

**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”), Constellation Energy Generation, LLC (“Constellation Energy”) and ISO New England Inc. (“ISO-NE”) (the “Agreement”),¹ the New England States Committee on Electricity (“NESCOE”) submits this Formal Challenge to Mystic’s 2022 informational filing, in which Mystic states it (1) supports the capital expenditures (“CapEx”) and costs that Mystic seeks to collect as an expense between January 1, 2023 and December 31, 2023 (“2023 CapEx Projects”); (2) updates the Annual Fixed Revenue Requirement (“AFRR”), the Maximum Monthly Fixed Cost Payment, and the Fixed O&M/Return on Investment component of the Monthly Fuel Cost Charge (“2022 Update”); and (3) updates the net plant to include actual capital expenditures and depreciation incurred between January 1, 2018 and December 31, 2021 (“2018-2021 Net Plant Update”).²

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.

² Constellation Mystic Power, LLC, 2022 Informational Filing, Docket No. ER18-1639-000 (filed Sept. 15, 2022) (“September 2022 Informational Filing”), Transmittal Letter at 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.³ 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.⁴

II. BACKGROUND

A. The Agreement

On May 16, 2018, pursuant to section 205 of the Federal Power Act ("FPA"),⁵ Mystic filed the executed Agreement. 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.⁶ The Commission found that the record provided by Mystic was "insufficient for determining the justness and reasonableness of the amount of

³ *ISO New England Inc.*, 121 FERC ¶ 61,105 (2007).

⁴ See Sept. 8, 2006 NESCOE Term Sheet ("Term Sheet") that was filed for information as Exhibit A to the Memorandum of Understanding among ISO-NE, the New England Power Pool ("NEPOOL"), and NESCOE (the "NESCOE MOU"). Informational Filing of the New England States Committee on Electricity, Docket No. ER07-1324-000 (filed Nov. 21, 2007). Pursuant to the NESCOE MOU, the Term Sheet is the binding obligation of ISO-NE, NEPOOL, and NESCOE.

⁵ 16 U.S.C. § 824d.

⁶ *Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022 (2018) ("July 2018 Order").

reported capital expenditures,” and directed participants to submit evidence regarding that issue at the hearing.⁷ 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.^{8]}

Accordingly, the Commission directed participants “to present evidence regarding the appropriate design of the true-up mechanism in the Agreement.”⁹

Following an expedited hearing, on December 20, 2018, the Commission issued an order accepting the Agreement, subject to condition, effective June 1, 2022.¹⁰ 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.”¹¹ 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

⁷ July 2018 Order at P 19.

⁸ *Id.* at P 20.

⁹ *Id.*

¹⁰ *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267, at P 1 (2018) (“December 2018 Order”).

¹¹ December 2018 Order at P 174.

of the costs of those projects from ratepayers under the Agreement.¹² The Commission also confirmed that interested parties “may challenge the prudence of the costs incurred by Mystic during the true-up process.”¹³

As noted, on August 23, 2022, the D.C. Circuit granted the petitions for review of NESCOE and other state petitioners.¹⁴ In addition to granting the petition for review on the issue of Mystic needing to demonstrate that it did not delay CapEx projects into the Term, the D.C. Circuit also remanded the case for, *inter alia*, failing to address NESCOE’s requests for rehearing that interested parties could challenge the calculation of the revenue credits during the true-up process and that ratepayers can challenge tank congestion costs in the true-up process.¹⁵

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....”¹⁶ The Protocols require Mystic to “file” with ISO-NE¹⁷ on or before April 1, 2022 “appropriate support for the capital expenditures and costs that

¹² *Id.* at P 180. On rehearing, the Commission 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). However, the United States Court of Appeals for the D.C. Circuit (“D.C. Circuit”) found that the Commission failed to address NESCOE’s rehearing request and granted its petition for review on this issue. *Constellation Mystic Power, LLC v. FERC*, 45 F.4th 1028 (D.C. Cir. 2022), 2022 U.S. App. LEXIS 23485, at *68 (D.C. Cir. Aug. 23, 2022).

¹³ December 2018 Order at P 86.

¹⁴ *See supra* n.12.

¹⁵ *Constellation Mystic Power v. FERC*, 2022 U.S. App. LEXIS 23485, at *57-61.

¹⁶ Schedule 3A, Section I.

¹⁷ Although the Protocols use the term “file,” Mystic was required to submit the 2022 Filing by April 1, 2022 to ISO-NE, rather than file it with the Commission, and ISO-NE is required to post it. Schedule 3A, Section II.2.

will be collected as an expense during calendar year 2023 (January 1, 2023 to December 31, 2023).”¹⁸ The Protocols also require Mystic to update the AFRR, among other things.¹⁹

If Mystic’s Filing includes capital expenditures that will be incurred during the Term, it is required to:

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.^[20]

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:

For sake of clarity, NESCOE refers to the April 2022 “Filing” Mystic submitted to ISO-NE, as updated in June 2022, as the “2022 Informational Posting.”

¹⁸ Schedule 3A, Section I.B.2.i.

¹⁹ Schedule 3A, Sections I.B.2.i, I.B.2.ii.

²⁰ Schedule 3A, Section II.2.A. As noted above, aspects of this section of the Protocols were addressed by the D.C. Circuit.

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.^[21]

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

C. The 2022 Informational Filing

Mystic submitted its 2022 Informational Posting to ISO-NE on April 1, 2022,²² and submitted an update to its 2022 Informational Posting on June 21, 2022.²³

Mystic’s 2022 Informational Posting included, as relevant here:

- Attachment A, a list of 2023 CapEx projects, which included a tab for the Mystic Units (the “Mystic 8 & 9 Template”), and a tab for Everett (the “EMT Template”);
- Attachment B, the populated methodology updated on June 21, 2022, to reflect (1) the 2023 CapEx Projects, (2) the 2022 Update and (3) the 2018-2021 Net

²¹ Schedule 3A, Section II.4.G.

²² Constellation Mystic Power, LLC, 2022 Informational Posting (Apr. 1, 2022), at https://www.iso-ne.com/static-assets/documents/2022/04/mystic_2022_annual_posting.zip.

²³ Constellation Mystic Power, LLC, Update to 2022 Informational Posting (June 21, 2022) (“June 2022 Update”), at https://www.iso-ne.com/static-assets/documents/2022/06/mystic_june_21_2022_update_to_april_1_2022_posting.pdf. NESCOE refers to Mystic’s April 2022 Informational Posting and its June 2022 Update collectively as the “2022 Informational Posting”).

Plant Update. Mystic has deemed aspects of Attachment B as privileged, namely Schedule F, and all of the workbooks/workpapers included in the workable data-populated template provided in Excel format.

NESCOE participated in the Annual Meeting that Mystic held on April 28, 2022, and in the Technical Session that Mystic held on May 26, 2022. Between April 29, 2022 and June 1, 2022, NESCOE submitted five sets of information and document requests to Mystic.²⁴ NESCOE submitted its Informal Challenges on August 1, 2022,²⁵ and Mystic provided its Responses to NESCOE's Informal Challenges on August 31, 2022.²⁶

Mystic submitted its 2022 Informational Filing to the Commission on September 15, 2022.²⁷

III. FORMAL CHALLENGE

A. Mystic's 2023 CapEx Projects Are Not Supported.

As explained above, the Protocols provide 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....”²⁸ To support any particular CapEx project, Mystic must:

- Explain why it “is necessary in order to meet the obligations of the Agreement;”
- “Demonstrate that” it “is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of

²⁴ Excerpts from NESCOE's information requests and Mystic's responses are attached as Appendix A.

²⁵ NESCOE's August 1, 2022 Informal Challenges are attached as Appendix B.

²⁶ Mystic's August 31, 2022 Responses to NESCOE's Informal Challenges are attached as Appendix C.

²⁷ *See supra* n.2.

²⁸ Schedule 3A, Section I.

the Agreement[,]” including not just a description of the project but also “the alternatives considered with respect to the least-cost alternatives[;]” and

- Identify whether (and why) the project was scheduled for before the Term but delayed into the Term, or scheduled for during the Term but should have been completed prior to the Term.^[29]

As the Commission has summarized, Mystic has the burden to demonstrate that its capital expenditures “are: (1) necessary to meet Mystic’s obligations under the Mystic Agreement; and (2) the least-cost commercially reasonable option consistent with Good Utility Practice.”³⁰

Mystic has included in its 2022 Update a number of capital expenditures for projects it describes as “emergent.” Mystic explains in its September 2022 Informational Filing that support for its 2023 CapEx Projects is included in Attachment A.³¹ However, as Mystic acknowledges, Attachment A does “not include Mystic’s projected budget for emergent (i.e., as yet unidentified) capital projects.”³² Although Attachment A includes no projects for Mystic 8 & 9, Mystic has included \$2.5 million of 2023 CapEx Projects in the populated Template to reflect Mystic’s budget for emergent projects.³³ Similarly, although Mystic’s Attachment A (as revised

²⁹ Schedule 3A, Section II.2.A. As noted above, the D.C. Circuit granted NESCOE’s petition for review related to aspects of these provisions.

³⁰ *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,011, at P 26 (2022) (“April 2022 Challenge Order”), Notice of Denial of Rehearing by Operation of Law, 179 FERC ¶ 62,179 (2022) (citing Schedule 3A, Section II.2.A).

