with the Methodology* and shall exclude true-up of investment and expense items disallowed by the Commission, if any.^[23]

Mystic’s 2021 Informational Posting included as Attachment C updated AFRRs for Mystic 8&9 and Everett. NESCOE’s information and document requests included a number of inquiries intended to understand how and why Mystic had updated the inputs to the formula rate templates. Mystic objected to all of NESCOE’s information requests regarding Attachment C. Mystic’s articulated basis for these objections was that:

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.^[24]

²³ Schedule 3A, Section I.B. 1.i (emphasis added).

²⁴ See e.g., Appendix A at 13 (Mystic objection to NES-MYS-1-08).

Although Mystic responded to three of NESCOE’s initial information requests about Attachment C,²⁵ Mystic did not provide any responses to over twenty of NESCOE’s requests.²⁶ There was, therefore, no way for NESCOE to determine whether Mystic met its burden of demonstrating that it correctly applied the terms of the Methodology with respect to the AFRRs it intends to recover in calendar year 2022. Accordingly, NESCOE submitted an Informal Challenge on this issue.

Mystic did not respond substantively to this Informal Challenge. Rather, Mystic held firm on its view that it need not include updated AFRRs in the 2021 Informational Filing nor provide any support for the costs and inputs to the AFRRs. Mystic chalked this up to “confusion that the informational inclusion of Attachment C has appeared to cause in this process,” and stated that it would “not be filing Attachment C in its Informational Filing with the Commission.”²⁷ Indeed, Mystic omitted Attachment C from the 2021 Informational Filing. Mystic reasserted that its 2021 Informational Filing “is limited to providing information to demonstrate that the proposed 2022 CapEx Projects are appropriate capital expenditures under the Mystic Agreement. No other aspect of the Protocols, Methodology, or Mystic Agreement are within the scope of this filing.”²⁸

²⁵ In response to NES-MYS-1-05, NES-MYS-1-06 and NES-MYS-1-10, Mystic stated “[n]otwithstanding the foregoing and without waiving or limiting these objections, Mystic makes a good faith effort to respond.” Appendix A at 8, 11, 15.

²⁶ NES-MYS-1-08, NES-MYS-1-09, and NES-MYS-1-11 through NES-MYS-1-28. The objection quoted above was Mystic’s sole objection to a number of responses (*i.e.*, NES-MYS-1-08, 1-09, 1-11, 1-15, 1-16, 1-18, 1-19, and 1-27). With the exception of the objection to NES-MYS-1-28, about which Mystic raised a more specific objection, the remaining responses also included objections such as “vague,” “unduly burdensome,” and “overbroad.” See *generally* Appendix A.

²⁷ Appendix C at 17.

²⁸ 2021 Informational Filing at 3.

NESCOE continues to disagree with Mystic’s view of its obligations under the Agreement. Mystic states that: “Section I.A.1, ‘2021 Filing’ requires Mystic to provide support ‘for Capital Expenditures necessary to meet the reliability need between June 1, 2022 and December 31, 2022[,]’”²⁹ suggesting that this is all that is required in the 2021 Filing. However, Mystic ignores that the text in the provision it quotes requires it to file “appropriate support for the capital expenditures *and costs* that will be collected as an expense during the Term in calendar year 2022 (June 1, 2022 to December 2022).”³⁰ Mystic also ignores that for the 2021 Informational Filing, the Protocols require that the AFRR, along with the Maximum Monthly Fixed Cost Payment, and the Fixed O&M/Return on Investment component of the Monthly Fuel Cost Charge “for the relevant period of the Term...will be updated in accordance with the Methodology... .”³¹ The fact that a Mystic witness prepared an exhibit that shows Mystic intended only to substantiate CapEx for 2022 in the 2021 Filing³² is not controlling. That exhibit was not made part of Schedule 3A and it does supersede what the filed rate actually provides.³³

Because Mystic has not included Attachment C in the 2021 Informational Filing, and because Mystic refused to answer NESCOE’s questions about Attachment C, there is no way for NESCOE or the Commission to know whether Mystic’s update of the AFRR is correctly

²⁹ *Id.* (quoting Schedule 3A, Section I.[B]1.i). (Mystic refers to Section I.A.1, but the quote is from I.B.1.i.)

³⁰ Schedule 3A., Section I.B.1.i (emphasis added).

³¹ *Id.*

³² 2021 Informational Filing at 3 (citing Prepared Supplemental Direct Testimony of Alan C. Heintz, Exh. No. MYS-0020 at 4-5 (Jul. 30, 2018)).

³³ It is the rate on file—not, for example, an exhibit in a litigated proceeding—that satisfies the “rule that rates are supposed to identify new changes ‘plainly,’ and do so in filed tariffs that are ‘open in convenient form and place for public inspection.’” *W. Deptford Energy, LLC v. FERC*, 766 F.3d 10, 23-24 (2014) (quoting FPA sections 205(c) & (d)).

calculated, if the costs are the least-cost commercially reasonable option, and that the costs are necessary in order to meet the obligations of the Agreement. Mystic fails to meet its burden to recover these costs.

In its response to NESCOE’s Informal Challenge on this issue, Mystic stated that it “will not object, on the basis that information and document requests or challenges should have been made in response to the 2021 Informational Posting, to information and document requests or challenges related to the updates to components of the Annual Fixed Revenue Requirement, other than the 2022 Capital Expenditures. Mystic does not otherwise limit or waive any objections.”³⁴

NESCOE appreciates Mystic’s offer of a procedural safe harbor, but its voluntary commitment cannot substitute for Protocol procedures on file with the Commission. As the Commission said in response to arguments Mystic made trying to narrow the scope of items subject to the true-up mechanism, “[p]roviding greater transparency will allow the rate to be ‘sufficiently clear that all parties can determine what costs go into the rate and how it will be calculated.’”³⁵ The Commission should ensure that Interested Parties are not thwarted in their attempts to exercise their rights under the Information Exchange and Challenge Procedures of Schedule 3A by Mystic’s attempt to recast the Protocols.

³⁴ Appendix C at 17.

³⁵ December 2018 Order at P 177 (quoting *Midcontinent Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,149 at P 83 (2013)).

2. Because Mystic Has Not Provided Information Other Than the CapEx Projects, There Is No Way To Verify if the Recoating Project Costs, Reclassified as O&M, Are Properly Removed from Rate Base.

Mystic confirms in the 2021 Informational Filing that it is treating the recoating of the EMT LNG storage tanks as an O&M expense, rather than as a capital expenditure, as previously indicated in the 2021 Informational Posting.³⁶

NESCOE's Informal Challenge pointed out that there were substantial amounts already expended on this project, and that such amounts were not treated as O&M, but rather as capital costs. NESCOE raised the concern that this meant there is a substantial amount of money in Everett's rate base on which Mystic will collect a return. Accordingly, NESCOE explained that since Mystic has decided to treat this recoating project as an O&M expense, then the amounts that EMT expended previously on the project should likewise be treated as O&M expense and should be removed from EMT's rate base. Otherwise, Mystic benefits from this change in accounting by recovering a portion of the costs of the project as an expense during the two-year Term of the Agreement, in addition to recovering a return on the other portion of the costs of the project that was completed prior to the Term of the Agreement.³⁷

In response, Mystic stated:

The recoating of the EMT LNG storage tanks was originally classified as a capital expense because that was how it was treated by EMT's prior owners. After ExGen completed its acquisition of the facility in October 2018, it reclassified the project as O&M consistent with its own accounting standards and GAAP. The amounts expended for storage tank recoating that occurred after ExGen's acquisition of the facility have been treated as O&M expenses. Contrary to NESCOE's assertion, amounts expended for

³⁶ 2021 Informational Filing, Attachment B at 1.]

³⁷ Appendix B at 9.

work occurring after October 1, 2018 have not been treated as capital costs and are not included in EMT's rate base.^[38]

Unfortunately, because Mystic has not provided any information with its 2021 Informational Filing, there is no way for NESCOE or the Commission to confirm this independently. This is contrary to the requirement in the Protocols that "if the Filing provides for an update of projected costs or a true-up it shall: ... Provide sufficient information to enable Interested Parties to replicate the calculation of the formula results from the methodology provided below in the Methodology...."³⁹

While NESCOE appreciates Mystic's answer above that none of the EMT LNG storage tank recoating expenses are included in the rate base, without the updated AFRRs with supporting documentation, NESCOE has no way of verifying the answer. Nor does the Commission.

3. Mystic Provided No Information Supporting Costs Related to the Secondary Feed Agreement.

NESCOE's Informal Challenges included a challenge to costs related to a Secondary Feed agreement. Mystic had originally classified this as a 2022 CapEx Project and subsequently decided to treat it as O&M rather than capital expense.⁴⁰ According to Mystic, "consideration of the Secondary Feed project costs is currently outside the scope of this proceeding."⁴¹

NESCOE's questions about these costs have gone unanswered. There is no answer to the question of whether Mystic is attempting to recover costs related to a Secondary Feed agreement

³⁸ Appendix C at 8.

³⁹ Schedule 3A, Section II.2.A.3.

⁴⁰ Appendix C at 11.

⁴¹ *Id.*

that will have [BEGIN CUI//PRIV-HC] [REDACTED]
[REDACTED] [END
CUI//PRIV-HC] the costs related to [BEGIN CUI//PRIV-HC] [REDACTED]
[REDACTED] [END CUI//PRIV-HC] and should not be
recoverable under the Agreement.⁴² But because Mystic has provided no information, there is no
way to evaluate whether these are costs that are inappropriately being recovered from ratepayers
under the Agreement.

C. Mystic Provided No Support for Millions of Dollars in 2022 CapEx Projects.

1. Mystic Has Not Met Its Burden for the 2022 CapEx Projects Identified Below.

The Protocols require Mystic to support capital expenditures that will be incurred during the Term—as relevant here, the June-December 2022 period—“prior to their incurrence.”⁴³ Additionally it is Mystic’s burden under the Protocols to demonstrate that each “capital expenditure is necessary in order to meet the obligations of the Agreement, and that the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement.”⁴⁴

In its 2021 Informational Filing, Mystic provides a list of its 2022 CapEx Projects (Attachment A) and a summary of substantive corrections and adjustments made to the 2022 CapEx Projects since the 2021 Informational Posting (Attachment B).

⁴² See Appendix D (Mystic’s responses to NES-MYS-01.4d and NES-MYS-03-09 and excerpt from Mystic’s response to NESCOE’s Informal Challenge B-05 on this issue).

⁴³ Schedule 3A, Section I.

⁴⁴ Schedule 3A, Section II.4.G.

Review of Mystic’s 2021 Informational Filing reveals that it suffers from the same fundamental flaws as did the 2021 Informational Posting, namely that Mystic has provided no support for a number of 2022 CapEx Projects, identified in the tables below:

Mystic 8 & 9 2022 CapEx Projects⁴⁵			
Row	Project Name	Project Cost	Description
5	MYD8 BOP Capital	\$500,000	Capex to address emergent material conditions
6	MYD8 GT 81/82 Exp Jts 01	\$200,000	Gas Turbine Exhaust Duct Expansion Joint Replacement. Per Gas Turbine at the 01 joint
7	MYD8 Capital Valves	\$250,000	Replacement of whole valve or capital component of a qualifying valve under the Exelon Capital Process
8	MYD8 ST 85 Valves (even)	\$500,000	Inspection, refurbishment and replacement of capital component of Steam Turbine 85 even numbered stop and control valves under the Exelon Capital Process
9	MYD8 Steam Attemperators	\$100,000	Replacement of Steam Attemperators
10	MYD8 LCB II Replacement	\$250,000	Replacement of current differential protection relays with interface to Transmission Operator
13	MYD8 Compressors	\$350,000	Replacement of one of three originally installed
16	MYD9 Capital Motors	\$250,000	Replacement of whole motor or capital component of a qualifying motor under the Exelon Capital Process

⁴⁵ 2021 Informational Filing, Attachment A, Mystic 8&9 Template.

17	MYD9 Capital Valves	\$250,000	Replacement of whole valve or capital component of a qualifying valve under the Exelon Capital Process
18	MYD9 Steam Attemperators	\$100,000	Replacement of Steam Attemperators
19	MYD9 LCB II Replacement	\$250,000	Replacement of current differential protection relays with interface to Transmition [sic] Operator

EMT 2022 CapEx Projects⁴⁶			
Row	Project Name	Project Cost	Description
5	Liquid Level Gauge Replacement	\$400,000	Replace Level Indication in the two storage tanks
6	Cryo Insulation	\$475,000	Address cryogenic insulation on LNG piping systems that have reached the end of their service life by reinsulating process lines with an insulation system that uses foamglass as the primary insulator
7	BOP Maintenance Capital	\$500,000	Capex to address emergent material conditions
8	Cryogenic Valve Replacement	\$100,000	Cryogenic Valve Replacement
9	BOP Capital Valves	\$100,000	Replacement of whole valve or capital component of a qualifying valve under the Exelon Capital Process
10	BOP Capital Motors	\$100,000	Replacement of whole motor or capital component of a qualifying motor under the Exelon Capital Process

⁴⁶ 2021 Informational Filing, Attachment A, EMT Template.

