

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

ISO New England Inc. )  
Participating Transmission Owners ) Docket No. ER20-2054  
Administrative Committee )

**THE NEW ENGLAND STATES COMMITTEE ON ELECTRICITY'S  
MOTION FOR LEAVE TO ANSWER, ANSWER, AND RESPONSE TO THE  
MOTION TO DISMISS OF CENTRAL MAINE POWER COMPANY**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, NESCOE<sup>1</sup> hereby respectfully submits this Motion for Leave to Answer, Answer, and Response to the Motion to Dismiss and Response of Central Maine Power Company to New England States Committee on Electricity, Inc. Formal Challenge (“CMP Motion to Dismiss and Answer”).

CMP’s pleading essentially breaks down into two parts. First, CMP moves to dismiss NESCOE’s Formal Challenge arguing that it improperly challenges CMP’s formula rate. Second, CMP responds to the merits of NESCOE’s Formal Challenge and argues that it should be allowed to collect its incentive compensation expense based on financial targets notwithstanding the Commission’s determination in *Pacific Gas and Electric*. Both of these arguments, as addressed in turn below, are without merit and the Commission should reject them. Accordingly, the Commission should grant the relief requested in NESCOE’s Formal Challenge and direct CMP to make a supplemental filing under the Transmission Formula Rate Protocols to remove these costs from its filing and reimburse customers for costs collected to date.

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<sup>1</sup> All short-form abbreviations used herein are the same as in NESCOE’s Formal Challenge unless otherwise noted.

## I. MOTION FOR LEAVE TO ANSWER

NESCOE requests leave to answer the portion of CMP's pleading that it styles as a response to NESCOE's Formal Challenge.<sup>2</sup> While the Commission's rules do not permit answers to answers "unless otherwise ordered by the decisional authority,"<sup>3</sup> it has found good cause to permit answers in cases where an answer ensures a more accurate and complete record or provides useful and relevant information that assists the Commission in its decision-making process.<sup>4</sup>

Good cause exists here because NESCOE's response would ensure a more complete record and provide useful and relevant information that assists the Commission in its decision-making. In particular, CMP makes new arguments attempting to justify recovering its incentive compensation expense from customers and distinguishing the Commission's decision in *Pacific Gas and Electric* that it did not make in its response to NESCOE's Informal Challenge.<sup>5</sup> CMP's answer also includes a new affidavit that includes information that was not provided to NESCOE during the information exchange process or in response to NESCOE's Informal Challenge.

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<sup>2</sup> As described *supra*, CMP styles one portion of its pleading as a response to NESCOE's Formal Challenge and another portion of its pleading as a Motion to Dismiss. Per the provisions of Rule 213(a)(3), NESCOE has a right to respond to the arguments contained in the Motion to Dismiss. Accordingly, leave from the Commission is only necessary for NESCOE to respond to the arguments included in the portion of CMP's pleading that responds to the merits of NESCOE's Formal Challenge.

<sup>3</sup> Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2).

<sup>4</sup> See *SunEnergy1, LLC*, 176 FERC ¶ 61,004, at P 41 (2021) (accepting an otherwise prohibited answer and stating that "[w]e accept SunEnergy's answer because it has provided information that assisted us in our decision-making process."); *Saltville Gas Storage Co.*, 164 FERC ¶ 61,212, at P 2 n.6 (2018) (allowing an answer that was not allowed as of right, stating that "the Commission finds good cause to accept Saltville's answer because it will not delay the proceeding, will assist the Commission in understanding the issues raised, and will ensure a complete record.") *N.Y. State Pub. Serv. Comm'n. v. N.Y. Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,137, at P 29 (2017) (accepting otherwise impermissible answers because they "provided information that assisted us in our decision-making process.")

<sup>5</sup> Compare, e.g., CMP Motion to Dismiss and Answer, at 25–26, 28–29 with Formal Challenge, Attachment 3, Written Response, at 4–6.

NESCOE, though submitting its answer, seeks to provide useful information that would provide a more complete record that would assist the Commission in its decision-making.