³¹ September 2022 Informational Filing, Transmittal Letter at 5.

³² *Id.*

³³ See Appendix B at 5. See September 2022 Informational Filing, Attachment B, Mystic 8&9 Schedule A, line 24.

by the September 2022 Information Filing) identified four projects for EMT totaling \$1,225,000, Mystic has included \$6.35 million for all projected EMT 2023 CapEx Projects.³⁴

NESCOE sought information regarding the projects listed in Attachment B, WP8 for EMT: “For each project listed in WP8, please provide documentation such as annual inspection reports, evidence of known service wear, and internal reports that led to the addition of the project and the recommendation to replace or upgrade the equipment.”³⁵ Similarly, NESCOE sought information regarding the projects listed in Attachment B, WP9 for Mystic 8 & 9: “For each project listed in WP9, please provide documentation such as annual inspection reports, evidence of known service wear, and internal reports that led to the addition of the project and the recommendation to replace or upgrade the equipment.”³⁶

In both cases, Mystic referred back to an earlier response, which stated:

Based on Mystic’s years of experience operating the facilities, the Emergent CapEx Projects represent those projects that Mystic expects to need, and that would be placed into service in 2023 to meet the obligations of the Cost of Service Agreement, but that Mystic cannot at this time confirm due to their emergent nature. The “WP9 2023 CapEx” tab of Attachment B (Mystic 8&9) and the “WP8 2023 CapEx” tab of Attachment B (EMT) provide the budgeted spend by project category in 2023. Interested parties may challenge the prudence of these costs during the appropriate true-up period when such costs are identified and supported consistent with the Mystic Protocols.^[37]

³⁴ September 2022 Informational Filing, Attachment B, Everett Schedule A, line 24. (NESCOE’s Informal Challenge referred to \$8.35 million, which is what had been included in the April 2022 Informational Posting. *See* Appendix B at 5-6.)

³⁵ Appendix A at 6 (NES-MYS-2.7-Everett).

³⁶ Appendix A at 5 (NES-MYS-2.5-Mystic).

³⁷ Appendix A at 2 (NES-MYS-1.2).

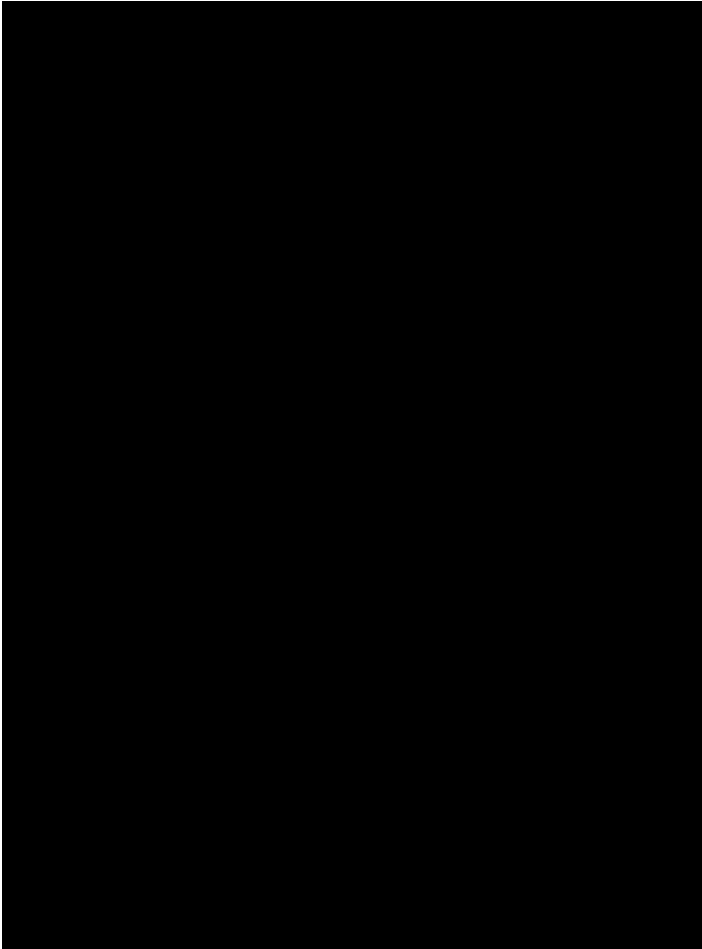
NESCOE does not disagree that there may be the need for expenditures that arise after the April 1, 2022 Informational Posting deadline. However, Mystic has deemed as “emergent” substantial amounts: \$6.35 million of EMT 2023 CapEx and \$2.5 million of Mystic 2023 CapEx. This essentially renders nugatory the provision in the Protocols that places the burden on Mystic to support the need for those expenditures before they are incurred. And it leaves NESCOE and the Commission with no information to ascertain whether Mystic is recovering from ratepayers projected capital expenditures included in the 2022 Update in accordance with the standards set forth in the Protocols.

With the exception of the three items noted with an asterisk, the following are the 2023 CapEx projects about which Mystic has provided no supporting information:

[BEGIN CUI//PRIV-HC]



³⁸ See Appendix B at 5 (citing Mystic 8 & 9, WP9).



[END CUI//PRIV-HC]

Mystic did not answer information requests about these projects, with the limited exception of those items marked with an asterisk. Accordingly, there is no way to verify if Mystic has made the requisite demonstrations regarding its right to recover these costs under the Agreement. As such, the projects with no supporting information by definition fail to meet the burden in the Protocols that “[c]apital expenditures that will be incurred during the Term will be supported prior to their incurrence.”⁴⁰ While NESCOE appreciates that Mystic’s budgeting

³⁹ See Appendix B at 6 (citing EMT WP8).

⁴⁰ Schedule 3A, Section I.

process makes it difficult for it to comply with this requirement in the Protocols, nonetheless, there is no basis in the Agreement or any Commission order for Mystic to recover from ratepayers costs for 2023 CapEx Projects that are not yet supported.

Regarding the three 2023 CapEx Projects marked with an asterisk, although Mystic provided some documentation, NESCOE has not been able to verify based on the information provided that the projects are needed to meet the reliability need under the Agreement, that the projects have not been delayed until the Term or should have been completed prior to the Term, and/or that the expenditures are the least-cost commercially reasonable alternatives.

Mystic's position is that it is unable to provide support for CapEx projects for 2023 because it does not yet know what it will spend for such projects. Mystic explained:

Mystic is limited in terms of the documentation it can provide in April of 2022 for, say, a valve or motor that may need to be replaced in the fall of 2023 based on an inspection. What Mystic can do, and what Mystic has done, is provide a budgeted amount based on the company's years of experience operating the facilities so that the projections used in the rate are as close as possible to actual spending. This budgeted amount will then get trued-up to the actual costs during the appropriate true-up process. Per Section I.B.4.i of the Protocols, Mystic will provide support for "emergent" capital projects at that time.^[41]

However, Mystic attempts to shift the burden to NESCOE, arguing that "NESCOE has yet to explain how it proposes Mystic handle emergent CapEx projects."⁴² It is not NESCOE's responsibility to tell Mystic how to handle emergent CapEx projects. It is, however, Mystic's burden to demonstrate that the 2023 CapEx Projects are supported. And Mystic has provided

⁴¹ Appendix C (Mystic Response to NESCOE Informal Challenge) at 5.

⁴² *Id.*

very little—and in most cases, no—documentation that demonstrates that the CapEx projects it is including in the 2023 AFRR are necessary to meet Mystic’s obligations under the Agreement, that they were not delayed until the Term, and/or that the expenses are the least-cost commercially reasonable alternatives available.

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”⁴³ Mystic’s interpretation would also leave Interested Parties with no means of challenging these 2023 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 actuals, not whether a capital expenditure should have been designated as necessary to meet the reliability need.”⁴⁴

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;”⁴⁵ and explain what alternatives were considered with respect to the least-cost alternatives.⁴⁶ For the 2023

⁴³ Schedule 3A, Section I (emphasis added).

⁴⁴ Schedule 3A, Section I.B.3.ii. *See also id.* at I.B.4.i (2024 Filing) and I.B.5.i (2025 Filing).

⁴⁵ Schedule 3A, Section II.2.A.2. As noted above, the D.C. Circuit granted NESCOE’s petition for review on aspects of these provisions. *See supra* n.12.

⁴⁶ Schedule 3A, Section II.2.A.3.

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.

While NESCOE is sympathetic to Mystic’s budgeting process and other pragmatic constraints, Mystic nonetheless must support these expenditures in accordance with the protocols. Mystic has not done so.

In its 2021 informational filing, Mystic took a similar approach to its 2022 CapEx Projects. Earlier this year, the Commission found that Mystic had “not adequately supported its 2022 CapEx Projects as being necessary to meet the obligations of the Mystic Agreement or being the least-cost commercially reasonable option consistent with Good Utility Practice.”⁴⁷ The Commission explained that it could not “find on this record that Mystic has met its burden of demonstrating that its 2022 capital expenditures meet the standard required by the Mystic Agreement, namely that the capital expenditures are: (1) necessary to meet Mystic’s obligations under the Mystic Agreement; and (2) the least-cost commercially reasonable option consistent with Good Utility Practice.”⁴⁸

⁴⁷ April 2022 Challenge Order, *supra* n.30, at P 26.