11	BOP Capital Pumps	\$100,000	Replacement of whole pump or capital component of a qualifying pump under the Exelon Capital Process
12	MV Electrical System Replacemt	\$550,000	Electrical Switchgear and breakers at Medium Voltage system
13	Firewater Main Repl/Upgrade	\$100,000	Underground firewater piping and above ground firewater pumps
15	Forward Bollard	\$1,100,000	Installation of new Bollard for improved berthing of LNG vessels
16	Structural Suppt Upgr-Conduit	\$500,000	Replacement of structural supports used for instrumentation and power conduit runs
17	Mooring Hooks	\$400,000	Installation of new mooring hooks for improved berthing of LNG vessels
19	Tank Base Heater Replacement	\$1,260,000	Replacement of tank base heaters on Storage Tank T-1

For each of these 2022 CapEx Projects, Mystic states:

Project need and cost estimates determined through long range planning process, as described in Affidavit submitted with informational posting and resubmitted here as Attachment A-1. Any supplemental information on final cost and alternatives studied will be provided in subsequent informational filings after project approval obtained[.]⁴⁷

In turn, the Affidavit states:

Many of the CapEx projects identified in this 2021 Informational Posting for the June 2022 through December 2022 time period are still in the long-range planning phase, and therefore do not yet have formal internal approvals, formalized alternatives, or more final cost estimates. Once formal internal approvals are secured, documentation establishing the projects as the least-cost, commercially-reasonable option, consistent with Good Utility Practice, will be available for parties to review. It was determined

⁴⁷ 2021 Informational Filing, Attachment A, Mystic 8&9 Template and EMT Template, Column H.

to be infeasible and inconsistent with ExGen’s best practice, which we believe has driven optimal results for our fleet, to attempt to establish a separate approval process just for the Mystic Agreement or to pursue project approval and project commitments on an advanced timeline. Further, because the Mystic Agreement requires an updated projection of costs in April of 2022 and a true-up to actual costs in 2023, interested parties will have ample opportunity to review the actual, final costs when they are known.^[48]

Mystic’s position is that “[t]he 2022 CapEx Project costs will become an input into Mystic Schedule D and Everett Schedule D of the Methodology as ‘RMR CapEx’ and actual costs will be trued-up in the 2023 Filing.”⁴⁹ However, Mystic’s position is internally consistent, as it also acknowledges that Section I.A.1 of the Protocols “requires Mystic to provide support ‘for Capital Expenditures necessary to meet the reliability need between June 1, 2022 and December 31, 2022[.]’”⁵⁰

Moreover, Mystic’s approach and its view cannot be reconciled with the actual language in the Protocols, which provide that “Capital expenditures that will be incurred during the Term *will be supported prior to their incurrence and* are subject to a true-up adjustment to the actual costs in accordance with the protocols”⁵¹ Mystic’s interpretation would also leave Interested Parties with no means of challenging these 2022 CapEx Projects, as the Protocols make clear that Interested Parties may *not* wait until the true-up process to challenge projected capital expenditures: “For capital expenditures previously identified as being necessary to meet the reliability need, this [2023] filing will only true-up the amount for each capital expenditure to

⁴⁸ 2021 Informational Filing, Attachment A-1, Affidavit of Michael Brown and Abegail Piollo-Alam, at P 10.

⁴⁹ 2021 Informational Filing at 3.

⁵⁰ *Id.* (quoting Schedule 3A, Section I.[B]1.i). (Mystic refers to Section I.A.1, but the quote is from 1.B.1.i.)

⁵¹ Schedule 3A, Section I (emphasis added).

actuals, not whether a capital expenditure should have been designated as necessary to meet the reliability need.”⁵²

In order to support CapEx Projects, Mystic must, among other things, “[d]emonstrate that the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement;”⁵³ and explain what alternatives were considered with respect to the least-cost alternatives.⁵⁴ For the 2022 CapEx Projects listed above, Mystic provides no information regarding whether the expenditures are the least-cost commercially reasonable option, what alternatives that were considered, and whether these expenditures are required to meet the obligations of the Agreement. Rather, Mystic provides only a very brief description of each project and the total project cost. Without this supporting information, there is no way for the Commission to verify that Mystic has made the requisite demonstrations regarding its right to recover these capital expenditures as expenses under the Agreement.

In response to NESCOE’s Informal Challenge, Mystic stated that “for projects where documentation or supporting materials are not yet available but will become available in the future, Mystic will make that information available to the Interested Parties in subsequent Informational Postings. For such projects, Mystic agrees that NESCOE’s rights to challenge these capital expenditures will be preserved until such time as Mystic has provided such supporting documentation and NESCOE has had the opportunity to seek information and

⁵² Schedule 3A, Section I.B.3.ii. *See also id.* at I.B.4.i (2024 Filing) and I.B.5.i (2025 Filing).

⁵³ Schedule 3A, Section II.2.A.2. As noted above, aspects of these provisions are under review at the D.C. Circuit in Case. No. 20-1343.

⁵⁴ Schedule 3A, Section II.2.A.3.

respond consistent with the Protocols.”⁵⁵ Once again—as is the case with respect to updating the AFRRs—Mystic is bending the Protocol provisions to suit its desired process.

NESCOE emphasizes that Schedule 3A provides that Mystic has the burden of demonstrating capital expenditures prior to their incurrence. Mystic’s approach willfully ignores this language. Protocols that give interested parties the right to challenge projected costs are not novel. The Commission has approved such approaches in other contexts: “the fundamental process for the formula rates remains the same: rates are estimated for the following year, either through prior-year FERC Form No. 1 data or through projections, and data regarding such rates is provided to customers with sufficient time for them to review the rates *before they are implemented* and challenge them before the Commission if necessary.”⁵⁶ This is the approach the Commission approved here, and Mystic’s internal project approval processes are depriving Interested Parties of the right to review the updated capital expenditures before they are implemented.

Schedule 3A is the filed rate. Given that Mystic has not made the required demonstrations as required by Schedule 3A, there is no basis to allow cost recovery for unsupported 2022 CapEx Projects as expense in calendar year 2022.

2. Mystic Has Not Demonstrated That the Mooring Hooks and Forward Bollard Projects Are Needed to Meet the Reliability Need Under the Agreement.

Based on the information provided by Mystic in response to NESCOE information requests, Mystic has not demonstrated that replacing the forward bollard or the mooring hooks

⁵⁵ Appendix C at 2.

⁵⁶ *Virginia Electric and Power Co.*, 123 FERC ¶ 61,098 at P 16 (2008) (emphasis added).

are CapEx projects needed during the Term of the Agreement for Mystic to meet its reliability obligations under the Agreement.

Everett has been in continuous operations, even since the failure identified on January 24, 2020, and yet to this date, these capital expenditures have “not yet been presented to management for funding authorization.” This response calls into question assertions that the projects address a threat to reliable operations of EMT. Mystic has not demonstrated why these projects could not wait until after the end of the Term, and why these capital expenditures are related to Mystic meeting the obligations of the Agreement. From the information provided, these appear to be routine repairs that may or may not need to be completed during the Term, and that will last for decades beyond the Term. Mystic’s position seems to be that any expenditures related to Everett are automatically related to the reliability need under the Agreement. That simply is not the case. Mystic appears to be taking advantage of, under the guise of reliability, the ability to expense over the Term long-term projects that likely are not required for reliable operations during the term and will last for decades. If Mystic wishes to make these improvements to the enhance the longevity of the EMT these capital investments should be treated as a capital expense with costs recovered over time, not just during the Term of the Agreement. As proposed, this would give EMT a future competitive advantage on the backs of New England ratepayers.

Finally, as with the items in Section C.1 above, Mystic has not provided any information demonstrating that these expenditures are reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice.

D. Formal Challenge Requirements

Section II.4.C(1) of the Protocols sets forth the requirements needed to bring a Formal Challenge. NESCOE has “clearly identif[ied] the action or inaction which is alleged to violate the Methodology or protocols”⁵⁷ in Sections III.A-C, above. Because Mystic has not provided information on the expenditures identified above, there is no way for NESCOE to “[d]emonstrate that the expenditure is not reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement.”⁵⁸ NESCOE has set forth the issues presented by Mystic’s failure to provide all required information in its 2021 Informational Filing and has explained how this is not a proper application of the procedures under the Protocols. NESCOE describes above how such failure thwarts the ability of NESCOE and the Commission to ensure the “accuracy of data and consistency with the Methodology of the charges.”⁵⁹ Similarly, there is no way for NESCOE to quantify the financial impact on New England ratepayers.⁶⁰

While there is a pending appeal at the D.C. Circuit on certain issues related to the Protocols, the issues NESCOE raises in this Formal Challenge are not pending in that Court proceeding or in any other forum.⁶¹ The specific relief NESCOE requests is summarized in Section IV, below,⁶² and NESCOE has included all documents supporting its Formal

⁵⁷ Schedule 3A, Section II.4.C(1)(a).

⁵⁸ *Id.*, Section II.4.C(1)(b).

⁵⁹ *Id.*, Section II.4.C(1)(e)(iv). (NESCOE notes there are no subsections (c) or (d)).

⁶⁰ *Id.* Section II.4.C(1)(f).

⁶¹ *See id.*, Section II.4.C(1)(g).

⁶² *Id.*, Section II.4.C(1)(h).

Challenge.⁶³ As described in Section II.C., above, NESCOE did use the Informal Challenge Procedures, and was able to narrow the scope of its Formal Challenge.⁶⁴

IV. CONCLUSION

For the reasons discussed above, NESCOE respectfully asks that the Commission find that Mystic cannot recover costs in the June-December 2022 period for which Interested Parties have not had a full opportunity to review and challenge in accordance with Schedule 3A.

Respectfully Submitted,

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on Electricity

Date: October 15, 2021

⁶³ *Id.*, Section II.4.C(1)(i).

⁶⁴ *Id.*, Section II.4.C(1)(j).

APPENDIX A

Constellation Mystic Power, LLC Objections and Responses to NESCOE First Set of Information and Document Requests

CONSTELLATION MYSTIC POWER, LLC
OBJECTIONS AND RESPONSES TO NESCOE
FIRST SET OF INFORMATION AND DOCUMENT REQUESTS

Pursuant to the Information Exchange Procedures of Schedule 3A to the Cost of Service Agreement between Constellation Mystic Power, LLC (“Mystic”), Exelon Generation Company LLC, and ISO New England Inc., (“Mystic Agreement”), Mystic hereby objects and responds to the New England State Committee on Electricity (“NESCOE”) First Set of Information and Document Requests as follows.

NES-MYS-1-01: For each of the following projects, please clarify whether the project costs are (i) no longer being charged to consumers or if (ii) they were added to rate base or (iii) if they were expensed.

Mystic 8&9 Template

- a. [5M8C22001] MYD8 BOP Capital (Row 6)
- b. [5M8C22002] MYD8 GT81 & GT82 Exp Joints 00 (Row 7)
- c. [5M8C22010] MYD8 Transmssn Trnsfrmr Prote (Row 13)
- d. [5M8C22011] MYD8 Generator Projection Refr (Row 14)
- e. [5M8C22012] MYD8 GT SFC Refresh (Row 15)
- f. [5M8C22014] MYD8 UPS Replacement (Row 17)
- g. [5M9C22003] MYD9 GT93/GT94 Exp Jts 00 (Row 24)
- h. [5M9C22004] MYD9 GT93/GT94 Exp Jts 01 (Row 25)
- i. [5M9C22009] MYD9 Transmssn Trnsfrmr Protec (Row 30)
- j. [5M9C22010] MYD9 Generator Projection (Row 31)
- k. [5M9C22013] MYD9 UPS Replacement (Row 33)

EMT Template

- l. Recoat LNG Storage Tanks (incl Outer Shell Welds) (Row 6)
- m. [053C20003] DeNOx Refurbishment Repl (SCR) (Row 7)
- n. Site Water Removal System Improvements (Row 10)

RESPONSE:

Mystic objects to the form of the question, which implies a limited set of answers. Mystic interprets the question to inquire whether the costs of each such project will be an input to the rate under the Mystic Agreement and, if so, whether the costs will be fully recovered under the Mystic Agreement or added to rate base. Mystic’s answer reflects that understanding. Notwithstanding the foregoing and without waiving or in any way limiting the objection, Mystic makes a good faith effort to respond as follows:

Mystic 8&9 Template	Responses:
a. [5M8C22001] MYD8 BOP Capital (Row 6)	The amount budgeted has been reduced. This is a contingency we maintain in case it is needed; it is uncertain at present whether it will be needed.
b. [5M8C22002] MYD8 GT81 & GT82 Exp Joints 00 (Row 7)	To be added to rate base.

c. [5M8C22010] MYD8 Transmssn Trnsfrmr Prote (Row 13)	To be added to rate base.
d. [5M8C22011] MYD8 Generator Projection Refr (Row 14)	To be added to rate base.
e. [5M8C22012] MYD8 GT SFC Refresh (Row 15)	To be added to rate base.
f. [5M8C22014] MYD8 UPS Replacement (Row 17)	To be added to rate base.
g. [5M9C22003] MYD9 GT93/GT94 Exp Jts 00 (Row 24)	To be added to rate base.
h. [5M9C22004] MYD9 GT93/GT94 Exp Jts 01 (Row 25)	To be added to rate base.
i. [5M9C22009] MYD9 Transmssn Trnsfrmr Protec (Row 30)	To be added to rate base.
j. [5M9C22010] MYD9 Generator Projection (Row 31)	To be added to rate base.
k. [5M9C22013] MYD9 UPS Replacement (Row 33)	To be added to rate base.
EMT Template	
l. Recoat LNG Storage Tanks (incl Outer Shell Welds) (Row 6)	Work is ongoing and expected to continue into the term. Costs prior to term will not be charged under the Mystic Agreement. Costs incurred during the term will be expensed as O&M.
m. [053C20003] DeNOx Refurbishment Repl (SCR) (Row 7)	Deferred to a later date; Monitor for material condition.
n. Site Water Removal System Improvements (Row 10)	Deferred to a later date; Monitor for material condition.

NES-MYS-1-02: Referring to the Mystic 8 & 9 Template, column D (2022 COS Capex (April 2021 Update)):

- a. Please provide the Mitsubishi Hitachi Power System (“MHPS”) second major inspection report from 2017 and any subsequent MHPS reports related to the CRIs being required on all four gas turbines prior to the retirement the equipment at the end of the Mystic Agreement.
- b. Please provide the Black & Veatch evaluation that concluded with the recommendation of performing CRIs on all four gas turbines at the next inspection and any documentation from Exelon engineers agreeing with this recommendation.

PRIVILEGED ATTACHMENTS:

NES-MYS-1-02a_2017 Fall GT-93 Turbine MI MPS report_CUI-PRIV.pdf [Bates Number 000000001 – 000000422]

NES-MYS-1-02a_009983-TR Mystic GT93 Pre-CRI_CUI-PRIV.pdf [Bates Number 000000422 – 000000473]

NES-MYS-1-02a_055681-TR Mystic GT94 C3andC4 Spigot RCA_External_CUI-PRIV.pdf [Bates Number 000000474 – 000000532]

NES-MYS-1-02a_100103910 Mystic GT94 Final Report_CUI-PRIV.pdf [Bates Number 000000533 – 000000611]

NES-MYS-1-02a_100114863_Mystic GT-93 CRI_Final Report_CUI-PRIV.pdf [Bates Number 000000612 – 000000746]

NES-MYS-1-02a_Mystic GT94 C3andC4 Spigot RCA Update_External_022221_CUI-PRIV.pdf [Bates Number 000000747 – 000000803]

NES-MYS-1-02b_Gas Turbine Rotor Inspection Analysis_CUI-PRIV.pdf [Bates Number 000000804 – 000000806]

RESPONSE:

Refer to the above-listed Privileged Attachments.

