

**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 AND RESPONSE TO EVERSOURCE ENERGY  
SERVICE COMPANY'S RESPONSE TO ITS FORMAL CHALLENGE**

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 and Response to the Eversource Energy Service Company Response to the Formal Challenge of the New England States Committee on Electricity (the "Response" or "Eversource Response").

Eversource's Response is without merit. Eversource's Response first invents procedural hurdles to NESCOE's Formal Challenge that do not exist, including those that are the same type that the Commission rejected in its recent order on the formal challenge brought by the Maine Office of the Public Advocate (the "Maine OPA"). On the merits, Eversource's Response almost completely ignores the evidence that NESCOE presented in its Formal Challenge. In its Formal Challenge, NESCOE demonstrated that Eversource, as evidenced by its own statements to its shareholders, weighs company financial targets such as earnings per share much more highly than targets on operational goals that provide benefits to customers. NESCOE also quantified a reasonable estimate of the Eversource Entities' incentive compensation expense specifically attributable to these financial targets, and thus its Formal Challenge would leave the Eversource

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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.

Entities' expense for incentive compensation attributable to operational goals intact and recoverable through the formula rate. Eversource does not provide any evidence that directly disputes any of NESCOE's evidence, nor can it, as NESCOE's evidence is simply taken from Eversource's own statements to its shareholders.

Thus, for the reasons described below, the Commission should allow NESCOE leave to answer, reject Eversource's claims in the Response, and grant the relief that NESCOE requested in its Formal Challenge.

## **I. MOTION FOR LEAVE TO ANSWER**

While the Commission's rules do not permit answers to answers "unless otherwise ordered by the decisional authority,"<sup>2</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>3</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, Eversource makes new arguments and cites authority that the Eversource Entities did not include in their Written Responses to NESCOE's Informal Challenge. Indeed, the Eversource Entities' Written Responses concerning the issues raised in NESCOE's Informal Challenge did not cite *any* decisions from the Commission, so NESCOE did not have notice or an opportunity to respond to Eversource's views on Commission precedent until the instant

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

<sup>3</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.").

filing.<sup>4</sup> NESCOE, through 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 EVERSOURCE’S RESPONSE

### A. NESCOE’s Formal Challenge Appropriately Challenges an Input to the Eversource Entities’ Formula Rates.

Eversource’s principal argument is that NESCOE’s Formal Challenge is an “impermissible attempt to modify the Formula Rate.”<sup>5</sup> Eversource’s position, however, is at odds with the consistent Commission view that “acceptance of a formula rate constitutes acceptance of the formula, but not the inputs to the formula” and that 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> Although Eversource agrees that “the Protocols *do* permit certain types of challenges to inputs,” it claims that NESCOE’s Formal Challenge is not one of those types.<sup>7</sup>

As an initial matter, Eversource offers an overly restrictive reading of the Transmission Formula Rate Protocols. Eversource argues that NESCOE’s Formal Challenge is impermissible because it does not fall “under the permissible categories of Formal Challenges detailed in Section VI.2.a.iii of the Protocols.”<sup>8</sup> However, Section VI.2.a.iii in no way limits the types of challenges that a challenger can make to an input to the formula rate. Rather, Section VI.2.a.iii is a disclosure requirement. Section VI.2.a.iii states that the complainant must “[s]et forth the business, commercial, economic or other issues presented by the action or inaction as such relate to or affect

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<sup>4</sup> See Formal Challenge, Attachment 7, Written Responses of CL&P, NSTAR East, NSTAR West, and PSNH

<sup>5</sup> Eversource Response, at 1.

<sup>6</sup> Formal Challenge, at 10–11, citing *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,011, at P 25 (2022) (citing *Appalachian Power Co.*, 23 FERC ¶ 61,023, at 61,088 (1983)).

<sup>7</sup> Eversource Response, at 9 (emphasis in original).

<sup>8</sup> Eversource Response, at 8.

the party filing the Formal Challenge, which will include the following items, *where applicable*: ...”<sup>9</sup>

As the plain text provides, a Formal Challenge must only provide information on the sub-categories “where applicable.” Indeed, NESCOE has provided information applicable to its Formal Challenge, including “other information that may reasonably have substantive effect on the calculation of the charge pursuant to the Formula Rate” as prescribed in Section VI.2.A.iii(j).