⁴⁸ *Id.* (citing Mystic Agreement, Schedule 3A, Section II.2.A).

There is no more information in the record for the amounts included in the 2022 Update for the 2023 CapEx Projects. Because Mystic has not met its burden, NESCOE respectfully requests that the Commission set this issue for hearing and settlement judge procedures.

B. Property Tax Unrelated to Mystic 8 & 9

Mystic has included in the 2022 Informational Filing property tax that is unrelated to Mystic 8 & 9. In the December 2018 order, the Commission held that “including property taxes associated with the Mystic 7 land in the Mystic 8 and 9 revenue requirement is inappropriate under the ‘used and useful’ standard of ratemaking....Accordingly, we find that Mystic may not recover property tax expenses associated with Mystic 7 land under the term of the Agreement.”⁴⁹ Mystic included property taxes as a line item in its populated methodology in its March 2019 compliance filing stating that “by the time Mystic makes its true-up filing, the tax assessment will change because Mystic will have either sold the land associated with Mystic 7 or, the current tax finance agreement will have expired.”⁵⁰ Over NESCOE’s protest, the Commission permitted this, stating that “[t]he true-up process is designed to address precisely these types of issues in the future.”⁵¹

In its 2022 Informational Filing, Mystic has included \$13,764,258 in taxes other than income.⁵² NESCOE understands this amount to be [BEGIN CUI//PRIV-HC] [REDACTED]

⁴⁹ December 2018 Order, *supra* n.10, at P 92 (citation omitted).

⁵⁰ *Constellation Mystic Power, LLC*, Order on Compliance and Directing Further Compliance, 172 FERC ¶ 61,045, at P 30 (2020) (“July 2020 Order”) (quoting Mystic March 1, 2019 Transmittal Letter at 17).

⁵¹ July 2020 Order at P 36.

⁵² September 2022 Informational Filing, Attachment B, Mystic 8&9 Schedule B, line 8. This is higher than the amount originally included in the 2022 Informational Posting, which was \$13,439,843. April 2022 Informational Posting, Attachment B, Mystic 8&9 Schedule B, line 8.

[REDACTED] [END CUI//PRIV-HC],⁵³ which NESCOE understands from discussions and review of the workbooks, were calculated using [BEGIN CUI//PRIV-HC] [REDACTED] [REDACTED] [END CUI//PRIV-HC]. In the informational exchange process, NESCOE asked whether Mystic included any property tax expense associated with land other than Mystic 8 & 9 (*i.e.*, land associated with Mystic 7 and the Mystic Jet). In response, Mystic stated that it “does not receive a separate tax bill for Mystic Unit 7, nor does Mystic receive a separate tax bill for the other Mystic units not included in the Agreement (*i.e.*, units other than Mystic 8 & 9). There is only one Mystic property tax bill from the City of Everett, and the tax bill does not differentiate between the different units.”⁵⁴

Following NESCOE’s Informal Challenge and Mystic’s response on this issue, NESCOE and Mystic engaged in good faith informal discussions, which were helpful in understanding Mystic’s position about its current tax situation. Mystic further explained in its 2022

Informational Filing:

At this time, Mystic receives a single property tax bill for all the Mystic units (two parcels) and is unable to determine what portion of the tax is attributable to Mystic 7. If Mystic were to arbitrarily reduce the tax bill based on an estimate of what might be attributed to Mystic 8 & 9, the ratepayers would shoulder the refund (plus interest) obligation during the appropriate true-up if the reduced projection ended up being too low. In contrast, Mystic’s approach uses 2021 actuals, which is consistent with the requirement in the Methodology, and has Mystic incur the risk that the amount is too high, which it then must repay with interest. Mystic is in the process of selling the parcel of land associated with Mystic 7, which should provide greater visibility into the tax liability associated with only Mystic 8 & 9. Mystic commits to return to

⁵³ Appendix A at 3-4 (NES-MYS-1.9).

⁵⁴ Appendix A at 7 (NES-MYS-5.1).

ratepayers any amounts collected from ratepayers above its actual tax liability for Mystic 8 & 9, when that liability is known with certainty.^[55]

Mystic states that it “commits to update the property tax line item for Mystic 8 & 9 during the true-up process to ensure that it only includes the portion of property tax identified by the taxing authority as associated with Mystic 8 & 9.”⁵⁶

NESCOE appreciates Mystic’s efforts in explaining its view and in its commitment to updating the property tax line item during the true-up process to ensure that only property tax associated with Mystic 8 & 9 are sought to be recovered from ratepayers. NESCOE understands that Mystic is in the process of selling the parcel of land associated with Mystic 7,⁵⁷ and that Mystic anticipates receiving a property tax bill for just Mystic 8 & 9 in the future. However, NESCOE is concerned that subjective judgment applied to setting the property tax allocation among Mystic 7 versus Mystic 8 & 9 could disadvantage ratepayers in the context of this Agreement. The City of Everett’s valuation of the Mystic 7 property will, of course, determine the property tax allocated to Mystic 8 & 9. While Mystic may have the opportunity to provide input to the City of Everett on that determination, NESCOE, other Interested Parties, and the Commission would not have visibility into these property tax decisions.

The Commission must ensure that Mystic 8 & 9 ratepayers (which include Everett residents and businesses) are not allocated an inflated portion of the property taxes. NESCOE’s perspective on a fair and reasonable allocation will be informed by the early information Mystic

⁵⁵ September 2022 Informational Filing, Transmittal Letter at n.15.

⁵⁶ *Id.* (citing NESCOE Informal Challenge II.B) (*see* Appendix B at 7-9).

⁵⁷ *Id.* at n.15.

provided in this proceeding. When Mystic originally filed the proposed Agreement, it sought to recover \$15.5 million in Other Taxes.⁵⁸ Of this amount, [BEGIN CUI//PRIV-HC] [REDACTED]
[REDACTED]
[REDACTED] [END CUI//PRIV-HC].⁵⁹

Here, as noted above, in its 2022 Informational Filing, Mystic has included \$13,764,258 in taxes other than income, which are [BEGIN CUI//PRIV-HC] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CUI//PRIV-HC].

NESCOE appreciates Mystic's commitment to update the property tax line item and to refund the amounts with interest, and NESCOE is willing to hold its challenge on this issue in abeyance until next year's true-up filing provided that the Commission confirms NESCOE would not be waiving the right to make such a challenge. NESCOE's hope and expectation is that the total amount of the property tax will decrease. Regardless, NESCOE expects to continue to challenge any amount that seeks to recover from ratepayers more than the [BEGIN

⁵⁸ Appendix D includes several hearing exhibits from the hearing held in 2018 in Docket No. ER18-1639-000. See Appendix D at 2 (Hearing Exhibit MYS-0050 at 1, line 19).

⁵⁹ Appendix D at 4 (Hearing Exhibit NES-006).

CUI//PRIV-HC] [REDACTED] [END CUI//PRIV-HC] of the total tax bill in the true-up proceeding.

C. 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”⁶⁰ in Sections III.A-C, above. Because Mystic provided no information on virtually all of the 2023 CapEx Projects 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.”⁶¹ NESCOE has set forth the issues presented by Mystic’s failure to provide all required information in its 2022 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.”⁶² Similarly, there is no way for NESCOE to quantify the financial impact on New England ratepayers.⁶³

The issues NESCOE raises in this Formal Challenge are not pending at FERC, although there is a pending proceeding involving NESCOE’s Formal Challenge to Mystic’s 2021

⁶⁰ Schedule 3A, Section II.4.C(1)(a).

⁶¹ *Id.*, Section II.4.C(1)(b).

⁶² *Id.*, Section II.4.C(1)(e)(iv). (NESCOE notes there are no subsections (c) or (d)).

⁶³ *Id.* Section II.4.C(1)(f).

Informational Filing.⁶⁴ The specific relief NESCOE requests is summarized in Section IV, below,⁶⁵ and NESCOE has included all documents supporting its Formal Challenge.⁶⁶ As described in Section II.C, above, NESCOE did use the Informal Challenge Procedures.⁶⁷

IV. CONCLUSION

For the reasons discussed above, NESCOE respectfully asks that the Commission (1) find that Mystic cannot recover 2023 CapEx costs for the January 2023-December 2023 period for which Interested Parties have not had a full opportunity to review and challenge in accordance with Schedule 3A; and (2) confirm that NESCOE and other Interested Parties will retain the ability to challenge the Mystic property tax in subsequent year's true-up filings.

Respectfully Submitted,

/s/ Jason Marshall

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⁶⁴ *See id.*, Section II.4.C(1)(g). As noted above, *supra* n.30, in the April 2022 Challenge Order, the Commission set for hearing and settlement judge procedures challenges to Mystic's 2022 CapEx Projects.

⁶⁵ *Id.*, Section II.4.C(1)(h).

⁶⁶ *Id.*, Section II.4.C(1)(i).

⁶⁷ *Id.*, Section II.4.C(1)(j).

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Attorneys for the New England States Committee
on Electricity

Date: October 17, 2022

APPENDIX A

**Excerpts from Constellation Mystic Power, LLC Responses to
New England States Committee on Electricity Information Requests**

NES-MYS-1.2: Does omission of a project from Attachment A to Mystic’s Informational Posting indicate that this project will not be undertaken between June 2022-May 2023?

a. For each project listed, 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 and the recommendation to replace or upgrade the equipment.