NES-MYS-1-03: Please provide documentation such as annual inspection reports, evidence of known service wear, and internal reports that lead to the addition of the MYD8 Compressors (Row 20) on the Cap Ex schedule and the recommendation to replace the equipment.

RESPONSE:

At the time of the April 1, 2021 Informational Filing, this project was included as a “2022 COS CapEx” project due to the service life of the units, which were original to the commercial operation date. A more recent inspection indicated that the compressors are expected to be reliable through the term with regular maintenance and, consequently do not need to be replaced. So, this project will be removed from Attachment A in the September 2021 Informational Filing with FERC. Therefore, we are not providing information solely relevant to that project.

NES-MYS-1-04: Please provide documentation such as annual inspection reports, evidence of known service wear, and internal reports that lead to the addition of the following items on the EMT Template tab of the Cap Ex schedule and the recommendation to replace the equipment.

- a. [053C19006] Firewater Main Repl/Upgrade (Row 23)
- b. [053C19007] HA Bypass for SCR (HAB) Repl (Row 24)
- c. [053C21005] Forward Bollard (Row 25)
- d. [053C21008] Secondary Feed (Row 26)
- e. [053C22007] Structural Suppt Upgr-Conduit (Row 27)
- f. [053C22009] Mooring Hooks (Row 28)
- g. [053C220010] Heated Vent Hot Water Piping (Row 29)
- h. [053C22011] Tank Base Heater Replacement (Row 30)

ATTACHMENTS:

NES-MYS-1-04a_1-Corrective Maintenance Work Orders_CUI-PRIV.pdf [Bates Number 000000807 – 000000818]

NES-MYS-1-04b_1-Recommendations for Replacement Duct Material_CUI-PRIV.pdf [Bates Number 000000819 – 000000825]

NES-MYS-1-04b_2-Everett LNG HAB Ducting Failure Analysis_CUI-PRIV.pdf [Bates Number 000000826 – 000000843]

NES-MYS-1-04d_Eversource Letter to NGRID_CUI-PRIV.pdf [Bates Number 000000844]

NES-MYS-1-04g_1-Corrective Maintenance Work Orders_CUI-PRIV.pdf [Bates Number 000000845 – 000000857]

NES-MYS-1-04h_1-LNG Tank Upgrade Recommendations_CUI-PRIV.pdf [Bates Number 000000858 – 000000865]

RESPONSE:

- a) [053C19006] Firewater Main Replacement/Upgrade

Refer to NES-MYS-1-04a_1-Corrective Maintenance Work Orders_CUI-PRIV.pdf [Bates Number 000000807 – 000000818]

- b) [053C19007] HA Bypass for SCR (HAB) Replacement

Refer to the Attachments for NES-MYS-1-04b above.

- c) [053C21005] Forward Bollard

Everett personnel concluded that this project was necessary, which conclusion is supported by a US Coast Guard Report (MISLE Incident Investigation Report for Iberica Knutsen – Equipment Failure, dated Jan. 24, 2020). It is our understanding that we do not have permission to share the report with third parties. However, third parties may make a

Freedom of Information Act request for IBERICA KNUTSEN Marine Casualty Report, MISLE Case Number 1206116.

d) [053C21008] Secondary Feed

Refer to NES-MYS-1-04d_Eversource Letter to NGRID_CUI-PRIV.pdf [Bates Number 000000844]

e) [053C22007] Structural Support Upgrade – Conduit Supports

Based upon history and experience, funding to address structural support foundations associated with large conduit supports has been budgeted for 2022. It is anticipated that surveys in late 2021 will provide sufficient data to make a determination of scope and timing of any support upgrade work.

f) [053C22009] Mooring Hooks

Refer to Response to NES-MYS_1-4.c above.

g) [053C220010] Heated Vent Hot Water Piping

NES-MYS-1-04g_1-Corrective Maintenance Work Orders_CUI-PRIV.pdf [Bates Number 000000845 – 000000857]

Piping is shown in photos from May 2020 below.



h) [053C22011] Tank Base Heater Replacement

Refer to Attachment NES-MYS-1-04h_1-LNG Tank Upgrade Recommendations_CUI-PRIV.pdf [Bates Number 000000858 – 000000865]

NES-MYS-1-05: Please confirm that the following projects are not expected to be completed during the term of the Mystic Agreement:

EMT Template

- a. [053C22002] Jetty/Dock Structure Improvmt (Row 11)
- b. [5M8C22009] MYD8 Waterfront Rip Rap (Row 12)
- c. [053C22006] Plant Steam Modifications (Row 16)
- d. [053C20010] Boil-Off Compressor Upgrade (Row 21)

Mystic 8&9 Template

- e. [5M9C22008] MYD9 Waterfront Rip Rap (Row 29)
- f. [5M9C22015] MYD9 ST 96 Valves (even) (Row 34)

RESPONSE:

Mystic objects to this question as beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

Notwithstanding the foregoing and without waiving or limiting these objections, Mystic makes a good faith effort to respond as follows:

EMT Template	Response
a. [053C22002] Jetty/Dock Structure Improvmt (Row 11)	Project will be evaluated on an ongoing basis to determine whether it is needed. The marine facilities are evaluated on a yearly basis and determination of project timing and final scope will be based on the Material Condition found.
b. [5M8C22009] MYD8 Waterfront Rip Rap (Row 12)	Project will be evaluated each year to determine whether it is needed. Determination will be based on Material Condition. (Note:

	this is a Mystic project, not an EMT project as suggested in the question).
c. [053C22006] Plant Steam Modifications (Row 16)	Plant Steam system components are reaching end of anticipated life (20-25 years). Modifications and replacement of steam components and subsystems will continue to be evaluated on an ongoing basis. Project continues to be anticipated but timing of project execution will be based on Material Condition.
d. [053C20010] Boil-Off Compressor Upgrade (Row 21)	The terminal's existing boilloff compressor continues to be maintained. A limited number of components are reaching end of anticipated life (35-40 years). Modifications and replacement of compressor components and subsystems will continue to be evaluated on an ongoing basis. Project continues to be anticipated but timing of project execution will be based on Material Condition.
Mystic 8&9 Template	Response
e. [5M9C22008] MYD9 Waterfront Rip Rap (Row 29)	Project will be evaluated on an ongoing basis to determine whether it is needed. Determination will be based on Material Condition.
f. [5M9C22015] MYD9 ST 96 Valves (even) (Row 34)	Project will be evaluated each year to determine whether it is needed. Determination will be based on Material Condition. (Note: this is a Mystic project, not an EMT project as suggested in the question.)

NES-MYS-1-06: Referring to the Mystic 8&9 template (Row 41), with respect to the auxiliary boiler:

- a. Please provide documentation that led Mystic to determine that it could make several upgrades to segregate services currently supplied to the auxiliary boiler and fire pump house by the Mystic 7 facility and allow Mystic 8 & 9 to provide these services, specifically electric power, water, air supply, and industrial wastewater.
- b. Please provide any cost build up documentation that supports the revised cost estimate.

PRIVILEGED ATTACHMENTS:

NES-MYS-1-06a_Exelon-Mystic-Aux_Blr-Time_Capsule_Report-20191209_CUI-PRIV.pdf [000000866 - 000000892]

NES-MYS-1-06a_Exelon-Mystic-Lease_Aux_Blr-Time_Capsule_Report-20200629_CUI-PRIV.pdf [Bates Number 000000893 - 000000989]

NES-MYS-1-06a_Mystic 7 Report_CUI-PRIV-CEII.pdf [Bates Number 000000990 - 000001054]

NES-MYS-1-06b_Aux Boiler-FP Segregation for EPCAC PRESO Jan 26_CUI-PRIV.pdf [Bates Number 000001055 - 000001081]

RESPONSE:

Mystic objects to this question to the extent it calls for production of documents that contain some content beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

Mystic further objects to this question to the extent that it calls for production of documents that contain materials that are attorney work product or attorney client privileged.

Notwithstanding the foregoing and without waiving or limiting these objections, Mystic makes a good faith effort to respond by producing responsive documents, redacted in some cases to omit material that is beyond the scope of the proceeding, or that is attorney work product or attorney client privileged, or that is not responsive to the question:

- a. Refer to the above-referenced Privileged Attachments.
- b. Refer to the above-referenced Privileged Attachments.

NES-MYS-1-07: Referring to the EMT template, with respect to Row 14, [053C20011] Cryo Insulation boiler:

- a. Please provide documentation on the scope refinement and inspection reports that led Mystic to reclassify this project and update the cost estimate.
- b. Please provide any cost build up documentation that supports the revised cost estimate.

RESPONSE:

Mystic objects to this question on the basis that the use of the term “reclassify” mischaracterizes the description of the project in the Informational Filing. Notwithstanding the foregoing and without waiving or limiting this objection, Mystic makes a good faith effort to respond as follows:

The original 2018 Cost of Service filing included funding for 2022 the Reperlite LNG Tank project to reinsulate the interstitial space of the LNG Storage tanks. This work was determined to be needed before 2022 and, therefore, was completed in December of 2020.

On Attachment A of the April 1, 2021 Informational Filing, a capital project designated 053C20011 - Cryogenic Insulation Project, which is a new project that is expected to be undertaken in 2022, was added to the template on the same line as the Reperlite LNG Tank project. The new project that is budgeted for 2022 will address cryogenic insulation on LNG piping systems that have reached the end of their service life. The new project will involve reinsulating process lines with an insulation system that uses foamglass as the primary insulator. The scope for this project has not yet been finalized. By early 2022, the LNG Terminal expects to conduct a review of the insulation systems of the Terminal’s LNG process piping and develop a prioritized list of insulation sections to be reinsulated. At the time of internal project approval, cost build up documentation will become available (estimated Q1 2022).

So, the 053C20011 - Cryogenic Insulation Project is separate from the Reperlite LNG Tank project and should have been entered on a separate line on Attachment A. Mystic will update the template to reflect this change in the September 2021 Informational Filing with FERC.

NES-MYS-1-08: Referring to Mystic 8 & 9 Schedule A, please provide the actual expenditures for the calendar years 2018, 2019 and 2020 for the following expense line items:

- a. Production O&M
- b. Corporate Admin and General
- c. Other Taxes

RESPONSE:

Mystic objects to this request as beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

NES-MYS-1-09: Referring to Mystic 8 & 9 Schedule A, please provide the following year end balances for the years 2018, 2019 and 2020 for the following asset accounts:

- a. Material and Supplies
- b. Prepayments

RESPONSE:

Mystic objects to this request as beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

NES-MYS-1-10: Referring to Mystic 8 & 9 Schedule D, Page 1, please clarify if the \$12,000,000 listed on line 23 (cell C29) are the costs related to the previously labeled “Common - Boiler move Costs” that are now shown as “MYD9 Mystic Campus Segregation (line 26). Since the “MYD9 Mystic Campus Segregation” costs are included as RMR CapEx costs in line 26, should the \$12,000,000 amount in line 23 be reduced to \$0? If the answer is “no,” please explain.

RESPONSE:

Mystic objects to this question as beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

Notwithstanding the foregoing and without waiving or limiting these objections, Mystic makes a good faith effort to respond as follows:

Yes, the \$12,000,000 listed on line 23 (cell C29) of Schedule D in the 2021 Informational Filing is the cost related to the previously labeled “Common - Boiler Move Costs” that is now shown as “MYD9 Mystic Campus Segregation (line 26); this item will be updated to reflect the change as part of the April 2022 Informational Posting.

NES-MYS-1-11: Referring to Mystic 8 & 9 Schedule D, please confirm or deny that the book depreciation adjustment for the period 7/1/2003 through 6/30/2004 is related only to Mystic 8 & 9. If denied, please provide a detailed breakdown of the total book depreciation for each asset that was impacted by this adjustment (i.e., Mystic 8 & 9, Mystic 7, Mystic Jet, Mystic Common).

RESPONSE:

Mystic objects to this request as beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

NES-MYS-1-12: Referring to Mystic 8 & 9 Schedule A, please provide a reconciliation and explanation of the Electric Plant in Service amount (Line 1) from what Mystic originally proposed for its Electric Plant in Service in Docket No. ER18-1639.

RESPONSE:

Mystic objects to this request as vague and beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

NES-MYS-1-13: Referring to Mystic 8 & 9 Schedule D, the Net Plant Adjustment in Row 4 (\$441,418.636), please confirm that this adjustment is the result of complying with FERC’s directive to use the original cost test. Please provide supporting documentation to replicate this calculation.

RESPONSE:

Mystic objects to this request as vague and beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

NES-MYS-1-14: Referring to Mystic 8 & 9 Schedule E, please confirm or deny that the tax basis for determining the excess deferred income taxes should be adjusted for any plant that was not included in the book basis calculation at the end of 2017. If deny, provide a detailed explanation of why the book basis was adjusted from the Compliance filing, but not the tax basis calculation.

RESPONSE:

Mystic objects to this request as vague, unduly burdensome, and beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

NES-MYS-1-15: Referring to Mystic 8 & 9 Schedule E, please provide the underlying calculation of the hard coded numbers for Mystic 8 & 9 Tax Basis used for determining excess deferred income taxes. Please include all years as well as the detailed components on lines 2-4.

RESPONSE:

Mystic objects to this request as beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

NES-MYS-1-16: Referring to Mystic 8 & 9 Schedule I, please provide an updated calculation of the Gross Plant Allocator based on the annual gross plant balance that is included on the Mystic 8 & 9 Schedule D. Mystic 8 & 9 Schedule I references Mystic 8 & 9 Schedule D, but the reference does not appear to be correct. If Mystic disagrees that the reference is incorrect, please provide an explanation.