## **II. NESCOE’S RESPONSE TO CMP’S MOTION TO DISMISS**

### **A. NESCOE’s Formal Challenge Appropriately Challenges an Input to CMP’s Formula Rate.**

CMP’s Motion to Dismiss argues that NESCOE’s challenge to its request to recover incentive compensation based on financial targets is not a challenge to an input but is, rather, an attack on the formula rate itself. As the Commission instructed in *Constellation Mystic Power*, “[t]he Commission has held that acceptance of a formula rate constitutes acceptance of the formula, but not the inputs to the formula. Parties can challenge the inputs to the formula rate in the same way as they can challenge costs in a stated rate case, including but not limited to the prudence of those expenditures.”<sup>6</sup> NESCOE acknowledges that a formal challenge is not the proper vehicle to challenge the formula rate itself. Its Formal Challenge, however, appropriately challenges an input to CMP’s formula Rate and not the formula rate itself. NESCOE’s Formal Challenge, therefore, is proper and the Commission should deny CMP’s Motion to Dismiss.

CMP fails to demonstrate that the recovery of incentive compensation arises from the formula rate itself rather than an input in the formula rate. CMP argues that it is entitled to recover incentive compensation based on financial targets based on Line 14 in Worksheet 4 of Appendix A to Attachment F of the Open Access Transmission Tariff (“OATT”). Line 14 is an input for CMP’s “Administrative and General (A&G) Expense,” and references several FERC Accounts ranging from numbers 920 to 935. CMP argues that one of those Accounts (specifically, Account 920) includes CMP’s incentive compensation based on financial targets

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<sup>6</sup> *Constellation Mystic Power, LLC*, 179 F.E.R.C. ¶ 61,011, P 25 (2022).

and that CMP booked that expense consistent with the rules in FERC’s Uniform System of Accounts.<sup>7</sup> However, none of those arguments change the fact that “Administrative and General (A&G) Expense” is itself an input. Indeed, the Staff Guidance on Formula Rates that CMP cites in its argument specifically refers to “Administrative and General (A&G) Expense” as an input.<sup>8</sup> CMP’s arguments go to the merits of whether it can properly recover the disputed costs through the input, not as to whether recovery of incentive compensation based on financial targets is a feature of the formula rate.<sup>9</sup>

In addition, CMP’s argument that the right to recover incentive compensation based on financial targets is a hard-coded feature of its formula rate is belied by the practices of other NETOs. As NESCOE discussed in its Formal Challenge, New England Power and Rhode Island Energy also have expense for incentive compensation based on financial targets, but do not recover those costs through their contributions to the Annual Update.<sup>10</sup> However, CMP’s formula rate in all respects relevant here is identical to New England Power and Rhode Island Energy. Worksheet 4 of Appendix A to Attachment F of the OATT applies to all NETOs, not just CMP, and thus contains the same references to Accounts 920 through 935 for New England Power and Rhode Island Energy. Account 920 for New England Power and Rhode Island Energy are also subject to the same Uniform System of Accounts that apply to CMP. However, New England Power and Rhode Island Energy do not recover their costs for incentive

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<sup>7</sup> See CMP Motion to Dismiss and Answer, at 6–11.

<sup>8</sup> FERC, Staff Guidance on Formula Rate Updates at 5 (July 17, 2014), available at <https://www.ferc.gov/sites/default/files/2020-04/staff-guidance.pdf> (“Such inputs include, but are not limited to... administrative and general expense account balances that are often required by the formula to be adjusted...”).

<sup>9</sup> On that matter, CMP’s arguments that the relevant line of the worksheet at issue references Account 920, among other FERC accounts, and that CMP’s recording of its executive compensation in Account 920, in and of itself, says little about the appropriateness of flowing those costs through to CMP’s customers. CMP’s recordation of these amounts in Account 920 is a reporting exercise and those amounts and their component parts have not been specifically examined by the Commission for cost recovery prior to NESCOE’s Formal Challenge here.

<sup>10</sup> See Formal Challenge, at 11.

compensation based on financial targets for their formula rate but CMP does.<sup>11</sup> That discrepancy demonstrates aptly that CMP’s inclusion of those costs is due to its own decision making in ultimately reporting the expense in its Administrative and General Expense input, rather than any hard-coded feature of the formula rate.