CUI//PRIV-HC ATTACHMENTS:

NES-MYS-01-02_053C23003_-_Halon_System_Replacement_Final_CUI-PRIV-HC.pdf [Bates Nos. 000000228 to 000000230]

NES-MYS-01-02_053C23015 Medium Pressure Drainage_CUI-PRIV-HC.pdf [Bates Nos. 000000231 to 000000233]

NES-MYS-01-02_053C23016 Access Road Repaving_CUI-PRIV-HC.pdf [Bates Nos. 000000234 to 000000236]

NES-MYS-01-02_053C220012 - ELF HPE HAB Piping Replacement Train 1 EPCAC Post Meeting Approval_CUI-PRIV-HC.pdf [Bates Nos. 000000237 to 000000251]

RESPONSE:

Mystic interprets the question as asking whether omission of a project from Attachment A indicates that such project(s) will not be placed into service during calendar year 2023, consistent with Schedule 3A, section I.B.2.i. of the Protocols (rather than “undertaken between June 2022-May 2023,” as drafted). Mystic’s interpretation is consistent with Schedule 3A and the scope of this informational filing. *See* Cost of Service Agreement, Schedule 3A, section I.B.2.i. (“Support for Capital Expenditures that will be necessary to meet the reliability need in calendar year 2023”). To the extent the request seeks information about projections of calendar year 2022 capital projects, Mystic objects to the request as beyond the scope of this informational posting.

The scope of this informational process is established by Schedule 3A, Sections I.B.2 and II of the Mystic Agreement. Consistent with the Mystic Agreement Protocols, Mystic’s April 2022 Posting (the “Second Mystic Posting”) supported capital expenditures for calendar year 2023 and provided updated projections for items subject to true up and the resulting updated (i) Annual Fixed Revenue Requirement, (ii) Maximum Monthly Fixed Cost Payments, and (iii) Fixed O&M/Return on Investment components of the Monthly Fuel Cost Charge for each year of the Term. The Second Mystic Posting also updated the “net plant” to include actual capital expenditures and depreciation incurred between January 1, 2018, and December 31, 2021. Subject to and without waiving that objection, Mystic responds as follows.

As discussed in the transmittal letter to the Second Mystic Posting, projects included in Attachment A are those projects that “at the time of this Posting, have been identified by

Constellation as specific projects anticipated to go in-service in calendar year 2023 and that meet the requirements for capitalization” in Constellation’s accounting policy. Second Posting, Transmittal at 2. The transmittal letter further explains that Attachment A does *not* include projects that cannot be identified with specificity, because they are expected to be emergent capital projects for calendar year 2023 (“Emergent CapEx Projects”). *Id.* Based on Mystic’s years of experience operating the facilities, the Emergent CapEx Projects represent those projects that Mystic expects to need, and that would be placed into service in 2023 to meet the obligations of the Cost of Service Agreement, but that Mystic cannot at this time confirm due to their emergent nature. The “WP9 2023 CapEx” tab of Attachment B (Mystic 8&9) and the “WP8 2023 CapEx” tab of Attachment B (EMT) provide the budgeted spend by project category in 2023. Interested parties may challenge the prudence of these costs during the appropriate true-up period when such costs are identified and supported consistent with the Mystic Protocols.

For the documentation requested in (a) above, refer to the attachments.

Dated: May 19, 2022

NES-MYS-1.9: Referring to Mystic 8 & 9 Schedule B, please identify what comprises the “Taxes Other Than Income” (line 8) and provide documentation supporting this input. Also please explain why this amount decreased from the April 1, 2021 informational filing.

CUI//PRIV-HC ATTACHMENTS:

[Redacted content]

RESPONSE:

Mystic objects to the request to explain any “decrease from the April 1, 2021 informational filing” as a mischaracterization, overly broad, and outside the scope of this proceeding. In the April 1, 2021 annual posting (the “First Mystic Posting”), Mystic provided a version of the populated template with only the 2022 RMR Capex cell modified from the last updated version of the methodology, and the “Taxes Other Than Income” amount carried forward from 2018. This attachment was provided for informational purposes only. Cost estimates from 2018 are not relevant to the actual costs incurred in 2021, which form the basis for the projections that are included in this year’s informational filing.

Subject to and without waiving or limiting this objection, Mystic provides the following

response. Taxes Other Than Income in Schedule B (Mystic) is comprised [BEGIN CUI//PRIV-
HC] [REDACTED]

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

Mystic has corrected this error. These revisions are reflected in CUI//PRIV-HC Attachment ENC-MYS-01-08_Mystic89 Populated 01 April 2022_Updated 5-19-22_CUI-PRIV_HC_000000252.xlsx [Bates No. 000000252], provided with Mystic's response to ENC-MYS-1.8.

Mystic is coordinating with ISO-NE and commits to provide ISO-NE with a revised posting reflecting this correction and any other inadvertent errors discovered in the course of responding to discovery requests.

Dated: May 19, 2022

NES-MYS-2.5-Mystic: For each project listed in WP9, please provide documentation such as annual inspection reports, evidence of known service wear, and internal reports that led to the addition of the project and the recommendation to replace or upgrade the equipment.

RESPONSE:

Refer to Mystic’s response to **NES-MYS-1.2**, which explained the nature of the “Emergent CapEx” included in WP9 (Mystic).

Dated: May 26, 2022

NES-MYS-2.7-Everett: For each project listed in WP8, please provide documentation such as annual inspection reports, evidence of known service wear, and internal reports that led to the addition of the project and the recommendation to replace or upgrade the equipment.

RESPONSE:

Refer to Mystic's response to **NES-MYS-1.2**, which responded to the same question but for the projects in Attachment A rather than WP8. WP8 includes the projects in Attachment A as well as "Emergent CapEx Projects," the nature of which was described in the transmittal letter to the Second Mystic Posting as well as in Mystic's response to **NES-MYS-1.2**.

Dated: May 26, 2022

CONSTELLATION MYSTIC POWER, LLC
OBJECTIONS AND RESPONSES TO NESCOE
FIFTH 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”), Constellation Energy Generation LLC, and ISO New England Inc., (“Mystic Agreement”), Mystic hereby objects and responds to the New England States Committee on Electricity (“NESCOE”) Fifth Set of Information and Document Requests as follows.

NES-MYS-5.1: Referring to Mystic 8 & 9 Schedule B, line 8 (Taxes Other Than Income), has Mystic included any property taxes associated with Mystic 7 or other non-Mystic 8&9 property in the amount shown on line 8?

- a. If yes, please identify the property and dollar amount.
- b. If no, has Mystic received separate property tax bills associated with property on which Mystic 7 or other non-Mystic 8&9 property is situated?
 - i. If yes, please provide copies of these bills.
 - ii. If no, please explain why not.

OBJECTION:

Mystic objects to subsection (b)(ii) of this question to the extent it seeks a legal opinion regarding how the City of Everett interprets the tax code.

RESPONSE:

Subject to and without waiving or limiting this objection, Mystic responds as follows. Mystic does not receive a separate tax bill for Mystic Unit 7, nor does Mystic receive a separate tax bill for the other Mystic units not included in the Agreement (i.e., units other than Mystic 8 & 9). There is only one Mystic property tax bill from the City of Everett, and the tax bill does not differentiate between the different units.

Dated: June 24, 2022

APPENDIX B

NESCOE Informal Challenges to Mystic's 2022 Informational Posting (Aug. 1, 2022)

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New England States Committee on Electricity Informal Challenges to Mystic's April 2022 Informational Posting

August 1, 2022

In accordance with the protocols contained in Schedule 3A to the Amended and Restated Cost-of-Service Agreement among Constellation Mystic Power, LLC (“Mystic”), Constellation Energy Generation, LLC (“Constellation”), and ISO New England Inc. (“ISO-NE”) (the “Agreement”),¹ the New England States Committee on Electricity (“NESCOE”) submits the following Informal Challenges to the Informational Posting that Mystic submitted for posting to ISO-NE on April 1, 2022, as updated on June 21, 2022 (“2022 Informational Posting”).

I. INTRODUCTION

Section I.B.2 of Schedule 3A requires Mystic to file on or before April 1, 2022: (i) “appropriate support for the capital expenditures and costs that will be collected as an expense during calendar year 2023 (January 1, 2023 to December 31, 2023);” and (ii) an update to the Annual Fixed Revenue Requirement (“AFRR”), the Maximum Monthly Fixed Cost Payment, and the Fixed O & M/Return on Investment component of the Monthly Fuel Cost Charge (the “2023 Update”); and (iii) an update of net plant to include actual capital expenditures and depreciation incurred between January 1, 2018 and December 31, 2021 (“2021 Net Plant Update”).

In the 2022 Informational Posting, Mystic provided on April 1, 2022:

- A cover letter (“April 1 Cover Letter”);
- Attachment A, an excel spreadsheet listing 2023 capital expenditure projects (“CapEx Projects”) related to the Mystic 8 & 9 units (the “Mystic 8&9

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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Template”), and to the Everett Marine Terminal (“Everett” or “EMT”) (the “EMT Template”);

- Attachment B, the Populated Methodology updated to reflect (1) the 2023 CapEx Projects, (2) the 2023 Update, and (3) the 2021 Net Plant Update; and
- Attachment C, a confidentiality agreement.