RESPONSE:

Mystic objects to this request as beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

NES-MYS-1-17: Referring to Mystic 8 & 9 Schedule I, please provide the gross plant detail allocated to Mystic 8 & 9 as of December 31, 2020 for the following:

- a. Mystic 7
- b. Mystic Jet
- c. Mystic Station Common gross plant
- d. Mystic Station Common

RESPONSE:

Mystic objects to this request as overbroad, unduly burdensome and beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

NES-MYS-1-18: Referring to Everett Schedule A, please provide the actual expenditures for the calendar years 2018, 2019 and 2020 for the following expense line items:

- a. Production O&M
- b. Corporate Admin and General
- c. Other Taxes

RESPONSE:

Mystic objects to this request as beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

NES-MYS-1-19: Referring to Everett Schedule A, please provide the year end balances for the years 2018, 2019 and 2020 for the following asset accounts:

- a. Material and Supplies
- b. Prepayments

RESPONSE:

Mystic objects to this request as beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

NES-MYS-1-20: Please provide supporting information for all non-formulaic inputs to Mystic 8 & 9 Schedule B.

RESPONSE:

Mystic objects to this request as vague, unduly burdensome, and beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

NES-MYS-1-21: Please provide supporting information for all non-formulaic inputs to Everett Schedule B.

RESPONSE:

Mystic objects to this request as vague, unduly burdensome, and beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

NES-MYS-1-22: Regarding Mystic 8 & 9 Schedule H:

- a. Please provide supporting information for all non-formulaic inputs to Schedule H.
- b. Please describe the type of costs included in line 11.

RESPONSE:

Mystic objects to this request as vague, unduly burdensome, and beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

NES-MYS-1-23: Regarding Everett Schedule H:

- a. Please provide supporting information for all non-formulaic inputs to Schedule H.
- b. Please describe the type of costs included in line 11.

RESPONSE:

Mystic objects to this request as vague, unduly burdensome, and beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

NES-MYS-1-24: Referring to Mystic 8 & 9 Schedule I:

- a. Please provide supporting information for all non-formulaic inputs to Schedule I.
- b. Please explain the basis for the use of 0.75 to determine the amount in line 5.
Should line 5 be an input? If so please provide supporting information.

RESPONSE:

Mystic objects to this request as vague, unduly burdensome, and beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

NES-MYS-1-25: Referring to Everett Schedule I, please provide supporting information for all nonformulaic inputs to Schedule I.

RESPONSE:

Mystic objects to this request as vague, unduly burdensome, and beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
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As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

NES-MYS-1-26: Please provided an organization chart detailing the number of employees by position for all on-site labor currently at the Mystic facilities and the expected level of employees during the term of the Mystic Agreement.

RESPONSE:

Mystic objects to this request as unduly burdensome and beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

NES-MYS-1-27: Please confirm if any special compensation packages (such as retention bonus, severance pay) are expected during the term of the Mystic Agreement that will be included in Revenue Requirement.

RESPONSE:

Mystic objects to this request as beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

NES-MYS-1-28: Please provide a detailed breakdown of the \$500 million impairment that was recognized for the New England asset group in the third quarter of 2020 as reported in Exelon Corporation’s SEC Form 10K filed February 24, 2021. Provide the amount of the impairment that was directly related to the early retirement of Mystic 8 & 9 and if it is included on the Mystic 8 & 9 Schedule D. Also, provide a brief description of the nature of the impairment.

RESPONSE:

Mystic objects to this request as beyond the scope of this proceeding and contrary to the Commission’s determination that impairments are not relevant Mystic’s rates under the Mystic Agreement. *See Constellation Mystic Power, LLC*, 172 FERC ¶ 61,044 at P 112 (2020); *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 at P 71 (2018).

The scope of this proceeding is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests “shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.

APPENDIX B

**New England States Committee on Electricity Informal Challenges to
Mystic's April 2021 Informational Posting (Aug. 2, 2021)
(Public Redacted Version)**

Public Redacted Version**New England States Committee on Electricity Informal Challenges to
Mystic's April 2021 Informational Posting**

August 2, 2021

In accordance with the protocols contained in Schedule 3A to the Amended and Restated Cost-of-Service Agreement among Constellation Mystic Power, LLC (“Mystic”), Exelon Generation Company, LLC, and ISO New England Inc. (“Agreement”),¹ the New England States Committee on Electricity (“NESCOE”) submits the following Informal Challenges to the Informational Posting that Mystic made available on April 1, 2021 (“2021 Informational Posting”).

I. INTRODUCTION

Section I.B.1.i of Schedule 3A requires Mystic to file on or before April 1, 2021, “appropriate support for the capital expenditures and costs that will be collected as an expense during the Term in calendar year 2022 (June 1, 2022 to December 31, 2022). . . . The Annual Fixed Revenue Requirement, the Maximum Monthly Fixed Cost Payment, and the Fixed O & M/Return on Investment component of the Monthly Fuel Cost Charge for the relevant period of the Term in Schedule 3 will be updated in accordance with the Methodology”

In the 2021 Informational Posting, Mystic provided:

- A cover letter;

¹ Schedule 3A is referred herein to as “the Protocols.” Capitalized terms not defined in this Informal Challenge are intended to have the meaning given to such terms in the Protocols (and if not defined in the Protocols, then the meaning given to such terms in the Agreement).

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- Attachment A, a list of 2022 capital expenditure (“CapEx”) projects related to the Mystic 8 & 9 units (the “Mystic 8&9 Template”), and for the Everett Marine Terminal (“Everett” or “EMT”) (the “EMT Template”);
- Attachment B, the Affidavit of Michael Brown and Abigail Piollo-Alam (“Affidavit”);
- Attachment C, which Mystic described as “[a] version of the Methodology including the total costs of the 2022 CapEx Projects[;]”² and
- Attachment D, a confidentiality agreement.

In accordance with Section 3 of the Protocols, NESCOE submitted three sets of information and document requests to Mystic.

NESCOE has reviewed the 2021 Informational Posting and the responses to its information and document requests through the lens of the Protocols and the orders of the Federal Energy Regulatory Commission (“FERC” or the “Commission”). Below, NESCOE submits Informal Challenges related to Mystic’s 2022 CapEx projects (Section II) and to other aspects of the Informational Posting (Section III).

II. ATTACHMENT A - 2022 CAPEX PROJECTS

The 2021 Informational Posting is when Mystic needs to support its proposed 2022 CapEx projects (*i.e.*, capital expenditures to be incurred June 1, 2022 – December 31, 2022): “Capital expenditures that will be incurred during the term *will be supported prior to their incurrence* and are subject to a true-up adjustment to the actual costs in accordance with the

² Mystic stated: “the populated Methodology included as Attachment C is being included for informational purposes only and only reflects the addition of the costs of the 2022 CapEx Projects” and that “[t]he version of the Methodology used is the same as the populated Methodology submitted as Attachment C-1 to Mystic’s September 15, 2020 compliance filing submitted in Docket No. ER18-1639-007, which is currently pending before the Commission.”

Public Redacted Version

protocols”³ Indeed, the Protocols make clear that Interested Parties may *not* wait until the true-up process to challenge projected capital expenditures: “For capital expenditures previously identified as being necessary to meet the reliability need, this [2023] filing will only true-up the amount for each capital expenditure to actuals, not whether a capital expenditure should have been designated as necessary to meet the reliability need.”⁴

The Protocols describe what Mystic needs to do to support CapEx projects:

If the Filing will support the capital expenditures that will be incurred during the Term it shall:

1. Provide an explanation of need that explains why the capital expenditure is necessary in order to meet the obligations of the Agreement;
2. Demonstrate that the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
3. Include a description of the project(s), the need for the project(s), the alternatives considered with respect to the least-cost alternatives, the expected start and completion date(s), and the project costs.
4. Identify whether either of the following occurred for projects that it is proposing to expense over the term of the Agreement, and if so explain why: (a) the project was scheduled for before the Term but delayed into the Term, or (b) the project was scheduled for during the Term but should have been completed prior to the Term.⁵

³ Schedule 3A, Section I (emphasis supplied).

⁴ Schedule 3A, Section I.B.3.ii. *See also id.* at I.B.4.i (2024 filing) and I.B.5.i (2025 filing).

⁵ Schedule 3A, Section II.2.A. Aspects of these provisions are under review at the U.S. Court of Appeals for the D.C. Circuit in Case. No. 20-1343.

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As discussed below, Mystic has not supported a number of the 2022 CapEx projects. The Affidavit states that “because the Mystic Agreement requires an updated projection of costs in April of 2022 and a true-up to actual costs in 2023, interested parties will have ample opportunity to review the actual, final costs when they are known.”⁶ However, as noted above, the Protocols specify that the time to challenge projected CapEx projects on the basis that they are not needed for reliability or other reasons related to Mystic’s fulfilling its obligations under the Agreement, is now—at the time of the relevant Informational Posting, not in the future.

Accordingly, NESCOE includes below Informal Challenges related to CapEx projects that Mystic has failed to adequately support.

A. Mystic 8&9 Template**1. CapEx Projects Lacking Project Approval**

As shown in Attachment A, there are a number of CapEx projects that are included in the Mystic 8&9 Template where Mystic has provided no supporting information:

- MYD8 BOP Capital (Row 6) (see also A.3, below)
- MYD8 GT 81/82 Exp Jts 01 (Row 8)
- MYD8 Capital Valves (Row 9)
- MYD8 ST 85 Valves (even) (Row 10)
- MYD8 Steam Attemperators (Row 11)
- MYD8 LCB II Replacement (Row 16)

⁶ Attachment B, Affidavit at P 10.

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- MYD8 Compressors (Row 20)
- MYD9 Capital Motors (Row 26)
- MYD9 Capital Valves (Row 27)
- MYD9 Steam Attemperators (Row 28); and
- MYD9 LCB II Replacement (Row 32).

Rather, Mystic has simply stated with respect to each of these CapEx projects: “Project need and cost estimates determined through long range planning process, as described in Affidavit submitted with this informational posting. Any supplemental information on final cost and alternatives studied will be provided in subsequent informational filings after project approval obtained.”⁷

Because Mystic has provided no supporting information about these capital expenditures in the 2021 Informational Posting, there is no way for NESCOE to verify if Mystic has made the requisite demonstrations regarding its right to recover these costs under the Agreement. As such, these projects are unsupported and the costs cannot be incurred until they have been supported in accordance with the Protocols.

2. Comprehensive Rotor Inspections (CRIs) of Gas Turbine 81, 82, 93, and 94 (Rows 18, 19, 23, 35)⁸

Mystic provided information discussing the need for comprehensive rotor inspections (“CRIs”) of its four gas turbines. However, Mystic has not demonstrated that these costly CRIs

⁷ Attachment A, Mystic Template, Column L of Rows 6, 8, 9, 10, 11, 16, 20, 26, 27, 28, and 32.

⁸ Source: NES-MYS-1-02; NES-MYS-3-02; NES-MYS-3-03; NES-MYS-3-04; NES-MYS-3-05.

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need to be performed before or during the Term in order to keep the Mystic units running for the additional two years of the Term under the Agreement. Rather, these capital expenditures appear

[BEGIN CUI-PRIV//HC] 

[END CUI-PRIV//HC] Nor has Mystic demonstrated that the CRI expenditures are the least-cost commercially reasonable option consistent with Good Utility Practice.

3. BOP Capital (Row 6)⁹

Mystic has set aside a certain amount capital of expenditures for “emergent material conditions.” Mystic has indicated that it maintains this contingency in case it is needed. However, as noted above, Mystic is required to support any capital expenditures prior to their being incurred. Because there is no supporting information on these contingency capital expenditures, there is no way to determine whether they are or will be related to the reliability need under the Agreement or if they will be the least-cost commercially reasonable option consistent with Good Utility Practice.

B. EMT Template

As is the case with the unsupported CapEx projects in the Mystic 8&9 Template, Mystic includes many items in the EMT Template that are likewise unsupported.

The EMT CapEx projects that NESCOE identifies below suffer from two additional problems. First, Mystic has not demonstrated that the costs are related to extending Mystic’s operations by the two-year period covering the Agreement. Rather, these EMT CapEx projects are routine in nature and appear related to extending Everett’s operations beyond the Term of the

⁹ Source: NES-MYS-01, subpart a.

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Agreement.¹⁰ Mystic's position appears to be that *any* repair that will take place prior to the Term of the Agreement is necessary for the sole purpose of meeting its reliability obligations under the Agreement, including where a repair would have been needed prior to the Term and where a repair could be postponed until after the Term. Second, even if Mystic can demonstrate that the capital expenditures are related to the reliability need under the Agreement (which NESCOE believes it has not), in light of the lack of a clawback provision, Mystic has not explained why these capital expenditures should be treated as expense to be recovered during the two-year period instead of being capitalized, added to rate base, and recovered over an extended period beyond the Term.

1. EMT CapEx Projects Lacking Project Approval

As is the case with the Mystic CapEx projects discussed above (*see* Section A.1, above), there are a number of Everett CapEx projects shown in Attachment A that are included in the EMT Template where Mystic has provided no supporting information. (For the items with an asterisk, Mystic provided some information in response to NESCOE's information and documents requests, and these items are discussed in more detail below.)

- *Recoat LNG Storage Tanks (incl Outer Shell Welds) (Row 6) (*see* B.2, below)
- Liquid Level Gauge Replacement (Row 13)
- *Cryo Insulation (Row 14) (*see* B.8, below)
- BOP Maintenance Capital (Row 15)

¹⁰ The issue of whether Mystic has an obligation to refund costs paid by ratepayers related to Everett if Everett remains in operation beyond the Term of the Agreement is pending on appeal in the D.C. Circuit.

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- Cryogenic Valve Replacement (Row 17)
- BOP Capital Valves (Row 18)
- BOP Capital Motors (Row 19)
- BOP Capital Pumps (Row 20)
- MV Electrical System Replacemt (Row 22)
- Firewater Main Repl/Upgrade (Row 23)
- *Forward Bollard (Row 25) (see B.4, below)
- *Secondary Feed (Row 26) (see B.5, below)
- Structural Suppt Upgr-Conduit (Row 27)
- *Mooring Hooks (Row 28) (see B.4, below)
- *Tank Base Heater Replacment (Row 30) (see B.7, below)

Here, again, the EMT Template just notes: “Project need and cost estimates determined through long range planning process, as described in Affidavit submitted with this informational posting. Any supplemental information on final cost and alternatives studied will be provided in subsequent informational filings after project approval obtained.”¹¹

Because Mystic has not provided sufficient supporting information about these capital expenditures in the 2021 Informational Posting, there is no way for NESCOE to verify if Mystic has made the requisite demonstrations regarding its right to recover these costs under the

¹¹ EMT Template, Column L (for the rows specified above).