Moreover, the cases that CMP cites for the proposition that NESCOE’s Formal Challenge is an attack on the formula rate itself are inapposite. CMP relies on the decision on *Ameren Illinois Company* and the D.C. Circuit Court’s decision in *East Texas Electric Cooperative, Inc. v. FERC*. In *Ameren Illinois*, the challenging parties alleged that “Ameren Illinois has inappropriately included Account 190 items related to its generation and distribution functions.”<sup>12</sup> However, the Commission held that the “formula rate requires that Account 190 be allocated to transmission via the Net Plant allocator” and held that the challenge was an attack on the formula rate, which required a Section 205 or 206 filing.<sup>13,14</sup> The issue in *Ameren Illinois* was that the challengers challenged an allocation factor that was specifically set forth in the formula rate. In this matter, however, there is no provision of the formula rate that specifically provides that CMP may recover its expense for incentive compensation based on financial targets through its Administrative and General Expense. The other case upon which CMP relies, *East Texas Electric Cooperative*, is distinguishable for the same reason—the formal challenge sought to challenge the utility’s allocation of costs that was specifically governed by an

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<sup>11</sup> See Formal Challenge, at 11.

<sup>12</sup> *Ameren Illinois Company*, 156 FERC ¶ 61,209, P 28 (2016).

<sup>13</sup> *Id.* at P 33.

<sup>14</sup> CMP further notes that the Commission also rejected a challenge to franchise fees recovered through the formula rate. Notably, this challenge was based on the idea that these were distribution-company-specific expenses and the Commission may have rejected it in large for the same reason as it rejected the aforementioned challenge. See *Ameren Illinois Company*, 156 FERC ¶ 61,209, at PP 46–50.

allocation factor that was part of the formula rate.<sup>15</sup> Specifically, the D.C. Circuit Court in *East Texas Electric Cooperative* held “[t]he inclusion of the disputed coal-related costs in determining the charged rate was dictated by the Formula Rate, which applied an allocation factor to apportion transmission costs from the General Plant account. Petitioners’ opposition to the use of an allocation factor is an objection to the cost-based formula, which must be raised in a separate action under Section 206.”<sup>16</sup> Again, this decision does not apply to NESCOE’s Formal Challenge here, which challenges costs that are included as part of an input and not specifically referenced anywhere in CMP’s formula rate.

**B. NESCOE’s Formal Challenge Is Not Beyond the Scope of the Transmission Formula Rate Protocols.**

CMP also makes a related argument that NESCOE’s challenge to an input is beyond the scope of the Transmission Formula Rate Protocols. As a general matter, the Commission’s precedent on formula rates is to allow interested parties to challenge the inputs to the formula rate in a formal challenge. The Commission’s decision in *Constellation* provided, “[p]arties can challenge the inputs to the formula rate in the same way as they can challenge costs in a stated rate case....”<sup>17</sup> The Commission also recently affirmed as to the Transmission Formula Rate Protocols that, as to the information exchange period, the “information and document requests shall not otherwise be directed to ascertaining whether the Formula Rate is just and reasonable,’ *but it is appropriate to request information related to whether the inputs to the formula rate are just and reasonable, including the prudence of expenditures.*”<sup>18</sup> The clear reason for this rule is

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<sup>15</sup> See *East Tex. Elec. Coop., Inc. v. FERC*, 90 F.4th 579, 590 (D.C. Cir. 2024).

<sup>16</sup> *Id.*

<sup>17</sup> *Constellation Mystic Power*, 179 F.E.R.C. ¶ 61,011, at P 25.

<sup>18</sup> *ISO New England, Inc.*, 192 FERC ¶ 61,234, at P 42 (2025) (emphasis added), citing *Constellation Mystic Power*, 179 FERC ¶ 61,011, at P 25.

that a formula rate can only be just and reasonable if interested parties are afforded an opportunity to review the inputs and bring challenges if the costs are not prudent or should not be appropriately borne by its customers, provided that those challenges do not challenge the formula rate itself.

Notwithstanding this precedent, CMP argues that NESCOE’s formal challenge is beyond the scope of the Transmission Formula Rate Protocols because it is not within the scope of the types of challenges specifically listed under § VI.2.a.<sup>19</sup> However, the purpose of § VI.2.a is to describe the disclosures necessary in a formal challenge rather than limit formal challenges to only a few select topics. In particular, § VI.2.a.iii provides that the formal challenge shall set forth “the business, commercial, economic or other issues presented by the action or inaction as such relate to or affect the party filing the Formal Challenge, which will include the following items, *where applicable...*”<sup>20</sup> Many of the other provisions of § VI.2.a. concern disclosures in the formal challenge, such as quantifying the financial impact, disclosing whether the issues are pending in another proceeding, and stating whether the challenging party used the informal challenge procedures set forth in the Transmission Formula Rate Protocols.<sup>21</sup> § VI.2.a is not intended to roll back or limit the Commission’s typical rule that parties may challenge the inputs to a formula rate.