The Commission recently rejected a similar argument that Eversource made in an attempt to evade a formal challenge brought by the Maine OPA. In the formal challenge, the Maine OPA challenged Eversource and certain other NETOs for failing to fully respond to certain information requests concerning the prudence of their asset condition projects.<sup>10</sup> Eversource, along with certain other NETOs, argued that the formal challenge was improper because Section VI.1 of the Transmission Formula Rate Protocols required the Maine OPA “to specify an input or cost or name a specific transmission owner in the Informal Challenge,” and it had not done so.<sup>11</sup> The Commission rightly rejected this argument, noting that Section VI.1 provided that a challenger “specify the inputs, supporting explanations, allocations, calculations, or *other information* to which it objects, and provide an appropriate explanation and documents, as applicable, to support its challenge.”<sup>12</sup> The Commission found that the Maine OPA had provided the “other information” that was relevant to its formal challenge and ultimately granted the formal challenge in part, compelling Eversource and the other objecting NETOs to respond to several of the Maine OPA’s information requests.<sup>13</sup> Here, just as Eversource attempted to read “other information” out of Section VI.1 in that case, it now seeks to read “where applicable” out of Section VI.2.a.iii to

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<sup>9</sup> Transmission Formula Rate Protocols, § VI.2.a.iii (emphasis added).

<sup>10</sup> *ISO-NE Inc.*, 192 FERC ¶ 61,234, P 7 (2025).

<sup>11</sup> *Id.* at P 35.

<sup>12</sup> *Id.* (emphasis in original).

<sup>13</sup> *Id.* at PP 2, 35.

again engineer an artificially narrow reading of the Transmission Formula Rate Protocols. Like the Maine OPA in *ISO-NE*, NESCOE has provided the relevant information “where applicable” and Eversource’s objection is without merit.

In addition, contrary to Eversource’s contention,<sup>14</sup> the reference in the formula rate template to Account 920 (which is just one of the sixteen accounts referenced in the input) next to the challenged input does not transform NESCOE’s challenge from an otherwise proper input challenge to an improper challenge to the formula rate. The Commission has clarified that challenges to inputs are permissible and are *not* challenges to the formula rate even where the input references a FERC account number and the utility filled out the input using the relevant numbers from the applicable FERC account(s). Specifically, in *Kansas Elec. Power Coop., Inc. v. Evergy Kan. Cent., Inc.*, the challenger brought a formal challenge and complaint against a utility challenging, *inter alia*, the utility’s collection of amortization expense of several regulatory assets through a formula rate.<sup>15</sup> The utility argued that that it had properly populated the relevant inputs in its formula rate in “reference to those FERC Form No. 1 amounts” and that “it would violate the filed rate if it did not include these amounts” in its formula rate.<sup>16</sup> The Commission found for the challenger on the issue, reasoning that the Commission’s approval of the formula rate was not “approval to recover amounts booked to a regulatory asset because the [formula rate] specifies the FERC account in which the amortized balance of the regulatory asset has been recorded.”<sup>17</sup> In making this holding, the Commission reiterated that “in approving any formula rate, the Commission approves the formula itself, the

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<sup>14</sup> See Eversource Response, at 1–2, 7–8.

<sup>15</sup> 175 FERC ¶ 61,044, at PP 1, 28 (2021), *affirmed on reh’g by Kansas Elec. Power Coop. v. Evergy Kan. Cent., Inc.*, 176 FERC ¶ 61,083 (2021); see also *Ameren Corp.*, 147 FERC ¶ 61,225, P 37 (2014) (explaining on rehearing that the Commission could deny recovery of amounts recorded for goodwill in formula rate even though the accounting was proper because, *inter alia*, “accounting does not dictate ratemaking.”).

<sup>16</sup> *Kansas Elec. Power Coop.*, 175 FERC ¶ 61,044, at P 32.

<sup>17</sup> *Id.* at P 44.

algebraic equation used to calculate the rates. It does not approve the inputs into the formula or the charges resulting from the application of the inputs to the algebraic equation.”<sup>18</sup> Similarly, here, NESCOE’s Formal Challenge is not a challenge to the formula rate simply because it challenges an input that includes a reference to a number associated with certain FERC accounts.

Finally, in further support of its claim that some challenges to formula rate inputs are improper and some are not, Eversource relies on the D.C. Circuit Court of Appeals decision in *East Texas Electric Cooperative, Inc. v. FERC*, 90 F.4th 579, 590 (D.C. Cir. 2024), which Eversource states “explains why NESCOE’s challenge is improper.”<sup>19</sup> Eversource’s reliance on *East Texas*, however, is misplaced because the issue with the formal challenge brought in that case is inapposite here.

The complainants in *East Texas* challenged certain coal-related costs, arguing that they were generation costs inappropriately included in transmission rates.<sup>20</sup> The fatal flaw with this challenge, which both the Commission and the D.C. Circuit Court of Appeals recognized, is that the formula rate included an allocation factor specifically designed to allocate a portion of the total costs to transmission, leaving the estimated non-transmission costs (including the coal-related costs) to be recovered outside of transmission rates.<sup>21</sup> The relevant statements of the D.C. Circuit Court of Appeals’ decision in *East Texas* explaining its reasoning and quoted in full<sup>22</sup> are as follows:

The 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

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<sup>18</sup> *Id.*

<sup>19</sup> Eversource Response at 9, citing *East Tex. Elec. Coop., Inc. v. FERC*, 90 F.4th 579, 590 (D.C. Cir. 2024).