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Agreement. For the same reasons as discussed above with respect to unsupported Mystic CapEx projects (see Section A), NESCOE includes these CapEx projects in this Informal Challenge.

2. Recoat LNG Storage Tanks (incl Outer Shell Welds) (Row 6)¹²

NESCOE understands that Mystic is treating the recoating of the EMT LNG storage tanks as an O&M expense, rather than as a capital expenditure, and that Mystic is intending to expense approximately [BEGIN CUI//PRIV-HC] [REDACTED]

[REDACTED] [END CUI//PRIV-HC] Mystic states that the project was reclassified as O&M. Specifically, the approximately [BEGIN CUI//PRIV-HC] [REDACTED]

[REDACTED] [END CUI//PRIV-HC], were not treated as O&M, but rather as capital costs.

This means that there is [BEGIN CUI//PRIV-HC] [REDACTED] [END CUI//PRIV-HC] in EMT's rate base on which Mystic will collect a return. If Mystic is going to treat this recoating project as an O&M expense, then the amounts expended previously by EMT on it should likewise be treated as O&M expense and should be removed from EMT's rate base. Otherwise, Mystic benefits from this change in accounting by recovering a portion of the costs of the project as an expense during the two-year Term of the Agreement, in addition to recovering a return on the other portion of the costs of the project that was completed prior to the Term of the Agreement.

¹² Source: NES-MYS-1-01, subpart I; NES-MYS-3-01.

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3. HA (Bypass for SCR (HAB) Repl) (Row 24)¹³

[BEGIN CUI//PRIV-HC]

[REDACTED]

[END CUI//PRIV-HC]

Additionally, Mystic has not demonstrated that the costs of this project are associated with EMT providing fuel service to Mystic only during the Term of the Agreement. Rather, these are general repair costs that predate the Agreement and are unrelated to Mystic's obligations under the Agreement.

¹³ Source: NES-MYS-1-04, subpart b; NES-MYS-3-06; NES-MYS-3-07; ENC-MYS-1-11.

Public Redacted Version**4. Forward Bollard (Row 25) and Mooring Hooks (Row 28)¹⁴**

Based on the information provided by Mystic in response to NESCOE information requests, Mystic has not demonstrated that replacing the forward bollard or the mooring hooks are projects needed during the Term of the Agreement for Mystic to meet its reliability obligations under the Agreement.

Indeed, Everett has been in continuous operations, even since the failure identified on January 24, 2020, and yet to this date, these capital expenditures have “not yet been presented to management for funding authorization.” In light of this, Mystic has not demonstrated why these projects could not wait until after the end of the Term. And Mystic has likewise not demonstrated that these capital expenditures are related to Mystic’s meeting the reliability need under the Agreement. From the information provided, these appear to be routine repairs that may or may not need to be completed during the Term, and that will last for decades beyond the Term. Additionally, Mystic had not demonstrated that these expenditures are reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice.

Accordingly, to the extent that Mystic does demonstrate a need for the forward bollard or mooring hooks to be replaced now, there is no justification to expense these capital costs during the Term of the Agreement. These are long-term projects that will last for decades, and these types of capital investments should be treated as a capital expense with costs recovered over time, not just during the Term of the Agreement.

¹⁴ Source: NES-MYS-1-04, subparts c and f; NES-MYS-3-08; NES-MYS-3-10.

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5. Secondary Feed (Row 26)¹⁵

This capital project relates to [BEGIN CUI//PRIV-HC] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CUI//PRIV-HC] Mystic has not supported ratepayers bearing these capital expenses as they go well beyond what Mystic would need to meet the reliability need under the Agreement.

6. Heated Vent Hot Water Piping (Row 29)¹⁶

NESCOE understands that this CapEx project relates to replacement of hot water piping between heaters and LNG Storage tank heated vents. Mystic has indicated that the damage to

¹⁵ Source: NES-MYS-1-04, subpart d; NES-MYS-3-09.
¹⁶ Source: NES-MYS-1-04, subpart g; NES-MYS-3-11.

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the piping has already been repaired. There appears to be no basis, therefore, for Mystic to recover these capital costs as expenses during the Term of the Agreement, rather than including them in EMT's rate base and recovering them over the life of the project.

As with the case of the forward bollard and mooring hooks, as far as NESCOE can tell based on the information provided, these repairs appear related to extending Everett's operations and will clearly benefit Everett long past the Term of the Agreement.

7. Tank Base Heater Replacement (Row 30)¹⁷

NESCOE's understanding of the tank base heater replacement project is that [BEGIN
CUI//PRIV-HC] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CUI//PRIV-

HC] Additionally, Mystic has not demonstrated that this expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice.

¹⁷ Source: NES-MYS-1-04, subpart h; NES-MYS-3-12; NES-MYS-3-13.

Public Redacted Version**8. Cryo Insulation (Row 14)**¹⁸

To date, Mystic has not provided any supporting data for this project. Mystic has said that documentation of the Cryogenic Insulation Project is expected to be available in the first quarter of 2022.

Given the lack of data, it is impossible to know whether the costs are justified and in compliance with the cost recovery provisions of the Agreement and the Commission's orders.

III. ATTACHMENT C**A. General Challenge and Reservation of Rights**

NESCOE submitted a number of information requests and document requests to Mystic regarding Attachment C. *See* NES-MYS-1-08 through NES-MYS-1-28; NES-MYS-2-01; and NES-MYS-3-16.

With the exception of NES-MYS-1-10 and NES-MYS-3-16, Mystic did not provide responses to any of these questions. For most of the information requests, Mystic provided the following objection:

Mystic objects to this question as beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests "shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with

¹⁸ Source: NES-MYS-1-07; NES-MYS-3-14.

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Good Utility Practice to meet the obligations of the Agreement;
and

- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term.”

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.”

Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process.^[19]

NESCOE disagrees and believes that the information requests to which Mystic has objected on the basis that they are “outside of the scope of this information exchange process” are, in fact, properly within the scope of the information exchange process.

The Protocols state that for the 2021 Informational Posting:

Owner shall file on or before April 1, 2021, in accordance with the Informational Exchange and Challenge Procedures detailed below, appropriate support for the capital expenditures *and costs* that will be collected as an expense during the Term in calendar year 2022 (June 1, 2022 to December 31, 2022) as detailed below. *The Annual Fixed Revenue Requirement, the Maximum Monthly Fixed Cost Payment, and the Fixed O & M/Return on Investment component of the Monthly Fuel Cost Charge for the relevant period of the Term in Schedule 3 will be updated in accordance*

¹⁹ E.g., Mystic objection to NES-MYS-1-08.

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with the Methodology and shall exclude true-up of investment and expense items disallowed by the Commission, if any.^[20]

The Protocols further state that:

If the Filing provides for an update of projected costs or a true-up it shall:

1. Include a workable data-populated template and underlying workpapers in native format with all formulas and links intact;
2. Provide the template rate calculations and all inputs thereto, as well as supporting documentation and workpapers for data that are used in the formula rate that are not otherwise available in the methodology provided below in the Methodology;
3. Provide sufficient information to enable Interested Parties to replicate the calculation of the formula results from the methodology provided below in the Methodology;
4. Identify any changes in the formula references (page and line numbers) to the methodology provided below in the Methodology;
5. Include the information that is reasonably necessary to determine that Owner has applied the methodology provided below in the Methodology, the extent of any accounting or other changes that affect the inputs into that methodology, and any corrections or adjustments made in the calculation.^[21]

Mystic's position that the populated version of the Methodology it provided with the 2021 Informational Posting is shielded from review and challenge because it was provided "for informational purposes only" is not supported by the cited Protocol provisions. The requirement that Mystic update its capital expenditures for the June 1-December 31, 2022 period in the 2021

²⁰ Protocols, Section I.B.1.i (emphasis supplied).

²¹ Protocols, Section II.2.A.

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Informational Posting does not relieve Mystic from the obligation to support the non-CapEx costs it seeks to recover under the Agreement.

Because Mystic did not provide responses to many of the questions that NESCOE had regarding the 2021 Informational Posting, there is no way to determine that Mystic has demonstrated that the charges proposed therein are consistent with FERC's orders approving the Agreement and the FERC-approved methodology, are prudent and otherwise just and reasonable. Accordingly, NESCOE submits this Informal Challenge on the unexplained costs about which NESCOE requested information and that are the subject of Mystic's objections.

B. Specific Challenges

In addition to the general challenge above, NESCOE challenges the following items in Attachment C, which have been modified from either the original 2018 filing or from Mystic's various compliance filings. Because Mystic has provided no information in response to requests, it is difficult to unwind and understand what Mystic has done in Attachment C.

As one example, it appears that Schedules A, D and E include the same adjustments as were made in Mystic's September 2020 compliance filing; however, Schedule I—which affects Schedule E—was not updated in the September 2020 compliance filing, as far as NESCOE can tell. In short, Mystic has not provided any information to allow NESCOE to understand how the inputs were derived (regardless of Mystic's claim that the entirety of Attachment C was provided “for informational purposes only”).

Because Mystic has not provided responses to NESCOE's information and document requests, there is no way to determine whether these changes are correct, in accordance with

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FERC's orders (both addressing the underlying Agreement and Mystic's compliance filings) and otherwise in accordance with the Agreement and just and reasonable.

1. Schedule A and Schedule D

Mystic has provided no information so that NESCOE can verify the net book values for Mystic 8&9 plant in service at 12/31/2017 and the associated depreciation expense.²² It has also not provided any of the requested labor and labor related expense information in order to determine the reasonableness of the capitalized portion of these expenditures that have or will become components of the total CapEx projects.

2. Schedule A and Schedule E

The adjusted net book values for Mystic 8&9 on Exhibit D in the 2021 filing carry over to the computation of accumulated deferred income taxes ("ADIT")/excess deferred income taxes ("EDIT"), resulting in a significant change to the ADIT and EDIT calculations compared to Mystic's original filing.²³

3. Schedule I

Schedule I was not adjusted in Attachment C based on new plant amounts. This is inconsistent with the adjustments to Schedule A, D and E. The Mystic 8&9 gross plant detail amounts used to develop plant allocators have not been adjusted to reflect the adjusted gross plant costs on Schedule D in this filing.²⁴

²² See NES-MYS-1-11; NES-MYS-1-12; and NES-MYS-1-13.

²³ See NES-MYS-1-14 and NES-MYS-1-15.

²⁴ See NES-MYS-1-16 and NES-MYS-1-17.

APPENDIX C

**Constellation Mystic Power, LLC Responses to the Informal Challenges of the
New England States Committee on Electricity (Aug. 27, 2021)**

Constellation Mystic Power, LLC

Responses to the Informal Challenges of the New England States Committee on Electricity

August 27, 2021

On April 1, 2021, Constellation Mystic Power, LLC (“Mystic”) had posted on the ISO New England Inc. (“ISO-NE”) webpage (<https://www.iso-ne.com/committees/key-projects/forward-capacity-market--retain-resources-for-fuel/>) its original 2021 Informational Posting. Mystic had an errata posted on April 27, 2021. Mystic subsequently received and responded to Information and Document Requests by Interested Parties. On August 2, 2021, Mystic received Informal Challenges from the New England States Committee on Electricity (“NESCOE”). Mystic’s responses to those Informal Challenges are provided herein.

NESCOE Introduction (Attachment A)

Informal Challenge:

The 2021 Informational Posting is when Mystic needs to support its proposed 2022 CapEx projects (*i.e.*, capital expenditures to be incurred June 1, 2022 – December 31, 2022): “Capital expenditures that will be incurred during the term *will be supported prior to their incurrence* and are subject to a true-up adjustment to the actual costs in accordance with the protocols” Indeed, the Protocols make clear that Interested Parties may *not* wait until the true-up process to challenge projected capital expenditures: “For capital expenditures previously identified as being necessary to meet the reliability need, this [2023] filing will only true-up the amount for each capital expenditure to actuals, not whether a capital expenditure should have been designated as necessary to meet the reliability need.”

The Protocols describe what Mystic needs to do to support CapEx projects:

If the Filing will support the capital expenditures that will be incurred during the Term it shall:

1. Provide an explanation of need that explains why the capital expenditure is necessary in order to meet the obligations of the Agreement;
2. Demonstrate that the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
3. Include a description of the project(s), the need for the project(s), the alternatives considered with respect to the least-cost alternatives, the expected start and completion date(s), and the project costs.
4. Identify whether either of the following occurred for projects that it is proposing to expense over the term of the Agreement, and if so explain why:
(a) the project was scheduled for before the Term but delayed into the Term, or
(b) the project was scheduled for during the Term but should have been completed prior to the Term.

As discussed below, Mystic has not supported a number of the 2022 CapEx projects. The Affidavit states that “because the Mystic Agreement requires an updated projection of costs in

April of 2022 and a true-up to actual costs in 2023, interested parties will have ample opportunity to review the actual, final costs when they are known.” However, as noted above, the Protocols specify that the time to challenge projected CapEx projects on the basis that they are not needed for reliability or other reasons related to Mystic’s fulfilling its obligations under the Agreement, is now—at the time of the relevant Informational Posting, not in the future.

Accordingly, NESCOE includes below Informal Challenges related to CapEx projects that Mystic has failed to adequately support (emphases in original) (citations omitted).

Response:

Mystic has made every effort to support the proposed 2022 capital expenditures as required by Schedule 3A, Section II.2.A. In most instances, Mystic has provided full and adequate support for each project. For some of the projects, however, certain supporting documentation was not provided because it does not yet exist. For example, certain 2022 capital projects have not yet received all the requisite internal approvals. This is the product of time lag resulting from having to provide information on anticipated capital expenditures up to a year in advance of Exelon’s capital approval process. *See* April 1, 2021 Informational Filing, Attachment B at PP 8-10.