On June 21, 2022, Mystic provided:

- A cover letter (“June 21 Cover Letter”), which includes an Appendix summarizing the changes; and
- An updated Attachment B.

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

NESCOE has reviewed the 2022 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 Informational Posting.

II. INFORMAL CHALLENGES

A. Attachment A – Emergent 2023 CapEx Projects

The Protocols provide 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”² The Protocols further 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:

² Schedule 3A, Section I.

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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.^[3]

As the Commission has summarized, Mystic has the burden to demonstrate that its capital expenditures “are: (1) necessary to meet Mystic’s obligations under the Mystic Agreement; and (2) the least-cost commercially reasonable option consistent with Good Utility Practice.”⁴

Mystic has included in its 2023 Update a number of capital expenditures for projects it describes as “emergent.” Mystic states:

2023 CapEx Projects in Attachment A do not include Constellation’s projected budget for emergent (i.e., as yet unidentified) capital projects (e.g., replacement of property units such as valves and motors as the need for replacement arises). However, Constellation has budgeted for these items based upon the longstanding experience of Constellation personnel with the equipment that they operate and maintain, meaning that there is a reasonable likelihood that emergent capital expenditures will be incurred in amounts similar to the budgeted amount. Thus, while these anticipated emergent projects are not included in the 2023

³ 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.

⁴ *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,011, at P 26 (2022), Notice of Denial of Rehearing by Operation of Law, 179 FERC ¶ 62,179 (2022).

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they are nonetheless included in the 2023 Update by including such budgeted amounts in the 2023 RMR CapEx cell in the Methodology.^{5]}

Mystic has not provided sufficient—and for most of the 2023 CapEx projects, any—documentation that demonstrates that they are necessary to meet Mystic’s obligations under the Agreement, that they were not delayed until the Term, and/or that the expenses are the least-cost commercially reasonable alternatives available. Mystic’s theory that “these budgeted amounts are included pursuant to Section I.B.2.ii. of the Protocols (discussed below), not Section I.B.2.i”⁶ is creative but not supported by the plain language of Section I.B.2 of the Protocols.

NESCOE sought information regarding the projects listed in WP8 for EMT: “For each project listed in WP8, please provide documentation such as annual inspection reports, evidence of known service wear, and internal reports that led to the addition of the project and the recommendation to replace or upgrade the equipment.”⁷ Similarly, NESCOE sought information regarding the projects listed in WP9 for Mystic 8&9: “For each project listed in WP9, please provide documentation such as annual inspection reports, evidence of known service wear, and internal reports that led to the addition of the project and the recommendation to replace or upgrade the equipment.”⁸

In both cases, Mystic referred back to the response to NES-MYS-1.2, which stated:

Based on Mystic’s years of experience operating the facilities, the Emergent CapEx Projects represent those projects that Mystic expects to need, and that would be placed into service in 2023 to meet the obligations of the Cost of Service Agreement, but that Mystic cannot at this time confirm due to their emergent nature. The “WP9 2023 CapEx” tab of Attachment B (Mystic 8&9) and

⁵ April 1 Cover Letter at 2-3 (footnotes omitted).

⁶ *Id.* at 3.

⁷ NES-MYS-2.7-Everett.

⁸ NES-MYS-2.5-Mystic.

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the “WP8 2023 CapEx” tab of Attachment B (EMT) provide the budgeted spend by project category in 2023. Interested parties may challenge the prudence of these costs during the appropriate true-up period when such costs are identified and supported consistent with the Mystic Protocols.

NESCOE does not disagree that there may be the need for expenditures that arise after the April 1, 2022 Informational Posting deadline. However, Mystic has deemed as “emergent” substantial amounts: \$8.35 million of EMT 2023 CapEx and \$2.5 million of Mystic 2023 CapEx. This essentially renders nugatory the provision in the Protocols that places the burden on Mystic to support the need for those expenditures before they are incurred. And it leaves NESCOE and the Commission with no information to ascertain whether Mystic is recovering from ratepayers projected capital expenditures included in the 2023 Update in accordance with the standards set forth in the Protocols.

The following are the 2023 CapEx projects about which Mystic has provided no supporting information:

[BEGIN CUI//PRIV-HC]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] ⁹

⁹ Mystic 8&9, WP9.

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[REDACTED]

[END CUI//PRIV-HC]

With the exception of the four items noted with an asterisk, Mystic provided no supporting information about these emergent capital expenditures in the 2022 Informational Posting. Mystic did not answer information requests about these projects. Accordingly, there is no way to verify if Mystic has made the requisite demonstrations regarding its right to recover

¹⁰ EMT WP8.

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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.

Regarding the four 2023 CapEx projects marked with an asterisk, although Mystic provided some documentation, NESCOE has not been able to verify based on the information provided that the projects are needed to meet the reliability need under the Agreement, that the projects have not been delayed until the Term or should have been completed prior to the Term, and/or that the expenditures are the least-cost commercially reasonable alternatives.

B. Property Tax Unrelated to Mystic 8 & 9

In the December 2018 order, FERC held that “including property taxes associated with the Mystic 7 land in the Mystic 8 and 9 revenue requirement is inappropriate under the ‘used and useful’ standard of ratemaking....Accordingly, we find that Mystic may not recover property tax expenses associated with Mystic 7 land under the term of the Agreement.”¹¹ Mystic included these property taxes as a line item in its populated methodology in its March 2019 compliance filing stating that “by the time Mystic makes its true-up filing, the tax assessment will change because Mystic will have either sold the land associated with Mystic 7 or, the current tax finance agreement will have expired.”¹² Over NESCOE’s protest, the Commission permitted this, stating that “[t]he true-up process is designed to address precisely these types of issues in the future.”¹³

¹¹ *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267, at P 92 (2018).

¹² *Constellation Mystic Power, LLC*, Order on Compliance and Directing Further Compliance, 172 FERC ¶ 61,045, at P 29 (2020) (“July 2020 Order”) (quoting Mystic March 1, 2019 Transmittal Letter at 17).

¹³ July 2020 Order at P 36.

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In its 2023 Update, Mystic included \$13,439,843 in taxes other than income.¹⁴ When NESCOE attempted to probe into the question of whether Mystic included any property tax expense associated with land other than Mystic 8 & 9 (i.e., land associated with Mystic 7 and the Mystic Jet), Mystic’s response was: “Mystic does not receive a separate tax bill for Mystic Unit 7, nor does Mystic receive a separate tax bill for the other Mystic units not included in the Agreement (i.e., units other than Mystic 8 & 9). There is only one Mystic property tax bill from the City of Everett, and the tax bill does not differentiate between the different units.”¹⁵

Although Mystic confirmed that [BEGIN CUI//PRIV-HC] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁶ [END

CUI//PRIV-HC] Mystic’s view is that these questions are outside the scope of discovery of the 2022 Informational Posting.

Because Mystic has not answered the information requests fully, NESCOE does not know the precise amount of tax that is related to [BEGIN CUI//PRIV-HC] [REDACTED]
[REDACTED]

¹⁴ See Mystic 8&9 Schedule B, line 8; and NES-MYS-1.9 [BEGIN CUI//PRIV-HC] [REDACTED]
[REDACTED] [END CUI//PRIV-HC]

¹⁵ NES-MYS-5.1.

¹⁶ NES-MYS-5.2(b)(ii)-(iii).

17

[END CUI//PRIV-HC]

While Mystic would not provide any information in response to NESCOE’s information requests here, NESCOE understands that as of 2018, the amount of property tax associated with Mystic 7 was approximately [BEGIN CUI//PRIV-HC] [END CUI//PRIV-HC].¹⁸ Mystic is not permitted to recover any of this amount from ratepayers. To the extent Mystic seeks to do so through this true-up process, this is an inappropriate attempt to shift its property tax burden related to the Mystic 7 site to consumers as part of its cost-of-service arrangement for Mystic 8 & 9. Mystic has the burden to demonstrate that its recovery of property taxes from consumers is just and reasonable, and it has not done so in the 2022 Informational Posting.

C. Budget Increases for Various Expenses

Mystic has explained in response to NESCOE’s information request that “[a]s required by the Methodology, Mystic provided in this year’s annual posting (the “Second Mystic Posting”) an update of certain projected costs based on 2021 actuals.”¹⁹ NESCOE appreciates that Mystic used 2021 actual costs to derive the estimates used in the 2023 Update, which contains projections for costs to be incurred throughout the Term. NESCOE does not object to that method in all instances and understands that further review of these types of costs (e.g., Contracting, Materials, Travel & Entertainment, Other Operating Expenses, Auxiliary Power, and Insurance costs) at this time may not be relevant to the actual charges that will actually be incurred over the term of the Agreement. But by simply copying and pasting all 2021 actual

¹⁷ NES-MYS-5.2(h).

¹⁸ Exh. NES-005 at 2 (line 42); Exh. NES-047 at 1.

¹⁹ NES-MYS-1-10.