<sup>20</sup> *East Texas*, 90 F.4th at 590.

<sup>21</sup> See *id.*; *Southwest Power Pool*, 180 FERC ¶ 61,161, at P 21.

<sup>22</sup> In its Response, Eversource selectively quotes only snippets of the above sentences, omitting the phrase “which applied an allocation factor to apportion transmission costs from the General Plant account,” and thereby avoiding the phrase that demonstrates the crucial difference between *East Texas* and the matter presently before the Commission. See Eversource Response, at 10.

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>23</sup>

Thus, the issue in *East Texas* was that the complainant's formal challenge conflicted with an allocation factor expressly set forth in the formula rate (*i.e.*, a part of the "algebraic equation used to calculate the rates"). Similarly, the Commission on rehearing in the underlying case acknowledged that it allows challenges to the inputs of a formula rate, but that a challenge goes too far when it challenges a feature of the formula rate itself and not just an input:

Joint Customers allege that the Commission did not address precedent allegedly supporting their argument that "inputs must be just and reasonable even if the cost is included in an account used in the formula rate." However, such precedent is not relevant here where Joint Customers are not challenging whether the costs of the coal mining assets and rail car facilities themselves were imprudently incurred or otherwise unjust and unreasonable, but instead are challenging the justness and reasonableness of the formula rate itself (*specifically, whether costs of the coal mining assets and rail car facilities should be allocated in part to the transmission revenue requirement, as the formula provides*). The Commission's determination focused exclusively on whether Joint Customers' Formal Challenge regarding the formula rate's treatment of costs of the coal mining assets and rail car facilities was permissible under the AEP West Protocols. As discussed in the March 2022 Order and above, section 5(c) of the AEP West Protocols does not allow for this type of challenge through the Formal Challenge procedures.<sup>24</sup>

As the above quote reflects, the allocation of transmission and non-transmission expense was expressly governed by the formula rate, thus challenging an input on the grounds that the input in fact includes charges that should be attributable to generation is a challenge to the formula rate.

NESCOE agrees that if the formula rate here included a factor that removed an estimate of Eversource's incentive compensation expense based on financial targets, and NESCOE then challenged the input on the grounds that the estimate was insufficient to remove the *actual* incentive compensation expense based on financial targets, that hypothetical challenge would be an impermissible attack on the formula rate. However, there is no such factor here, as the

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<sup>23</sup> *Southwest Power Pool*, 180 FERC ¶ 61,161, at P 21.

<sup>24</sup> *Id.* (emphasis added).

Eversource Entities' formula rate says absolutely nothing about the recovery of expense for incentive compensation based on financial targets. Rather, the Eversource Entities decided unilaterally to include those expenses as part of a much larger category of expenses—namely, its Administrative and General Expense—and no tariff language gives the Eversource Entities explicit permission to include those expenses in that input. Indeed, the fact that at least two NETOs *do not* include expense for incentive compensation based on financial targets in the input, despite in fact incurring that expense, reflects that recovery of expense for incentive compensation based on financial targets is not itself a feature of the formula rate.<sup>25</sup> Accordingly, it is permissible for NESCOE to challenge the inclusion of that expense in a Formal Challenge.

Lastly, Eversource argues in a footnote that the Commission in *Southwest Power Pool* also relied on tariff language similar to language in the Transmission Formula Rate Protocols in New England to find that the *Southwest Power Pool* formal challenge was beyond the scope of the protocols applicable in that case.<sup>26</sup> However, the relevant tariff language in *Southwest Power Pool*—Section 5(c) of the AEP West Protocols—provides that “Preliminary and Formal Challenges shall be limited to issues that may be necessary to determine” certain identified issues.<sup>27</sup> There is no analogue to Section 5(c) in New England’s Transmission Formula Rate Protocols, as no language therein expressly limits Formal Challenges to a particular list of

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<sup>25</sup> In its Response, Eversource characterizes National Grid and RIE’s decision not to include expense for incentive compensation based on financial targets as part of their Administrative and General Expense in their formula rate as “accommodations, which are essentially settlements to avoid formal disputes...” Eversource Response at 13. To the extent that Eversource means to imply that National Grid and RIE removed these expenses from their rates to avoid a challenge from NESCOE or others, that implication is not supported by the record. As described in NESCOE’s Formal Challenge, National Grid reported that it does not include the expense in FERC-jurisdictional rates in discovery. Formal Challenge, at 12. Similarly, although RIE removed the expense following an informal challenge from NESCOE, RIE represented that the expense was included “in error”—not that it was removing the expense to avoid a formal challenge. *Id.*

<sup>26</sup> Eversource Response, at 11 n.30.