In addition, during the period of time since the 2021 Informational Posting, internal approval for certain of the CapEx Projects has been obtained. Mystic has included the supporting documentation associated with those projects as Attachments to these Responses. Notably, those projects include the following, which are second phases of projects that are already underway:

- Hot Air Bypass project – Phase II (Attachment NES_MYS_IC.II_053C2200XX - ELF HPE HAB Piping Replacement Train 1 EPCAC Meeting 082621_CUI-PRIV-HC.pdf) [Bates Nos. 000001563 - 000001576];
- Piping Replacement project – Phase II (Attachment NES_MYS_IC.II_053C220XX - ELF Heated Vent Hot Water Piping Phase 2 T1 Riser EPCAC 082621_CUI-PRIV-HC.pdf) [Bates Nos. 000001551 - 000001562].

Mystic is committed to working with NESCOE and other Interested Parties to ensure that the informational exchange process described in the Protocols is followed and that Interested Parties have the opportunity to verify that Mystic has made the requisite showing for each capital project. Therefore, for projects where documentation or supporting materials are not yet available but will become available in the future, Mystic will make that information available to the Interested Parties in subsequent Informational Postings. For such projects, Mystic agrees that NESCOE’s rights to challenge these capital expenditures will be preserved until such time as Mystic has provided such supporting documentation and NESCOE has had the opportunity to seek information and respond consistent with the Protocols. However, Mystic does not waive its right to otherwise defend against such challenges.

NESCOE A-01

Informal Challenge:

As shown in Attachment A, there are a number of CapEx projects that are included in the Mystic 8&9 Template where Mystic has provided no supporting information:

- MYD8 BOP Capital (Row 6) (see also A.3, below)
- MYD8 GT 81/82 Exp Jts 01 (Row 8)
- MYD8 Capital Valves (Row 9)
- MYD8 ST 85 Valves (even) (Row 10)
- MYD8 Steam Attemperators (Row 11)
- MYD8 LCB II Replacement (Row 16)
- MYD8 Compressors (Row 20)
- MYD9 Capital Motors (Row 26)
- MYD9 Capital Valves (Row 27)
- MYD9 Steam Attemperators (Row 28); and
- MYD9 LCB II Replacement (Row 32).

Rather, Mystic has simply stated with respect to each of these CapEx projects: “Project need and cost estimates determined through long range planning process, as described in Affidavit submitted with this informational posting. Any supplemental information on final cost and alternatives studied will be provided in subsequent informational filings after project approval obtained.”

Because Mystic has provided no supporting information about these capital expenditures in the 2021 Informational Posting, there is no way for NESCOE to verify if Mystic has made the requisite demonstrations regarding its right to recover these costs under the Agreement. As such, these projects are unsupported and the costs cannot be incurred until they have been supported in accordance with the Protocols.

Response:

See Response to Introduction, which Mystic incorporates by reference. With respect to NESCOE’s statement that “costs cannot be incurred until they have been supported in accordance with the Protocols,” Mystic notes that cost incurrence is not an issue here, only cost recovery.

NESCOE A-02

Informal Challenge:

Mystic provided information discussing the need for comprehensive rotor inspections (“CRIs”) of its four gas turbines. However, Mystic has not demonstrated that these costly CRIs need to be performed before or during the Term in order to keep the Mystic units running for the additional two years of the Term under the Agreement. Rather, these capital expenditures appear **[BEGIN CUI-PRIV//HC]** [REDACTED] **[END CUI-**

PRIV//HC] Nor has Mystic demonstrated that the CRI expenditures are the least-cost commercially reasonable option consistent with Good Utility Practice.

Response:

Mystic has provided ample material demonstrating that the CRI expenditures are necessary to meet the reliability need and are the least-cost commercially reasonable option consistent with Good Utility Practice. *See* Responses to NES-MYS-3-02; NES-MYS-3-03, NES-MYS-1-02, and ENC-MYS-1-06. These responses show that Exelon Generation’s supply organization negotiated the best possible value using the supply process. Given the proprietary technology at issue, it was commercially reasonable to only consider Mitsubishi Power Systems Americas, Inc., the OEM, to perform the CRIs, because the OEM is the only company with the capability and qualifications to perform the work. *See* April 1, 2021 Informational Posting, Attachment B at P 13 (“Mystic does not have any alternatives to complete the project and it cannot competitively bid out the project. The work must be done by the manufacturer”). Further, Mystic has demonstrated that the CRI projects needed to be completed in order to ensure the reliable operation of Mystic 8&9 during the Term of the Mystic Agreement, based among other things, on a review and application of prudent industry practices such as review of past failures, consideration of OEM recommendations, third party independent opinion, and the experience and judgement of Mystic personnel gained through the operation of Mystic 8&9 over a period of 19 years, and also gained through significant other experience operating electric generating plants.

The decision to perform the CRIs was made in the context that the Mystic Agreement simultaneously exposes Mystic to substantial penalties if it does not meet its performance obligations while limiting Mystic’s flexibility to actually meet those same obligations through means normally available to it, such as through purchase of replacement capacity. *See* April 1, 2021 Informational Posting, Attachment B at P 17 (citing Mystic Agreement Sections 3.3 and 3.7). The penalty risks are unprecedented because it was and is intended that Mystic should not take chances when it came to making sure that the Mystic units were available. In this context, Mystic reasonably determined there was a need for the CRI projects based on OEM recommendations, the third-party independent opinion that it received from Black & Veatch, and recent pre-CRI inspection results in its fleet, *see* Response to NES-MYS-3-02, the results of which demonstrated that the CRI projects were needed to ensure the reliable operation of Mystic 8&9 during the Term of the Agreement. This determination, based on these considerations, is prudent and consistent with Good Utility Practice. In the experience of Mystic personnel, this is the best way to assess whether there is a failure of the equipment. Other studies such as finite element analysis (“FEA”), are not appropriate and do not provide meaningful information in this context.

With regard to consideration of pre-CRI inspection results, at the time Mystic was evaluating whether to proceed with the CRIs, the GT93 rotor was scheduled to undergo a Major inspection under a Long-Term Maintenance Service Agreement with the OEM, which would allow access to the rotor for a pre-CRI inspection. Mystic therefore combined the pre-CRI inspection with the

LTSA Major inspection for the GT93 rotor. The results of this inspection identified corrosion, pitting and radial disc creep. These are all sources of failure initiation that indicate, among other things, the risk of liberated blades, which could cause injury to on-site personnel, collateral damage to the Mystic facility, and a forced outage that could last months. Given these unacceptable risks, and particularly when placed in the context of the Mystic’s penalty-based incentive to ensure unit availability described above, Mystic agreed with the OEM recommendation to further evaluate the rotor in detail during a CRI. Further, given that all four rotors at Mystic have very similar operating hours and service duty, prudence and Good Utility Practice indicates that if GT93 needed a CRI then all four rotors needed CRI. Mystic is, however, only seeking to recover the costs for three CRIs as 2022 capital expenditures under the Mystic Agreement; the need to incur the cost for the fourth CRI as a 2022 capital project has been obviated through the use of a spare rotor.

The fact that the CRI expenditures will provide continued service certification for a period beyond the Term of the Agreement is irrelevant; Mystic made the decision to do the CRI projects so that Mystic can reliably operate for the Term of Agreement. If Mystic continues to operate past the Term, the Commission has said the clawback will apply to all costs, less depreciation, for repairs and capital expenditures that were needed to continue operation of Mystic 8&9 during the Term of the Agreement. *See Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 at P 208 (2018).

NESCOE’s argument that these projects may have benefits to the gas turbines beyond the Term of the Mystic Agreement is a collateral attack on the Commission’s orders in Docket No. ER18-1639-000, which authorize Mystic to expense capital expenditures that are “reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the reliability need.” *See Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022 at PP 15, 20 (2018), *order on reh’g*, 172 FERC ¶ 61,043 at P 25 (2020); *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 at P 63 (2018); ISO-NE Tariff, Market Rule 1 at Section III.13.2.5.2.5.2(b).

NESCOE A-03

Informal Challenge:

Mystic has set aside a certain amount capital of expenditures for “emergent material conditions.” Mystic has indicated that it maintains this contingency in case it is needed. However, as noted above, Mystic is required to support any capital expenditures prior to their being incurred. Because there is no supporting information on these contingency capital expenditures, there is no way to determine whether they are or will be related to the reliability need under the Agreement or if they will be the least-cost commercially reasonable option consistent with Good Utility Practice.

Response:

As described in the Affidavit submitted with the 2021 Informational Posting, many of the CapEx projects identified in the 2021 Informational Posting are still in the long-range planning phase and have not yet gone through the internal approval process applicable to all capital expenditures

across the Exelon Power generation fleet. This includes CapEx projects that may be required to address emergent material conditions. Please see the last paragraph of the Response to the NESCOE Introduction, which Mystic incorporates by reference.

NESCOE B – EMT Template

As is the case with the unsupported CapEx projects in the Mystic 8&9 Template, Mystic includes many items in the EMT Template that are likewise unsupported. The EMT CapEx projects that NESCOE identifies below suffer from two additional problems. First, Mystic has not demonstrated that the costs are related to extending Mystic’s operations by the two-year period covering the Agreement. Rather, these EMT CapEx projects are routine in nature and appear related to extending Everett’s operations beyond the Term of the Agreement. Mystic’s position appears to be that any repair that will take place prior to the Term of the Agreement is necessary for the sole purpose of meeting its reliability obligations under the Agreement, including where a repair would have been needed prior to the Term and where a repair could be postponed until after the Term. Second, even if Mystic can demonstrate that the capital expenditures are related to the reliability need under the Agreement (which NESCOE believes it has not), in light of the lack of a clawback provision, Mystic has not explained why these capital expenditures should be treated as expense to be recovered during the two-year period instead of being capitalized, added to rate base, and recovered over an extended period beyond the Term. (footnote omitted).

Response

Please see the Response to NESCOE A-03 and the last paragraph of the Response to the NESCOE Introduction, which Mystic incorporates by reference.

NESCOE’s argument that certain projects may have benefits beyond the Term of the Mystic Agreement is a collateral attack on the Commission’s orders in Docket No. ER18-1639-000, which authorize Mystic to expense capital expenditures that are “reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the reliability need.” *See Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022 at PP 15, 20 (2018), order on reh’g, 172 FERC ¶ 61,043 at P 25 (2020); *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 at PP 96-98, 149 (2018); ISO-NE Tariff, Market Rule 1 at Section III.13.2.5.2.5.2(b).

NESCOE B-01

Informal Challenge:

As is the case with the Mystic CapEx projects discussed above (see Section A.1, above), there are a number of Everett CapEx projects shown in Attachment A that are included in the EMT Template where Mystic has provided no supporting information. (For the items with an asterisk, Mystic provided some information in response to NESCOE’s information and documents requests, and these items are discussed in more detail below.)

- *Recoat LNG Storage Tanks (incl Outer Shell Welds) (Row 6) (see B.2, below)

- Liquid Level Guage Replacement (Row 13)
- *Cryo Insulation (Row 14) (see B.8, below)
- BOP Maintenance Capital (Row 15)
- Cryogenic Valve Replacement (Row 17)
- BOP Capital Valves (Row 18)
- BOP Capital Motors (Row 19)
- BOP Capital Pumps (Row 20)
- MV Electrical System Replacemt (Row 22)
- Firewater Main Repl/Upgrade (Row 23)
- *Forward Bollard (Row 25) (see B.4, below)
- *Secondary Feed (Row 26) (see B.5, below)
- Structural Suppt Upgr-Conduit (Row 27)
- *Mooring Hooks (Row 28) (see B.4, below)
- *Tank Base Heater Replacment (Row 30) (see B.7, below)

Here, again, the EMT Template just notes: “Project need and cost estimates determined through long range planning process, as described in Affidavit submitted with this informational posting. Any supplemental information on final cost and alternatives studied will be provided in subsequent informational filings after project approval obtained.”

Because Mystic has not provided sufficient supporting information about these capital expenditures in the 2021 Informational Posting, there is no way for NESCOE to verify if Mystic has made the requisite demonstrations regarding its right to recover these costs under the Agreement. For the same reasons as discussed above with respect to unsupported Mystic CapEx projects (see Section A), NESCOE includes these CapEx projects in this Informal Challenge (citations omitted).

Response:

Please see the Response to NESCOE A-03 and the last paragraph of the Response to the NESCOE Introduction, which Mystic incorporates by reference.

NESCOE B-02

Informal Challenge:

NESCOE understands that Mystic is treating the recoating of the EMT LNG storage tanks as an O&M expense, rather than as a capital expenditure, and that Mystic is intending to expense approximately [BEGIN CUI//PRIV-HC] [REDACTED] [END CUI//PRIV-HC] Mystic states that the project was reclassified as O&M. Specifically, the approximately [BEGIN CUI//PRIV-HC] [REDACTED] [REDACTED] [END CUI//PRIV-HC], were not treated as O&M, but rather as capital costs.

This means that there is [BEGIN CUI//PRIV-HC] ██████████ [END CUI//PRIV-HC] in EMT's rate base on which Mystic will collect a return. If Mystic is going to treat this recoating project as an O&M expense, then the amounts expended previously by EMT on it should likewise be treated as O&M expense and should be removed from EMT's rate base. Otherwise, Mystic benefits from this change in accounting by recovering a portion of the costs of the project as an expense during the two-year Term of the Agreement, in addition to recovering a return on the other portion of the costs of the project that was completed prior to the Term of the Agreement.

Response:

The costs of recoating the EMT LNG storage tanks are *not* in rate base because (a) no EMT costs dating to the period before ExGen's acquisition of EMT are in rate base; and (b) all such costs have been classified as O&M costs since the acquisition. *See* Response to NES-MYS-1-01 at 1 ("Work is ongoing and expected to continue into the term. Costs prior to term will not be charged under the Mystic Agreement. Costs incurred during the term will be expensed as O&M").

The recoating of the EMT LNG storage tanks was originally classified as a capital expense because that was how it was treated by EMT's prior owners. After ExGen completed its acquisition of the facility in October 2018, it reclassified the project as O&M consistent with its own accounting standards and GAAP. The amounts expended for storage tank recoating that occurred after ExGen's acquisition of the facility have been treated as O&M expenses. Contrary to NESCOE's assertion, amounts expended for work occurring after October 1, 2018 have not been treated as capital costs and are not included in EMT's rate base.