Notably, § V.1, which governs the scope of the information exchange process, makes clear that interested parties can broadly investigate the inputs in the NETOs’ formula rates. Specifically, § V.1. states that “Interested Parties may also submit reasonable discovery requests to the PTO(s) *for any other information that may have an effect on the calculation of the charge*

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<sup>19</sup> See CMP Motion to Dismiss and Answer, at 12–13.

<sup>20</sup> Transmission Formula Rate Protocols, § VI.2.a.iii (emphasis added).

<sup>21</sup> See *id.*

*pursuant to the Formula Rate.*”<sup>22</sup> This section demonstrates that Transmission Formula Rate Protocols function consistently with the Commission’s precedent—a party may not challenge the formula rate itself, but it may challenge the calculation of the formula rate’s inputs.

Accordingly, because NESCOE’s Formal Challenge challenges an input to CMP’s formula rate and not the formula rate itself, it is within the scope of the Transmission Formula Rate Protocols and the Commission should decide it on the merits.

### **III. NESCOE’S RESPONSE TO CMP’S ANSWER**

CMP’s Answer addresses the merits of NESCOE’s Formal Challenge. Although CMP concedes that “incentive compensation tied to economic metrics may benefit shareholders,” CMP argues that it is nonetheless appropriate for customers, rather than shareholders, to bear these costs.<sup>23</sup> As described below, CMP’s Answer raises arguments that the Commission previously rejected in *Pacific Gas and Electric*, unsuccessfully attempts to distinguish *Pacific Gas and Electric*, and argues unpersuasively that one of its financial targets in its incentive compensation plans provides customer benefits. CMP’s Answer also argues that the Commission should decline to grant NESCOE’s alternative relief. As discussed below, the Commission should reject all of these arguments.

#### **A. CMP’s Answer Raises Arguments That the Commission Rejected in *Pacific Gas and Electric*.**

As an initial matter, CMP’s answer raises arguments that the Commission rejected in *Pacific Gas and Electric*. CMP argues that metrics based on financial targets encourage a financially healthy utility, which provides benefits to customers in terms of access to and a lower

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<sup>22</sup> *Id.* at § V.1 (emphasis added); see also *ISO New England*, 192 FERC ¶ 61,234, at P 43 (compelling information where the Commission found that, *inter alia*, the requested “information that may have an effect on the calculation of the charge pursuant to the Formula Rate.”).

<sup>23</sup> See CMP Motion to Dismiss and Answer, at 23.

cost of capital.<sup>24</sup> However, as NESCOE pointed out in its Formal Challenge, the Administrative Law Judge in *Pacific Gas and Electric* specifically rejected this line of argument, holding that “if PG&E can recover STIP payments attributable to the company’s financial performance on the ground that such incentives help the company to raise capital, then PG&E can recover any payments that benefit shareholders regardless of whether the payments are for activities that directly benefit ratepayers.”<sup>25</sup> The Administrative Law Judge recognized that asking customers to bear the costs of incentives based on utility financial health creates a slippery slope whereby the utility can justify passing nearly any payments for shareholders onto customers because they will inevitably make the utility healthier. Those arguments apply with equal force to CMP’s request to recover its expense for incentive compensation based on financial targets here, as they could be used to justify collecting any charge from its customers.

**B. A Formula Rate Does Not Remove the “Tension” Created by Tying Employee Incentives to Utility Financial Performance.**

CMP also attempts to distinguish *Pacific Gas and Electric*. Its attempt is similarly unavailing. CMP argues that its formula rate resolves the “tension” between operational and financial goals because “operational efficiencies” are returned to customers when the formula rate is reconciled.<sup>26</sup> CMP’s rationale, however, ignores that utility decision-making can inure to the detriment of customers in a myriad of other ways when its employees are motivated to balance maximizing profits with providing service. As but one example, NETOs are given almost unilateral discretion in making capital investments in the transmission system, and utility decision-makers motivated by financial gain may pursue more costly alternatives if they feel that

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<sup>24</sup> See CMP Motion to Dismiss and Answer, at 23–24.

<sup>25</sup> *Pacific Gas and Elec. Co.*, Initial Decision, 165 FERC ¶ 63,001, at P 848 (2018), *affirmed by Pacific Gas and Elec. Co.*, Opinion No. 572, 173 FERC ¶ 61,045, at P 239 (2020).