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expenses and adjusting them for inflation, Mystic’s projected expenses included in the 2023 Update include costs for whole categories of expenses that may not recur in subsequent years of the Term, and conversely, may omit entire categories of costs that may be incurred in subsequent years of the Term that were not incurred in 2021. For example, Mystic based its projections on the retention bonus incurred during 2021, shown in Schedule B,²⁰ and refused to answer an information request asking Mystic to confirm that the amounts included as 2021 actuals were expected to be materially similar to that in 2022, 2023 and 2024.²¹ Similarly, Mystic indicated that it inadvertently omitted [BEGIN CUI//PRIV-HC] [REDACTED]²² [END CUI//PRIV-HC] in severance payments, for which Mystic has not provided any support. Given that Mystic 7 and the Jet retired in 2021, and that any severance packages paid to those employees likely will not be repeated in 2022, 2023 and 2024, it is likely this will result in an overcollection. It is also possible that Mystic will incur other charges that were not included the 2021 costs that could materially impact any true up amount.

Another example of what seems to be a non-recurring budget item is LNG Tank Preventative Work. Mystic included in the 2023 Update [BEGIN CUI//PRIV-HC] [REDACTED]
[REDACTED] [END CUI//PRIV-HC].
Mystic provided little information about these costs other than to state that this project [BEGIN CUI//PRIV-HC] [REDACTED] [END CUI//PRIV-HC],²³ and Mystic refused to answer whether the work is expected to continue in 2022, 2023, and 2024.²⁴

²⁰ NES-MYS-1.20.

²¹ NES-MYS-5.3.

²² See June 21 Cover Letter, Appendix.

²³ NES-MYS-5.4.

²⁴ *Id.*

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Similarly, Mystic included nearly [BEGIN CUI//PRIV-HC] [REDACTED]
[REDACTED] [END CUI//PRIV-HC] costs. Although Mystic provided a little
information regarding what these types of costs are [BEGIN CUI//PRIV-HC] [REDACTED]
[REDACTED]
[REDACTED]²⁵ [END CUI//PRIV-HC],
Mystic did not provide any greater detail and refused to explain if such costs are expected for
2022, 2023, and 2024.²⁶ Other examples of what could be a non-recurring budget items or at a
minimum a completely different set of costs for Mystic 8&9 are [BEGIN CUI//PRIV-HC]
[REDACTED]
[REDACTED]²⁷ [REDACTED] [END CUI//PRIV-HC]. It simply is impossible to understand if
these types of costs are relevant to what is likely to be incurred during the Term.

NESCOE recognizes that it will have the right to seek appropriate documentation and
support in the true-up process, after the actual costs and expenditures will have been incurred, to
seek to ensure the accuracy of data and its consistency with the Methodology of the charges and
the prudence of actual costs and expenditures.²⁸ Nonetheless, under Mystic's method of
projecting costs, a simple comparison of actual costs to projected costs provides very little
information to facilitate an understanding of these projections and if they truly are appropriate to
be recovered at this time, and for this reason, NESCOE includes these in its Informal Challenges.

²⁵ NES-MYS-5.5(a).

²⁶ NES-MYS-5.5(e).

²⁷ We are unsure of the abbreviation of Corr but read it to mean corrective.

²⁸ Protocols, Section 4.C.

APPENDIX C

Mystic Responses to the Informal Challenges of NESCOE (Aug. 31, 2022)

PUBLIC

Constellation Mystic Power, LLC
Responses to the Informal Challenges of the New England States Committee on Electricity

August 31, 2022

On April 1, 2022, as updated on June 21, 2022, Constellation Mystic Power, LLC (“Mystic”) submitted for posting on the ISO New England Inc. (“ISO-NE”) webpage its 2022 Informational Posting (the “Second Annual Posting”). On August 1, 2022, Mystic received Informal Challenges from the New England States Committee on Electricity (“NESCOE”). Mystic’s responses to those Informal Challenges are provided herein.

Informal Challenge:

A. Attachment A – Emergent 2023 CapEx Projects

The Protocols provide 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”¹ The Protocols further 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^[2].

¹ Schedule 3A, Section I.

² 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 the Commission has summarized, Mystic has the burden to demonstrate that its capital expenditures “are: (1) necessary to meet Mystic’s obligations under the Mystic Agreement; and (2) the least-cost commercially reasonable option consistent with Good Utility Practice.”³

Mystic has included in its 2023 Update a number of capital expenditures for projects it describes as “emergent.” Mystic states:

2023 CapEx Projects in Attachment A do not include Constellation’s projected budget for emergent (i.e., as yet unidentified) capital projects (e.g., replacement of property units such as valves and motors as the need for replacement arises). However, Constellation has budgeted for these items based upon the longstanding experience of Constellation personnel with the equipment that they operate and maintain, meaning that there is a reasonable likelihood that emergent capital expenditures will be incurred in amounts similar to the budgeted amount. Thus, while these anticipated emergent projects are not included in the 2023 they are nonetheless included in the 2023 Update by including such budgeted amounts in the 2023 RMR CapEx cell in the Methodology.^[4]

Mystic has not provided sufficient—and for most of the 2023 CapEx projects, any—documentation that demonstrates that they are necessary to meet Mystic’s obligations under the Agreement, that they were not delayed until the Term, and/or that the expenses are the least-cost commercially reasonable alternatives available. Mystic’s theory that “these budgeted amounts are included pursuant to Section I.B.2.ii. of the Protocols (discussed below), not Section I.B.2.i”⁵ is creative but not supported by the plain language of Section I.B.2 of the Protocols.

NESCOE sought information regarding the projects listed in WP8 for EMT: “For each project listed in WP8, please provide documentation such as annual inspection reports, evidence of known service wear, and internal reports that led to the addition of the project and the recommendation to replace or upgrade the equipment.”⁶ Similarly, NESCOE sought information regarding the projects listed in WP9 for Mystic 8&9: “For each project listed in WP9, please provide documentation such as annual inspection reports, evidence of known service wear, and internal reports that led to the addition of the project and the recommendation to replace or upgrade the equipment.”⁷

In both cases, Mystic referred back to the response to NES-MYS-1.2, which stated:

³ *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,011, at P 26 (2022), Notice of Denial of Rehearing by Operation of Law, 179 FERC ¶ 62,179 (2022).

⁴ April 1 Cover Letter at 2-3 (footnotes omitted).

⁵ *Id.* at 3.

⁶ NES-MYS-2.7-Everett.

⁷ NES-MYS-2.5-Mystic.

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Based on Mystic’s years of experience operating the facilities, the Emergent CapEx Projects represent those projects that Mystic expects to need, and that would be placed into service in 2023 to meet the obligations of the Cost of Service Agreement, but that Mystic cannot at this time confirm due to their emergent nature. The “WP9 2023 CapEx” tab of Attachment B (Mystic 8&9) and the “WP8 2023 CapEx” tab of Attachment B (EMT) provide the budgeted spend by project category in 2023. Interested parties may challenge the prudence of these costs during the appropriate true-up period when such costs are identified and supported consistent with the Mystic Protocols.

NESCOE does not disagree that there may be the need for expenditures that arise after the April 1, 2022 Informational Posting deadline. However, Mystic has deemed as “emergent” substantial amounts: \$8.35 million of EMT 2023 CapEx and \$2.5 million of Mystic 2023 CapEx. This essentially renders nugatory the provision in the Protocols that places the burden on Mystic to support the need for those expenditures before they are incurred. And it leaves NESCOE and the Commission with no information to ascertain whether Mystic is recovering from ratepayers projected capital expenditures included in the 2023 Update in accordance with the standards set forth in the Protocols.

The following are the 2023 CapEx projects about which Mystic has provided no supporting information:

[BEGIN CUI//PRIV-HC]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

8

⁸ Mystic 8&9, WP9.

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Mystic Response:

As an initial matter, \$8.35 million is the total dollar value for all projected EMT 2023 RMR CapEx, not solely the emergent projects.

As Mystic explained in the transmittal letter to the Second Annual Posting, Attachment A included only the identified anticipated capital projects for calendar year 2023. “Attachment A” is the document that provides the required showing for capital expenditures to be collected as an expense during the Term. There were five projects listed in Attachment A for EMT (not four, as the NESCOE challenge suggests). Those projects were the CR Halon System Replacement, Medium Pressure Area Drainage, Access Road Repaving, Portable Fire Protection Equipment, and HPE Train 1 HAB Piping Replacement. Attachment B to Mystic’s posting was an updated populated Template, which included an updated projection for *all* “2023 RMR CapEx” in Schedule D, as required by the Methodology. Attachment B thus included the identified CapEx projects in Attachment A as well as Mystic’s budget for “emergent” CapEx. Mystic omitted from Attachment A the anticipated “emergent” RMR CapEx projects because, by their very nature, such projects are not yet known. Thus, for the avoidance of doubt, Attachment A included \$3,225,000 of EMT 2023 RMR CapEx, meaning the Second Annual Posting included \$5,125,000 million (not \$8.35 million) of emergent EMT 2023 RMR CapEx.

There are no anticipated and approved 2023 RMR CapEx Projects for Mystic 8 & 9. The \$2.5 million included in the Attachment B populated Template reflects Mystic’s budget for emergent projects.

The question of how to address emergent CapEx is not new. As discussed in last year’s annual filing process, supporting documentation for some of the projected CapEx projects cannot be provided at this time because it does not yet exist. Mystic is limited in terms of the documentation it can provide in April of 2022 for, say, a valve or motor that may need to be replaced in the fall of 2023 based on an inspection. What Mystic can do, and what Mystic has done, is provide a budgeted amount based on the company’s years of experience operating the facilities so that the projections used in the rate are as close as possible to actual spending. This budgeted amount will then get true-up to the actual costs during the appropriate true-up process. Per Section I.B.4.i of the Protocols, Mystic will provide support for “emergent” capital projects at that time.