With respect to periods before ExGen closed on the EMT purchase, the prior treatment of expenditures by EMT's prior owners is irrelevant for purposes of Mystic's recovery under the Mystic Agreement. The Commission has held that the plant-in-service value for EMT in the rate base calculation will solely be comprised of capital expenditures (net of depreciation) paid for by ExGen since its acquisition of EMT.¹ *See Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 at PP 148-49 (2018). As reflected in Everett Schedule D, page 98 of Attachment A to Mystic's September 15, 2020 Compliance Filing in Docket No. ER18-1639-000, the starting net book value for EMT as of 11/1/2018 was zero. Accordingly, there are no EMT LNG storage tank recoating expenses included in the rate base, and Mystic is not benefiting from the change in accounting for these expenses as suggested by NESCOE.

¹ This order remains subject to appellate review, and nothing in this document waives any rights that Mystic may have to raise any arguments on appeal.

NESCOE B-03

Informal Challenge:

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

Additionally, Mystic has not demonstrated that the costs of this project are associated with EMT providing fuel service to Mystic only during the Term of the Agreement. Rather, these are general repair costs that predate the Agreement and are unrelated to Mystic’s obligations under the Agreement.

Response:

In the first instance, Mystic disputes the assertion that [BEGIN CUI//PRIV-HC] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END
CUI//PRIV-HC] See HAB Phase I Presentation, Bates No. 000001269-000001284. [BEGIN
CUI//PRIV-HC] [REDACTED]

[REDACTED] [END CUI//PRIV-HC] See HAB Phase I Presentation at Slide 1, Bates No. 000001270. Although this portion of the project will be included in the EMT rate base, Mystic is not seeking recovery of Phase I as a CapEx project during the Term of the Mystic Agreement. Phase II of the HAB project, which is the portion of

the project included in the 2021 Informational Posting for the June 2022 through December 2022 time period, received internal approval on August 26, 2021. *See* Attachment NES_MYS_IC.II_053C2200XX - ELF HPE HAB Piping Replacement Train 1 EPCAC Meeting 082621_CUI-PRIV-HC.pdf [Bates Nos. 000001563 - 000001576] to these Responses, August 26, 2021 EPCAC Presentation (“HAB Phase II Presentation”).

As described in both the HAB Phase I Presentation and the HAB Phase II Presentation, **[BEGIN CUI//PRIV-HC]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[END CUI//PRIV-HC]** HAB Phase I Presentation at Slide 4, Bates No. 000001273; HAB Phase II Presentation at Slide 4, Bates No. 000001567.

Accordingly, NESCOE’s suggestion that the HAB project is being undertaken during the Term of the Mystic Agreement to allow Mystic to recover the costs of repairs as CapEx is unsupported. Rather, the information provided by Mystic demonstrates that ExGen began pursuing necessary repairs in the ordinary course once failures were discovered and the extent of those failures was assessed, and in fact will begin the first phase of those repairs, representing half of the project expenditures, before the Term of the Mystic Agreement. Further, Mystic has demonstrated the Phase II HAB Project’s relationship to the Mystic Agreement because it is necessary for the reliable and safe operation of EMT, which in turn is necessary for the reliability of Mystic 8&9.

NESCOE B-04

Informal Challenge:

Based on the information provided by Mystic in response to NESCOE information requests, Mystic has not demonstrated that replacing the forward bollard or the mooring hooks are projects needed during the Term of the Agreement for Mystic to meet its reliability obligations under the Agreement.

Indeed, Everett has been in continuous operations, even since the failure identified on January 24, 2020, and yet to this date, these capital expenditures have “not yet been presented to management for funding authorization.” In light of this, Mystic has not demonstrated why these projects could not wait until after the end of the Term. And Mystic has likewise not demonstrated that these capital expenditures are related to Mystic’s meeting the reliability need under the Agreement. From the information provided, these appear to be routine repairs that may or may not need to be completed during the Term, and that will last for decades beyond the Term. Additionally, Mystic had not demonstrated that these expenditures are reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice.

Accordingly, to the extent that Mystic does demonstrate a need for the forward bollard or mooring hooks to be replaced now, there is no justification to expense these capital costs during the Term of the Agreement. These are long-term projects that will last for decades, and these

types of capital investments should be treated as a capital expense with costs recovered over time, not just during the Term of the Agreement.

Response:

Please see the last paragraph of the Response to the NESCOE Introduction and the Responses to NES-MYS-1-04, NES-MYS-3-08, and NES-MYS-3-10, which Mystic incorporates by reference.

NESCOE’s argument that these projects may have benefits beyond the Term of the Mystic Agreement is a collateral attack on the Commission’s orders in Docket No. ER18-1639-000, which authorize Mystic to expense capital expenditures that are “reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the reliability need.” *See Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022 at PP 15, 20 (2018), *order on reh’g*, 172 FERC ¶ 61,043 at P 25 (2020); *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 at P 63 (2018); ISO-NE Tariff, Market Rule 1 at Section III.13.2.5.2.5.2(b).

Mystic also disagrees with the characterization that these projects will be “routine repairs.” To the contrary, the projects will be new assets.

NESCOE B-05

Informal Challenge:

This capital project relates to [BEGIN CUI//PRIV-HC] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [END CUI//PRIV-HC] Mystic has not supported ratepayers bearing these capital expenses as they go well beyond what Mystic would need to meet the reliability need under the Agreement.

Response:

Based on ExGen’s current understanding that, once completed, the line will not be owned by EMT but rather by National Grid, ExGen’s accounting team has concluded that the project costs will be treated as O&M rather than as a capital expense. Accordingly, consideration of the Secondary Feed project costs is currently outside the scope of this proceeding, which involves only capital expenditures. That portion of the Secondary Feed project costs incurred during the term of the Mystic Agreement will be expensed and justified in accordance with the O&M

recovery process based on the schedule of costs assessed by National Grid, unless National Grid determines a different ownership structure is warranted and that structure triggers a change in accounting treatment.

NESCOE’s argument that these projects may have benefits beyond the Term of the Mystic Agreement is a collateral attack on the Commission’s orders in Docket No. ER18-1639-000, which authorize Mystic to expense capital expenditures that are “reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the reliability need.” *See Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022 at PP 15, 20 (2018), *order on reh’g*, 172 FERC ¶ 61,043 at P 25 (2020); *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 at P 63 (2018); ISO-NE Tariff, Market Rule 1 at Section III.13.2.5.2.5.2(b).

NESCOE B-06

Informal Challenge:

NESCOE understands that this CapEx project relates to replacement of hot water piping between heaters and LNG Storage tank heated vents. Mystic has indicated that the damage to the piping has already been repaired. There appears to be no basis, therefore, for Mystic to recover these capital costs as expenses during the Term of the Agreement, rather than including them in EMT’s rate base and recovering them over the life of the project.

As with the case of the forward bollard and mooring hooks, as far as NESCOE can tell based on the information provided, these repairs appear related to extending Everett’s operations and will clearly benefit Everett long past the Term of the Agreement.

Response:

See Response to ENC-MYS-1-11, ENC-MYS-1-11_053C21007 - ELF Heated Vent Hot Water Piping EPCAC 032421_CUI-PRIV.pdf [Bates Nos. 000001285 – 000001297] (“Piping Replacement Phase I Presentation”) at Slide 2 [Bates No. 000001287]. [BEGIN CUI//PRIV-HC]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

Phase I, which was described in the Piping Replacement Phase I Presentation, was approved in March 2021 and will take place before the beginning of the Term of the Mystic Agreement. Although this portion of the project will be included in the EMT rate base, Mystic is not seeking recovery of Phase I as a CapEx project during the term of the Mystic Agreement.

Phase II of the Piping Replacement Project, which is the portion of the project included in the 2021 Informational Filing for the June 2022 through December 2022 time period, received internal approval on August 26, 2021. *See* Attachment NES_MYS_IC.II_053C220XX - ELF Heated Vent Hot Water Piping Phase 2 T1 Riser EPCAC 082621_CUI-PRIV-HC.pdf) [Bates

Nos. 000001551 - 000001562] to these Responses, August 26, 2021 EPCAC Presentation (“Piping Replacement Phase II Presentation”).

In addition to being a safety concern due to the potential for unwarmed venting of natural gas, continued piping failure represents a risk to reliability of EMT, which in turn represents a risk to the reliability of Mystic 8&9. *See* Piping Replacement Phase II Presentation at Slide 5, Bates No. 000001556.

NESCOE’s argument that these projects may have benefits beyond the Term of the Mystic Agreement is a collateral attack on the Commission’s orders in Docket No. ER18-1639-000, which authorize Mystic to expense capital expenditures that are “reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the reliability need.” *See Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022 at PP 15, 20 (2018), *order on reh’g*, 172 FERC ¶ 61,043 at P 25 (2020); *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 at P 63 (2018); ISO-NE Tariff, Market Rule 1 at Section III.13.2.5.2.5.2(b).

NESCOE B-07

Informal Challenge:

NESCOE’s understanding of the tank base heater replacement project is that [BEGIN CUI//PRIV-HC] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CUI//PRIV-HC] Additionally, Mystic has not demonstrated that this expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice.

Response:

As noted in Section 2.1 of the CB&I Report provided in Response to NES-MYS-1-04h (Bates No. 000000858-000000865), [BEGIN CUI//PRIV-HC] [REDACTED]
[REDACTED]
[REDACTED] [END CUI//PRIV-HC]
Although intermediary fixes have allowed the system to continue to operate, as explained in Response to NES-MYS-3-13, failure of a single conduit has wide system impacts, and continued failures could affect the reliability of EMT and accordingly Mystic. No work performed in 2020 on this project is being treated as 2022 capital expenditures.

NESCOE's argument that these projects may have benefits beyond the Term of the Mystic Agreement is a collateral attack on the Commission's orders in Docket No. ER18-1639-000, which authorize Mystic to expense capital expenditures that are "reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the reliability need." See *Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022 at PP 15, 20 (2018), *order on reh'g*, 172 FERC ¶ 61,043 at P 25 (2020); *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 at P 63 (2018); ISO-NE Tariff, Market Rule 1 at Section III.13.2.5.2.5.2(b).

NESCOE B-08

Informal Challenge:

To date, Mystic has not provided any supporting data for this project. Mystic has said that documentation of the Cryogenic Insulation Project is expected to be available in the first quarter of 2022.

Given the lack of data, it is impossible to know whether the costs are justified and in compliance with the cost recovery provisions of the Agreement and the Commission's orders.

Response:

Please see the Response to NESCOE A-03 and the last paragraph of the Response to the NESCOE Introduction, which Mystic incorporates by reference.

NESCOE C-A

Informal Challenge:

NESCOE submitted a number of information requests and document requests to Mystic regarding Attachment C. See NES-MYS-1-08 through NES-MYS-1-28; NES-MYS-2-01; and NES-MYS-3-16.

With the exception of NES-MYS-1-10 and NES-MYS-3-16, Mystic did not provide responses to any of these questions. For most of the information requests, Mystic provided the following objection:

Mystic objects to this question as beyond the scope of this proceeding, which is established by Schedule 3A, Section II.3.A of the Mystic Agreement and states that information and document requests "shall be limited to what is necessary to determine:

- a. Whether the capital expenditure is necessary in order to meet the obligations of the Agreement;
- b. Whether the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
- c. Whether either of the following occurred: (i) the project was scheduled for before the Term but delayed into the Term, or (ii) the project is scheduled for during the Term but should have been completed prior to the Term."

As noted in Mystic’s cover letter to its April 1, 2021 Informational Filing, the populated version of the Mystic Methodology was provided for “informational purposes only” as the protocols do “not require full updated projected costs or a true-up.” Accordingly, the populated version of the template “only reflects the addition of the costs of the 2022 CapEx Projects” in Schedule D of the Mystic and Everett templates in the row designated as being updated based on the 2021 Informational Filing. All questions about other aspects of the Methodology are thus outside of the scope of this information exchange process (citation omitted).

NESCOE disagrees and believes that the information requests to which Mystic has objected on the basis that they are “outside of the scope of this information exchange process” are, in fact, properly within the scope of the information exchange process.

The Protocols state that for the 2021 Informational Posting:

Owner shall file on or before April 1, 2021, in accordance with the Informational Exchange and Challenge Procedures detailed below, appropriate support for the capital expenditures *and costs* that will be collected as an expense during the Term in calendar year 2022 (June 1, 2022 to December 31, 2022) as detailed below. ***The Annual Fixed Revenue Requirement, the Maximum Monthly Fixed Cost Payment, and the Fixed O & M/Return on Investment component of the Monthly Fuel Cost Charge for the relevant period of the Term in Schedule 3 will be updated in accordance with the Methodology*** and shall exclude true-up of investment and expense items disallowed by the Commission, if any (emphasis in original) (citation omitted).

The Protocols further state that:

If the Filing provides for an update of projected costs or a true-up it shall:

1. Include a workable data-populated template and underlying workpapers in native format with all formulas and links intact;
2. Provide the template rate calculations and all inputs thereto, as well as supporting documentation and workpapers for data that are used in the formula rate that are not otherwise available in the methodology provided below in the Methodology;
3. Provide sufficient information to enable Interested Parties to replicate the calculation of the formula results from the methodology provided below in the Methodology;
4. Identify any changes in the formula references (page and line numbers) to the methodology provided below in the Methodology;
5. Include the information that is reasonably necessary to determine that Owner has applied the methodology provided below in the Methodology, the extent of any accounting or other changes that affect the inputs into that methodology, and any corrections or adjustments made in the calculation (citation omitted).

Mystic's position that the populated version of the Methodology it provided with the 2021 Informational Posting is shielded from review and challenge because it was provided "for informational purposes only" is not supported by the cited Protocol provisions. The requirement that Mystic update its capital expenditures for the June 1 -December 31, 2022 period in the 2021 Informational Posting does not relieve Mystic from the obligation to support the non-CapEx costs it seeks to recover under the Agreement.

Because Mystic did not provide responses to many of the questions that NESCOE had regarding the 2021 Informational Posting, there is no way to determine that Mystic has demonstrated that the charges proposed therein are consistent with FERC's orders approving the Agreement and the FERC-approved methodology, are prudent and otherwise just and reasonable. Accordingly, NESCOE submits this Informal Challenge on the unexplained costs about which NESCOE requested information and that are the subject of Mystic's objections.

Response:

Attachment C was submitted for informational purposes only and was not a required part of the 2021 Informational Posting. Section I.B.1.i of the Protocols requires the 2021 Informational Posting to provide "appropriate support for the capital expenditures and costs that will be collected as an expense during the Term in calendar year 2022 (June 1, 2022 and December 31, 2022)." Attachment A (CapEx Spreadsheet) and Attachment B (Affidavit) provide that supporting information.