<sup>26</sup> CMP Motion to Dismiss and Answer, at 28–29.

it is to the utility's benefit. Financial targets also indirectly discourage transparency in communications with stakeholders, because transparency into a utility's rates could lead to challenges which ultimately affect the utility's bottom line. In addition, even where customer and shareholder benefits are not directly in conflict, providing financial rewards based on utility finances motivates company employees to spend valuable employee time on matters that best maximize utility profits rather than those that might provide more direct benefits to customers. In short, there are countless ways in which rewarding employees for prioritizing the company's financial gain will lead to results that are detrimental to customers, regardless of whether the company has a formula rate or has rates set via traditional ratemaking. The "tension" identified by *Pacific Gas and Electric* very much continues to exist, notwithstanding that the costs are recovered through a formula rate rather than through traditional cost-of-service ratemaking.

**C. CMP's Financial Targets Are Designed to Enrich Avangrid, Not Drive Efficiency Improvements.**

CMP also claims that one of its financial targets, [BEGIN CUI//PRIV] [REDACTED] [REDACTED] [END CUI//PRIV], provides customer benefits when the utility has a formula rate because it encourages employees to create operational efficiencies, which the utility then flows back to customers as cost savings.<sup>27</sup> This argument, however, is misleading for several reasons.

First, the APA plan, which represents the majority of the incentive compensation expense that NESCOE challenges here, does *not* include a financial target for [BEGIN CUI//PRIV] [REDACTED] [END CUI//PRIV]. Rather, it includes financial targets for the [BEGIN CUI//PRIV] [REDACTED]

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<sup>27</sup> CMP Motion to Dismiss and Answer, at 24.

[END CUI//PRIV]<sup>28</sup> Obviously, neither [BEGIN CUI//PRIV] [REDACTED]

[REDACTED]

[REDACTED] [END CUI//PRIV]. Accordingly, CMP’s “operational efficiency” arguments regarding this particular financial target do not apply at all to the amounts that NESCOE challenges attributable to the APA. The financial target is not designed to drive operational efficiencies, but rather, to enrich Avangrid’s shareholders.

Second, any customer benefits provided by [BEGIN CUI//PRIV] [REDACTED] [REDACTED] [END CUI//PRIV] target in the EVP are speculative. For one, benefits can only be achieved if CMP’s cuts are to above-the-line expenses that are recoverable through FERC-jurisdictional rates. Cuts to expenses not recovered through the formula rate will not be “flowed back” to customers. Importantly, CMP does not provide a single example of an operational efficiency that CMP believes that it achieved through its EVP in its Motion to Dismiss and Answer or its supporting affidavit. Without knowledge of what costs were cut, it is impossible to judge whether the changes allegedly motivated by the EVP—even assuming that they exist at all—have helped or hurt customers. In any event, even if the Commission did credit CMP’s arguments regarding the EVP, which it should not, the EVP represents less than 10 percent of the amounts that NESCOE challenges here.<sup>29</sup> Accordingly, CMP’s arguments regarding the **BEGIN**

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<sup>28</sup> See CMP Motion to Dismiss and Answer, at 19–20; Formal Challenge, Attachment 4, Slater Aff., at Exh. NESCOE-MMS1.

<sup>29</sup> As described in the Affidavit of Michele Slater included with NESCOE’s Formal Challenge, NESCOE challenges a total of [BEGIN CUI//PRIV] [REDACTED] [END CUI//PRIV] for the amounts expensed and capitalized, respectively, for the APA and a total of [BEGIN CUI//PRIV] [REDACTED] [REDACTED] [END CUI//PRIV] for the amounts expensed and capitalized, respectively, for the EVP. See Formal Challenge, Attachment 4, Slater Aff., at ¶¶ 16(a) and 16(c).

CUI//PRIV] [REDACTED] [END CUI//PRIV] target are, at best, a basis to very slightly reduce NESCOE's requested disallowance, not reject it entirely as CMP asks.

**D. NESCOE's Alternative Relief Is Appropriate.**

In its Formal Challenge, NESCOE requested that the Commission open a Section 206 proceeding on its own Motion if it found that it could not deny the disputed expenses without a change to the formula rate. CMP asserts essentially two arguments in opposition to this alternative relief.