Mystic understands NESCOE’s concern about preserving its right to challenge the prudence of any such capital expenditures. That is why Mystic has agreed (repeatedly) 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.” *Constellation Mystic Power, LLC*, 2021 Informational Filing, Attachment C-3 at p. 2, Docket No. ER18-1639 (filed Sept. 15, 2021).

NESCOE has yet to explain how it proposes Mystic handle emergent CapEx projects. Mystic notes that the Protocols require a Formal Challenge to “[s]tate the specific relief or remedy requested . . . and the basis for that relief.” Mystic Agreement, Schedule 3A, Section II.4.C.h. No one’s interests will be served by removing all such budgeted projects from the rate now, as doing so would result in substantial refund obligations for customers when the emergent projects inevitably need to

PUBLIC

be placed in service and the costs are collected (with interest) through the true-up. Mystic remains willing and able to work with NESCOE and other Interested Parties to reach a fair solution that addresses NESCOE's concerns while mitigating against significant refund liability.

With respect to the projects in Attachment A, Mystic provided the information required by the Protocols for capital expenditures to be collected as an expense during the Term. *See* Mystic Agreement, Schedule 3A, Section II.2.A.1-4. NESCOE has not specified the information to which it objects, nor has NESCOE "provide[d] an appropriate explanation and documents, as applicable, to support its challenge," as required by the Protocols. *See* Mystic Agreement, Schedule 3A, Section 4.B.

B. Property Tax Unrelated to Mystic 8 & 9

In the December 2018 order, FERC held that “including property taxes associated with the Mystic 7 land in the Mystic 8 and 9 revenue requirement is inappropriate under the ‘used and useful’ standard of ratemaking....Accordingly, we find that Mystic may not recover property tax expenses associated with Mystic 7 land under the term of the Agreement.”¹⁰ Mystic included these property taxes as a line item in its populated methodology in its March 2019 compliance filing stating that “by the time Mystic makes its true-up filing, the tax assessment will change because Mystic will have either sold the land associated with Mystic 7 or, the current tax finance agreement will have expired.”¹¹ Over NESCOE’s protest, the Commission permitted this, stating that “[t]he true-up process is designed to address precisely these types of issues in the future.”¹²

In its 2023 Update, Mystic included \$13,439,843 in taxes other than income.¹³ When NESCOE attempted to probe into the question of whether Mystic included any property tax expense associated with land other than Mystic 8 & 9 (i.e., land associated with Mystic 7 and the Mystic Jet), Mystic’s response was: “Mystic does not receive a separate tax bill for Mystic Unit 7, nor does Mystic receive a separate tax bill for the other Mystic units not included in the Agreement (i.e., units other than Mystic 8 & 9). There is only one Mystic property tax bill from the City of Everett, and the tax bill does not differentiate between the different units.”¹⁴ Although Mystic confirmed that [BEGIN CUI//PRIV-HC] [REDACTED]

[REDACTED] ¹⁵ [END CUI//PRIV-HC] Mystic’s view is that these questions are outside the scope of discovery of the 2022 Informational Posting.

Because Mystic has not answered the information requests fully, NESCOE does not know the precise amount of tax that is related to [BEGIN CUI//PRIV-HC] [REDACTED]

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

¹⁰ *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267, at P 92 (2018).

¹¹ *Constellation Mystic Power, LLC*, Order on Compliance and Directing Further Compliance, 172 FERC ¶ 61,045, at P 29 (2020) (“July 2020 Order”) (quoting Mystic March 1, 2019 Transmittal Letter at 17).

¹² July 2020 Order at P 36.

¹³ See Mystic 8&9 Schedule B, line 8; and NES-MYS-1.9 [BEGIN CUI//PRIV-HC] [REDACTED] [END CUI//PRIV-HC]

¹⁴ NES-MYS-5.1.

¹⁵ NES-MYS-5.2(b)(ii)-(iii).

¹⁶ NES-MYS-5.2(h).

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While Mystic would not provide any information in response to NESCOE's information requests here, NESCOE understands that as of 2018, the amount of property tax associated with Mystic 7 was approximately [BEGIN CUI/PRIV-HC] [REDACTED] [END CUI/PRIV-HC].¹⁷ Mystic is not permitted to recover any of this amount from ratepayers. To the extent Mystic seeks to do so through this true-up process, this is an inappropriate attempt to shift its property tax burden related to the Mystic 7 site to consumers as part of its cost-of-service arrangement for Mystic 8 & 9. Mystic has the burden to demonstrate that its recovery of property taxes from consumers is just and reasonable, and it has not done so in the 2022 Informational Posting.

Mystic Response:

For purposes of the initial projection included in the Second Annual Posting, which is based on "2021 Actuals," Mystic included the entire Mystic property tax for 2021 as "Taxes Other Than Income." The reason Mystic did not attempt in the Second Annual Posting to exclude property taxes associated with Mystic 7 is because, after the Tax Increment Financing Agreement ("TIF") and the Payment in Lieu of Taxes Agreement ("PILOT") expired in 2020, Mystic began to receive a single property tax assessment from the City of Everett. That is, Mystic only receives one property tax bill from the City of Everett, and the tax bill does not distinguish between the different buildings or parcels of land associated with Mystic 7 versus Mystic 8 & 9.

Mystic is open to working with NESCOE to arrive at a fair method for allocating the property tax associated with Mystic 8 & 9. Mystic also notes that, similar to the discussion below in response to Informal Challenge (C), the current property tax in the rate is a projection based on 2021 actuals that will be trued up to actuals during the Term in 2022, 2023, and 2024. Mystic is in the process of selling the land associated with Mystic 7, which could help clarify the determination of the appropriate actual tax for Mystic 8 & 9 during the Term. In any event, Mystic commits to working with NESCOE in good faith to determine a reasonable method for adjusting the projected property tax value that is currently in the rate and subject to true-up.

¹⁷ Exh. NES-005 at 2 (line 42); Exh. NES-047 at 1.

C. Budget Increases for Various Expenses

Mystic has explained in response to NESCOE’s information request that “[a]s required by the Methodology, Mystic provided in this year’s annual posting (the “Second Mystic Posting”) an update of certain projected costs based on 2021 actuals.”¹⁸ NESCOE appreciates that Mystic used 2021 actual costs to derive the estimates used in the 2023 Update, which contains projections for costs to be incurred throughout the Term. NESCOE does not object to that method in all instances and understands that further review of these types of costs (e.g., Contracting, Materials, Travel & Entertainment, Other Operating Expenses, Auxiliary Power, and Insurance costs) at this time may not be relevant to the actual charges that will actually be incurred over the term of the Agreement. But by simply copying and pasting all 2021 actual expenses and adjusting them for inflation, Mystic’s projected expenses included in the 2023 Update include costs for whole categories of expenses that may not recur in subsequent years of the Term, and conversely, may omit entire categories of costs that may be incurred in subsequent years of the Term that were not incurred in 2021. For example, Mystic based its projections on the retention bonus incurred during 2021, shown in Schedule B,¹⁹ and refused to answer an information request asking Mystic to confirm that the amounts included as 2021 actuals were expected to be materially similar to that in 2022, 2023 and 2024.²⁰ Similarly, Mystic indicated that it inadvertently omitted [BEGIN CUI//PRIV-HC] ██████████²¹ [END CUI//PRIV-HC] in severance payments, for which Mystic has not provided any support. Given that Mystic 7 and the Jet retired in 2021, and that any severance packages paid to those employees likely will not be repeated in 2022, 2023 and 2024, it is likely this will result in an overcollection. It is also possible that Mystic will incur other charges that were not included the 2021 costs that could materially impact any true up amount.

Another example of what seems to be a non-recurring budget item is LNG Tank Preventative Work. Mystic included in the 2023 Update [BEGIN CUI//PRIV-HC] ██████████ [END CUI//PRIV-HC]. Mystic provided little information about these costs other than to state that this project [BEGIN CUI//PRIV-HC] ██████████ [END CUI//PRIV-HC],²² and Mystic refused to answer whether the work is expected to continue in 2022, 2023, and 2024.²³

Similarly, Mystic included nearly [BEGIN CUI//PRIV-HC] ██████████ [END CUI//PRIV-HC] costs. Although Mystic provided a little information regarding what these types of costs are [BEGIN CUI//PRIV-HC] ██████████

¹⁸ NES-MYS-1-10.

¹⁹ NES-MYS-1.20.

²⁰ NES-MYS-5.3.

²¹ See June 21 Cover Letter, Appendix.

²² NES-MYS-5.4.

²³ *Id.*

[REDACTED]²⁴ [END CUI//PRIV-HC], Mystic did not provide any greater detail and refused to explain if such costs are expected for 2022, 2023, and 2024.²⁵ Other examples of what could be a non-recurring budget item or at a minimum a completely different set of costs for Mystic 8&9 are [BEGIN CUI//PRIV-HC] [REDACTED]²⁶ [REDACTED] [END CUI//PRIV-HC]. It simply is impossible to understand if these types of costs are relevant to what is likely to be incurred during the Term.