Exhibit No. MYS-0023, which was submitted by Mystic during the hearing in Docket No. ER18-1639-000 and was not contested by any party, provides a summary overview of the actions required in each filing under the protocols in chart form. The substance of that exhibit is copied here:

Summary of Actions to Be Performed in Each Filing

ACTIONS	2021 Filing	2022 Filing	2023 Filing	2024 Filing	2025 Filing
Substantiation of CapEx for next calendar year	X	X	X		
Update Net Plant for CapEx incurred between 1/1/2018 – 12/31/2021		X			
Update Projected Costs for CapEx, O&M, A&G, and TOTIT for entire Term		X			
Update Net Plant by truing-up all CapEx prior to term, i.e., incurred between 1/1/2018 – 5/31/2022			X		
True-Up to Actual Costs incurred during prior calendar year for CapEx, O&M, A&G, and TOTIT			X	X	X

This exhibit clearly shows that the sole purpose of the 2021 filing is the substantiation of capital expenditures for the next calendar year, i.e., 2022. Further, it shows that next year’s filing, in 2022, will update net plant for capital expenditures incurred between 1/1/2018 – 12/31/2021 and update projected costs for capital expenditures, O&M, A&G, and TOTIT.

In other words, Mystic is not seeking to “shield” relevant information from NESCOE’s review. Mystic is simply following the process set out in the Protocols and review non-capital expenditure costs at the appropriate time. Mystic will not object, on the basis that information and document requests or challenges should have been made in response to the 2021 Informational Posting, to information and document requests or challenges related to the updates to components of the Annual Fixed Revenue Requirement, other than the 2022 Capital Expenditures. Mystic does not otherwise limit or waive any objections.

Because of the confusion that the informational inclusion of Attachment C has appeared to cause in this process, Mystic will not be filing Attachment C in its Informational Filing with the Commission. See Mystic Agreement, Section II.6.

NESCOE C-B

Informal Challenge:

In addition to the general challenge above, NESCOE challenges the following items in Attachment C, which have been modified from either the original 2018 filing or from Mystic's various compliance filings. Because Mystic has provided no information in response to requests, it is difficult to unwind and understand what Mystic has done in Attachment C.

As one example, it appears that Schedules A, D and E include the same adjustments as were made in Mystic's September 2020 compliance filing; however, Schedule I—which affects Schedule E—was not updated in the September 2020 compliance filing, as far as NESCOE can tell. In short, Mystic has not provided any information to allow NESCOE to understand how the inputs were derived (regardless of Mystic's claim that the entirety of Attachment C was provided "for informational purposes only").

Because Mystic has not provided responses to NESCOE's information and document requests, there is no way to determine whether these changes are correct, in accordance with FERC's orders (both addressing the underlying Agreement and Mystic's compliance filings) and otherwise in accordance with the Agreement and just and reasonable.

Schedule A and Schedule D: Mystic has provided no information so that NESCOE can verify the net book values for Mystic 8&9 plant in service at 12/31/2017 and the associated depreciation expense. It has also not provided any of the requested labor and labor related expense information in order to determine the reasonableness of the capitalized portion of these expenditures that have or will become components of the total CapEx projects.

Schedule A and Schedule E: The adjusted net book values for Mystic 8&9 on Exhibit D in the 2021 filing carry over to the computation of accumulated deferred income taxes ("ADIT")/excess deferred income taxes ("EDIT"), resulting in a significant change to the ADIT and EDIT calculations compared to Mystic's original filing.

Schedule I: Schedule I was not adjusted in Attachment C based on new plant amounts. This is inconsistent with the adjustments to Schedule A, D and E. The Mystic 8&9 gross plant detail amounts used to develop plant allocators have not been adjusted to reflect the adjusted gross plant costs on Schedule D in this filing (citations omitted).

Response:

See Responses to NESCOE A-01 and C-A, which Mystic incorporates by reference.

APPENDIX D

**Constellation Mystic Power, LLC Responses to
NESCOE Information Requests
NES-MYS-1-04.d, NES-MYS-3-09**

**Excerpt from Constellation Mystic Power, LLC
Response to NESCOE Informal Challenge**

NES-MYS-1-04: Please provide documentation such as annual inspection reports, evidence of known service wear, and internal reports that lead to the addition of the following items on the EMT Template tab of the Cap Ex schedule and the recommendation to replace the equipment.

- a. [053C19006] Firewater Main Repl/Upgrade (Row 23)
- b. [053C19007] HA Bypass for SCR (HAB) Repl (Row 24)
- c. [053C21005] Forward Bollard (Row 25)
- d. [053C21008] Secondary Feed (Row 26)
- e. [053C22007] Structural Suppt Upgr-Conduit (Row 27)
- f. [053C22009] Mooring Hooks (Row 28)
- g. [053C220010] Heated Vent Hot Water Piping (Row 29)
- h. [053C22011] Tank Base Heater Replacement (Row 30)

ATTACHMENTS:

NES-MYS-1-04a_1-Corrective Maintenance Work Orders_CUI-PRIV.pdf [Bates Number 000000807 – 000000818]

NES-MYS-1-04b_1-Recommendations for Replacement Duct Material_CUI-PRIV.pdf [Bates Number 000000819 – 000000825]

NES-MYS-1-04b_2-Everett LNG HAB Ducting Failure Analysis_CUI-PRIV.pdf [Bates Number 000000826 – 000000843]

NES-MYS-1-04d_Eversource Letter to NGRID_CUI-PRIV.pdf [Bates Number 000000844]

NES-MYS-1-04g_1-Corrective Maintenance Work Orders_CUI-PRIV.pdf [Bates Number 000000845 – 000000857]

NES-MYS-1-04h_1-LNG Tank Upgrade Recommendations_CUI-PRIV.pdf [Bates Number 000000858 – 000000865]

RESPONSE:

- a) [053C19006] Firewater Main Replacement/Upgrade

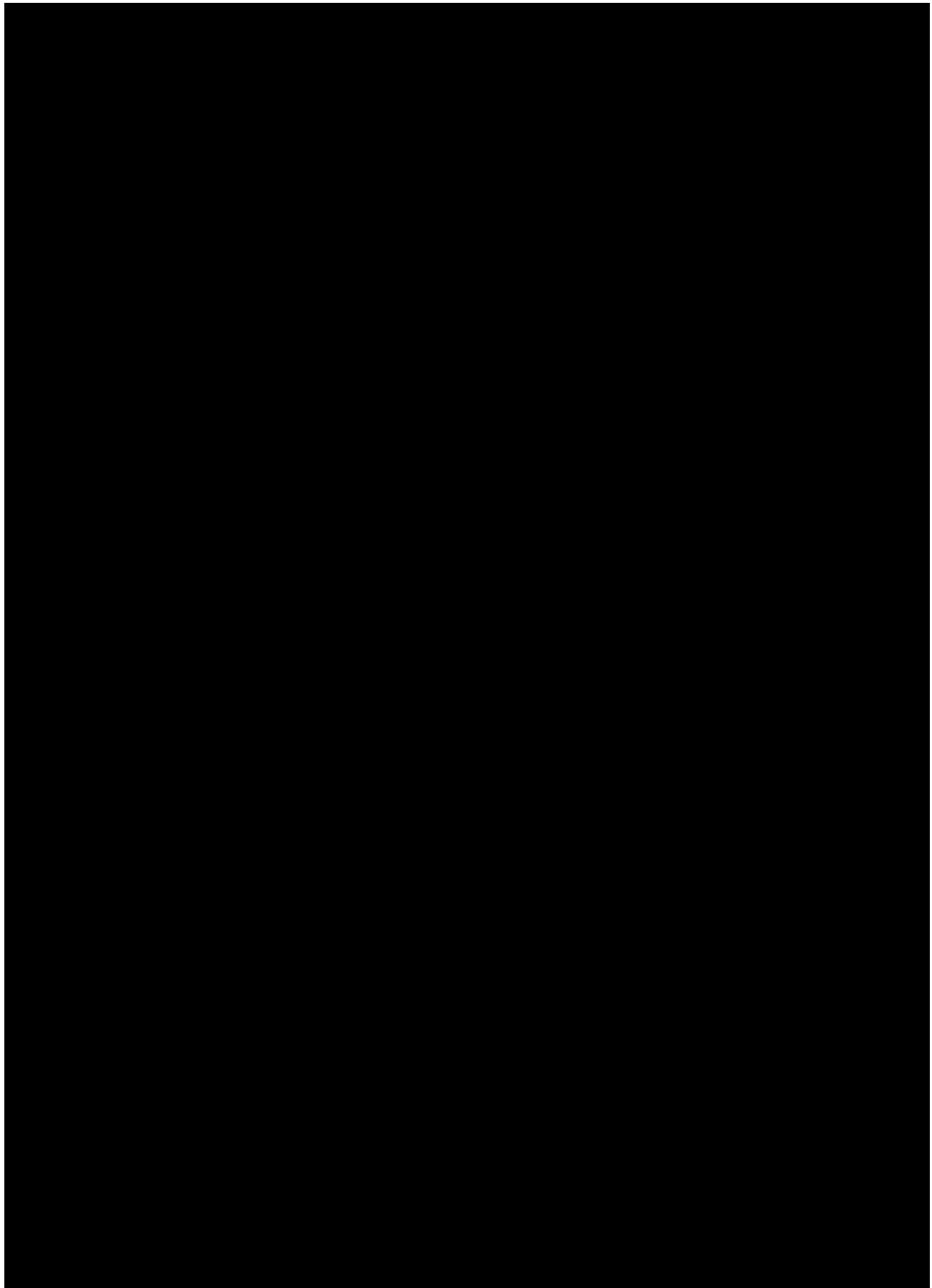
Refer to NES-MYS-1-04a_1-Corrective Maintenance Work Orders_CUI-PRIV.pdf [Bates Number 000000807 – 000000818]

- b) [053C19007] HA Bypass for SCR (HAB) Replacement

Refer to the Attachments for NES-MYS-1-04b above.

- c) [053C21005] Forward Bollard

Everett personnel concluded that this project was necessary, which conclusion is supported by a US Coast Guard Report (MISLE Incident Investigation Report for Iberica Knutsen – Equipment Failure, dated Jan. 24, 2020). It is our understanding that we do not have permission to share the report with third parties. However, third parties may make a



types of capital investments should be treated as a capital expense with costs recovered over time, not just during the Term of the Agreement.

Response:

Please see the last paragraph of the Response to the NESCOE Introduction and the Responses to NES-MYS-1-04, NES-MYS-3-08, and NES-MYS-3-10, which Mystic incorporates by reference.

NESCOE’s argument that these projects may have benefits beyond the Term of the Mystic Agreement is a collateral attack on the Commission’s orders in Docket No. ER18-1639-000, which authorize Mystic to expense capital expenditures that are “reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the reliability need.” *See Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022 at PP 15, 20 (2018), *order on reh’g*, 172 FERC ¶ 61,043 at P 25 (2020); *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 at P 63 (2018); ISO-NE Tariff, Market Rule 1 at Section III.13.2.5.2.5.2(b).

Mystic also disagrees with the characterization that these projects will be “routine repairs.” To the contrary, the projects will be new assets.

NESCOE B-05

Informal Challenge:

This capital project relates to [BEGIN CUI//PRIV-HC] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [END CUI//PRIV-HC] Mystic has not supported ratepayers bearing these capital expenses as they go well beyond what Mystic would need to meet the reliability need under the Agreement.

Response:

Based on ExGen’s current understanding that, once completed, the line will not be owned by EMT but rather by National Grid, ExGen’s accounting team has concluded that the project costs will be treated as O&M rather than as a capital expense. Accordingly, consideration of the Secondary Feed project costs is currently outside the scope of this proceeding, which involves only capital expenditures. That portion of the Secondary Feed project costs incurred during the term of the Mystic Agreement will be expensed and justified in accordance with the O&M

recovery process based on the schedule of costs assessed by National Grid, unless National Grid determines a different ownership structure is warranted and that structure triggers a change in accounting treatment.

NESCOE’s argument that these projects may have benefits beyond the Term of the Mystic Agreement is a collateral attack on the Commission’s orders in Docket No. ER18-1639-000, which authorize Mystic to expense capital expenditures that are “reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the reliability need.” *See Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022 at PP 15, 20 (2018), *order on reh’g*, 172 FERC ¶ 61,043 at P 25 (2020); *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 at P 63 (2018); ISO-NE Tariff, Market Rule 1 at Section III.13.2.5.2.5.2(b).

NESCOE B-06

Informal Challenge:

NESCOE understands that this CapEx project relates to replacement of hot water piping between heaters and LNG Storage tank heated vents. Mystic has indicated that the damage to the piping has already been repaired. There appears to be no basis, therefore, for Mystic to recover these capital costs as expenses during the Term of the Agreement, rather than including them in EMT’s rate base and recovering them over the life of the project.

As with the case of the forward bollard and mooring hooks, as far as NESCOE can tell based on the information provided, these repairs appear related to extending Everett’s operations and will clearly benefit Everett long past the Term of the Agreement.

Response:

See Response to ENC-MYS-1-11, ENC-MYS-1-11_053C21007 - ELF Heated Vent Hot Water Piping EPCAC 032421_CUI-PRIV.pdf [Bates Nos. 000001285 – 000001297] (“Piping Replacement Phase I Presentation”) at Slide 2 [Bates No. 000001287]. **[BEGIN CUI//PRIV-HC]**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

Phase I, which was described in the Piping Replacement Phase I Presentation, was approved in March 2021 and will take place before the beginning of the Term of the Mystic Agreement. Although this portion of the project will be included in the EMT rate base, Mystic is not seeking recovery of Phase I as a CapEx project during the term of the Mystic Agreement.

Phase II of the Piping Replacement Project, which is the portion of the project included in the 2021 Informational Filing for the June 2022 through December 2022 time period, received internal approval on August 26, 2021. *See* Attachment NES_MYS_IC.II_053C220XX - ELF Heated Vent Hot Water Piping Phase 2 T1 Riser EPCAC 082621_CUI-PRIV-HC.pdf) [Bates

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 15th day of October, 2021.

/s/ Phyllis G. Kimmel _____

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