First, CMP argues that the Commission should instead require NESCOE to file a Section 206 complaint whereby NESCOE would have to show that CMP's incentive compensation was not just and reasonable in the "context of a utility's overall labor expenses."<sup>30</sup> However, the inquiry that CMP suggests is vastly different than the Administrative Law Judge's inquiry in *Pacific Gas and Electric*. As discussed in NESCOE's Formal Challenge and *supra*, the Administrative Law Judge found that the portion of the utility's incentive compensation program applicable to financial targets did not benefit customers, so he disallowed that portion and allowed the portion that actually provided benefits to customers to be recovered in rates.<sup>31</sup>

CMP relies on the Commission's decision in *Constellation Mystic Power* for its argument that incentive compensation based on financial targets should be evaluated in the context of the utility's labor expenses at large.<sup>32</sup> The specific language that CMP relies on concerns a prior NESCOE proposal for a "cost cap" on incentive compensation, which would affect reasonable

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<sup>30</sup> See CMP Motion to Dismiss and Answer, at 31.

<sup>31</sup> *Pacific Gas and Elec.*, Initial Decision, 165 FERC ¶ 63,001, at PP 844–64, *affirmed by Pacific Gas and Elec.*, 173 FERC ¶ 61,045 at P 239.

<sup>32</sup> CMP Motion to Dismiss and Answer, at 31, *citing Constellation Mystic Power*, 165 FERC ¶ 61,267, at P 87.

charges for incentive compensation, even if those costs were high.<sup>33</sup> Here, however, for its alternative relief, NESCOE does not ask for a cost cap that could lead to limiting expenses that may be high but are ultimately just and reasonable. Rather, NESCOE asks for a laser-like change to Worksheet 4 that would specifically target only the portion of a utility’s incentive compensation based on financial targets—which the Commission has found to not benefit customers. This adjustment would be specifically designed to make clear that the adjustment in *Pacific Gas and Electric* applies to the NETOs’ Administrative and General Expense.

Second, CMP argues that NESCOE has not met its burden to show that the rate is not just and reasonable. CMP does not specify, however, what additional information is lacking that NESCOE would need to show. CMP admits that it incurs expenses for incentive compensation based on financial targets and that it recovers those expenses through its formula rate. In addition, NESCOE has quantified the amount of that expense based on financial targets and CMP does not appear to dispute the NESCOE’s calculations themselves.<sup>34</sup>

Moreover, in the event that any other information is required, NESCOE would note that CMP objected to most of NESCOE’s information requests concerning incentive compensation during the information exchange period and only provided a portion of this withheld information following NESCOE’s service of its Informal Challenge.<sup>35</sup> If more information is required, CMP should not be allowed to put NESCOE and other interested stakeholders in a “Catch 22”

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<sup>33</sup> Compare *Constellation Mystic Power*, 165 FERC ¶ 61,267, at PP 85–86 with CMP Motion to Dismiss and Answer, at 31, citing *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267, at P 87. In *Constellation Mystic Power*, the Commission also rejected a NESCOE request to adopt a formula rate that would expressly bar incentive compensation based on financial targets on the grounds that such a challenge should be made in the “true up” process. See *Constellation Mystic Power*, 165 FERC ¶ 61,267, at PP 81, 86–88. By filing a formal challenge here, NESCOE has sought to appropriately challenge the costs in the Transmission Formula Rate Protocols’ analogue to the “true up” in *Constellation Mystic Power*.

<sup>34</sup> See CMP Motion to Dismiss and Answer, at 19–20; Formal Challenge, Attachment 4, Slater Aff., at ¶¶ 15–16.

<sup>35</sup> See Formal Challenge, at 3–4.

situation where they are held to meet an evidentiary burden that they cannot meet because there is no means to discover the evidence that could meet it—evidence which is wholly in the possession of CMP.<sup>36</sup>

#### IV. CONCLUSION

For the reasons described herein, NESCOE respectfully requests that the Commission grant NESCOE’s requested relief.

Respectfully Submitted,

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<sup>36</sup> See *ISO-NE Inc.*, 192 FERC ¶ 61,234, at P 38 (2025) (holding that challenger made good faith effort to quantify the financial impact of its formal challenge where its formal challenge alleged that the relevant NETOs did not adequately respond to the challenger’s request for information, as “any quantification would depend on information Identified NETOs had not yet provided”).

## 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 Osterville, Massachusetts this 7th day of April, 2026.

*/s/ Nathan Forster*

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