NESCOE recognizes that it will have the right to seek appropriate documentation and support in the true-up process, after the actual costs and expenditures will have been incurred, to seek to ensure the accuracy of data and its consistency with the Methodology of the charges and the prudence of actual costs and expenditures.²⁷ Nonetheless, under Mystic’s method of projecting costs, a simple comparison of actual costs to projected costs provides very little information to facilitate an understanding of these projections and if they truly are appropriate to be recovered at this time, and for this reason, NESCOE includes these in its Informal Challenges.

Mystic Response:

Mystic projected its costs as required by the Protocols. The Protocols are part of the filed rate and must be followed absent a waiver. In short, NESCOE’s approach to projecting costs as discussed herein would require either a tariff waiver from the Commission or a change to the filed rate.

The Protocols required Mystic to refresh, in the Second Annual Posting, the projected revenue requirements to be collected during the Term based upon information in the company’s books and records. Mystic Agreement, Schedule 3A, Section I.2.B.ii. The Methodology provides further instruction on how to calculate the refreshed projections for O&M and certain other items, directing Mystic to calculate the projections using “2021 Actuals.” See, e.g., Mystic Agreement, Methodology, Schedule B (Mystic 8 & 9) (“All Updated in 2022 Filing with 2021 Actuals”). The Methodology does not require—and indeed does not permit—Mystic to omit, add, or adjust these categories of costs in the projection based upon likely recurrence (or nonrecurrence) during the Term. The projection establishes a simple baseline for the rate using 2021 actual costs, similar to a “test year” used in traditional formula rates, and will be true-up to actual costs in subsequent filings.

Accordingly, Mystic did not respond substantively to NESCOE’s information requests asking Mystic to speculate on expected spend on specific O&M items in 2022, 2023, and 2024 because that information is irrelevant to the calculation of the projected rate for the Second Annual Posting. Even if Mystic expects less (or more) spend on a particular line item during the Term than what occurred in 2021, the Methodology does not provide for the kind of discretionary budgeting that NESCOE appears to contemplate in this challenge.

²⁴ NES-MYS-5.5(a).

²⁵ NES-MYS-5.5(e).

²⁶ We are unsure of the abbreviation of Corr but read it to mean corrective.

²⁷ Protocols, Section 4.C.

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As NESCOE notes, NESCOE and other intervenors will have the opportunity to challenge the prudence of the actual costs incurred in next year's annual filing process. *See* Mystic Agreement, Schedule 3A, Section I.B.3.ii (requiring Mystic to true-up projections to actual costs for 2022); *id.*, Sections II.3, II.4 (explaining that the Information Exchange and Challenge Procedures allow parties to challenge the prudence of *actual costs and expenditures*) (emphasis added); *see also* *Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022, at P 20 (2018) (“Mystic should be allowed to collect actual prudently incurred costs to be reviewed in a future Commission proceeding when the costs are actually known.”).

APPENDIX D

**Excerpts from Hearing Exhibits in
Docket No. ER18-1639-000**

Exhibit No. MYS-0050

Revised Cost of Service for Mystic and Everett

Mystic 8 & 9
Summary Revenue Requirement

Exhibit No. MYS-0050
Schedule A
Page 1

Line No.	Description	2017	2018	2019	2020	2021	2022	2023	2024	2025	Source
	Summary of Results										
1	Electric Plant in Service	1,021,103,969	1,031,126,969	1,052,135,969	1,061,185,969	1,087,438,969	1,099,438,969	1,099,438,969	1,099,438,969	1,099,438,969	Schedule C
2	Depreciation Reserve	167,698,415	201,503,891	236,033,814	270,886,952	306,712,422	342,999,431	379,286,440	415,573,449	451,860,457	Schedule C
3	Net Plant	853,405,553	829,623,078	816,102,155	790,299,017	780,726,546	756,439,537	720,152,529	683,865,520	647,578,511	Sum lines 1 & 2
4	Accum. Deferred Inc. Taxes (Accts. 281, 282, 283)	(94,286,517)	(95,968,191)	(100,489,308)	(101,799,304)	(107,679,209)	(109,546,867)	(108,118,056)	(106,685,074)	(105,250,338)	Schedule D
5	Unamortized Excess Deferred Income Tax	-	(44,451,330)	(42,412,652)	(40,373,974)	(38,335,296)	(36,296,618)	(34,257,940)	(32,219,262)	(30,180,584)	Schedule D
6	Other Subtractive Adjust.										Schedule D
7	Total Subtractive Adjustments	(94,286,517)	(140,419,521)	(142,901,960)	(142,173,278)	(146,014,505)	(145,843,485)	(142,375,996)	(138,904,336)	(135,430,922)	Sum lines 4-6
8	Materials and Supplies	20,503,410	21,015,995	21,541,395	22,079,930	22,631,928	23,197,726	23,777,669	24,372,111	24,981,414	Schedule D
9	Prepayments	524,242	524,242	524,242	524,242	524,242	524,242	524,242	524,242	524,242	Schedule D
10	One eighth O&M (excluding Fuel & PP)	5,386,698	5,521,365	5,659,399	5,800,884	5,945,906	7,388,001	6,582,429	6,746,989	6,915,664	1/8 O&M and A&G
11	Cash working capital	26,414,350	27,061,602	27,725,036	28,405,056	29,102,076	31,109,969	30,884,340	31,643,343	32,421,320	Sum lines 8-10
12	Rate Base	785,533,386	716,265,159	700,925,231	676,530,795	663,814,117	641,706,021	608,660,872	576,604,527	544,568,910	Sum lines 3, 7 & 11
13	Production O&M	34,648,166	35,514,370	36,402,229	37,312,285	38,245,092	49,548,794	42,865,337	43,936,970	45,035,394	Schedule E
14	Corporate Admin & General	8,445,414	8,656,550	8,872,963	9,094,787	9,322,157	9,555,211	9,794,091	10,038,944	10,289,917	Schedule F
15	Total O&M Expense	43,093,580	44,170,920	45,275,193	46,407,072	47,567,249	59,104,005	52,659,428	53,975,914	55,325,312	Sum lines 13 & 14
16	Production	33,471,375	33,805,475	34,529,923	34,853,138	35,825,471	36,287,009	36,287,009	36,287,009	36,287,009	Schedule G
17	Total Depreciation Expense	33,471,375	33,805,475	34,529,923	34,853,138	35,825,471	36,287,009	36,287,009	36,287,009	36,287,009	Line 3
18	Other Taxes	9,307,629	9,307,629	9,307,629	9,307,629	9,307,629	15,500,445	15,500,445	15,500,445	15,500,445	Schedule H
19	Total Taxes Other than Income	9,307,629	9,307,629	9,307,629	9,307,629	9,307,629	15,500,445	15,500,445	15,500,445	15,500,445	Line 18
20	After Tax Rate of Return	68,837,547	62,767,462	61,423,199	59,285,476	58,171,093	56,233,725	53,337,926	50,528,777	47,721,445	Line 12 * Schedule B, line 4
21	Tax on equity	21,276,779	19,400,595	18,985,101	18,324,359	17,979,918	17,381,103	16,486,050	15,617,779	14,750,070	Line 12 * Schedule B, line 5
	Amortization of Excess Deferred Income Tax	(2,038,678)	(2,038,678)	(2,038,678)	(2,038,678)	(2,038,678)	(2,038,678)	(2,038,678)	(2,038,678)	(2,038,678)	
22	Pre-tax cost of capital	88,075,648	80,129,379	78,369,623	75,571,157	74,112,334	71,576,151	67,785,298	64,107,878	60,432,837	Sum lines 20 & 21
23	Gross Revenue Requirement	173,948,233	167,413,403	167,482,368	166,138,997	166,812,683	182,467,610	172,232,180	169,871,246	167,545,602	Sum lines 15, 17, 19 & 22
24	Revenue Credit	-	-	-	-	-	-	-	-	-	Schedule I
25	Current Year CapEx	-	-	-	-	-	29,282,629	19,553,123	1,044,827	-	Schedule C, page 1, line 9
26	Revenue Requirement (Without Current Year CapEx)	173,948,233	167,413,403	167,482,368	166,138,997	166,812,683	182,467,610	172,232,180	169,871,246	167,545,602	Line 23 less line 24 & plus line 25
27	Monthly Revenue Requirement (Without Current Year CapEx)	14,495,686	13,951,117	13,956,864	13,844,916	13,901,057	15,205,634	14,352,682	14,155,937	13,962,134	Line 26 / 12
28	Monthly Revenue Requirement (With Current Year CapEx)	14,495,686	13,951,117	13,956,864	13,844,916	13,901,057	19,388,867	15,982,109	14,364,903	13,962,134	
29	Annual Revenue Requirement (with Current Year CapEx)	173,948,233	167,413,403	167,482,368	166,138,997	166,812,683	211,750,239	191,785,303	170,916,074	167,545,602	
30	One Time True-up for CapEx prior to Effective Date						-	-	-	-	
31	Annual True-up						-	-	-	-	
32	Adjusted Annual Revenue Requirement (with Current Year CapEx)						211,750,239	191,785,303	170,916,074	-	

Exhibit No. NES-006

Mystic Response to NES-MYS-13-1

[REDACTED]

NES-MYS-13-1.

[REDACTED]

[REDACTED]

[REDACTED]

RESPONSE:

[REDACTED]

[REDACTED]

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

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 17th day of October, 2022.

/s/ Phyllis G. Kimmel

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