<sup>27</sup> SPP, OATT, Sixth Revised Vol. No. 1, attach. H, add. 4, pt. 2, § 5(c) (available at <https://sppviewer.etariff.biz/tariff>, last checked May 4, 2026).

delineated issues. Eversource claims that Section VI.2.a.iii in the New England Transmission Formula Rate Protocols is an analogue to Section 5(c) of AEP West Protocols, but in actuality, it is Section 5(b)(iii) in the AEP West Protocols that is the real mirror image of Section VI.2.a.iii.<sup>28</sup> As described *supra*, Section VI.2.a.iii in the New England Transmission Formula Rate Protocols are disclosure requirements, and Section 5(b) functions similarly in the AEP West Protocols. Indeed, if Section 5(b) of the AEP West Protocols functioned the way that Eversource claims that Section VI.2 functions, then Section 5(c) would be rendered redundant. Accordingly, Eversource’s argument that NESCOE’s Formal Challenge is beyond the scope of the Transmission Formula Rate Protocols is without merit, and the Commission should decide the merits of NESCOE’s Formal Challenge.

**B. NESCOE Demonstrated That Eversource’s Financial Targets Do Not Benefit Ratepayers.**

Turning to the substance of NESCOE’s Formal Challenge, Eversource claims that NESCOE has not developed a sufficient factual record to establish that Eversource’s financial targets do not provide benefits to ratepayers. Specifically, Eversource seeks to distinguish the Commission’s decision in *Pacific Gas and Electric* from NESCOE’s Formal Challenge because in that case “the relevant costs were extensively examined at hearing,” suggesting that the factual record here is insufficient for an unspecified reason.

Eversource’s claims are without merit because the relevant facts are all apparent on the face of the Proxy Statement. As the Proxy Statement reflects, 60.8 percent of its expense for incentive compensation is based on financial targets, which Eversource does not appear to

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<sup>28</sup> Compare Eversource Response, at 11 n.30 with SPP, OATT, Sixth Revised Vol. No. 1, attach. H, add. 4, pt. 2, § 5(b) (available at <https://sppviewer.etariff.biz/tariff>, last checked May 4, 2026).

dispute.<sup>29</sup> The Proxy Statement also includes the individual targets that make up the financial targets and how much each are weighted. Specifically, the Proxy Statement reflects that “Earnings Per Share” is weighted at 60%, “Dividend Growth” is weighted at 10%, and “Strategic Growth Initiatives” is weighted at 30%.<sup>30</sup> Although Eversource takes issue with NESCOE’s interpretation of the Proxy Statement, importantly, nowhere in its supporting affidavit or elsewhere does Eversource claim that NESCOE’s calculation of the ratio of operational goals to financial targets is inaccurate or incomplete.<sup>31</sup> Nor does Eversource appear to contest NESCOE’s quantification of the amount of incentive compensation based on financial targets that the Eversource Entities include in their contributions to the Annual Update.

NESCOE has similarly provided sufficient evidence that these amounts do not provide benefits to ratepayers. In *Pacific Gas and Electric*, the Commission found that a factor measuring “Earnings from Operations” did not benefit customers and instead benefited shareholders.<sup>32</sup> NESCOE has shown that Eversource’s incentive compensation plan includes the metrics “Earnings Per Share” and “Dividend Growth.”<sup>33</sup> These metrics are not meaningfully

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<sup>29</sup> Formal Challenge, at 7.

<sup>30</sup> Formal Challenge, Attachment 5, at 52.

<sup>31</sup> Eversource employee Sasha Lazor states in his affidavit that Eversource uses individualized goals to determine the levels of incentive compensation for its executives named in the Proxy Statement as well as its vice presidents. Affidavit of Sasha Lazor, at 5–6. However, he stops short of disputing NESCOE’s calculation of the ratio between the amount of Eversource’s variable compensation attributable to operational targets and the amount attributable to financial targets or claiming that that proportion is not generally applicable to Eversource’s vice presidents and above—which is the relevant factual issue raised by the Formal Challenge. *See id.* Indeed, the Proxy Statement clearly states that its “Compensation Discussion and Analysis” applies to Eversource’s “named executive officers” and that Eversource’s committee specifically determined that its “weighted financial performance goals result was 76 percent, and the weighted operational performance result was 49 percent.” Formal Challenge, Attachment 5, at 47. In addition, although Mr. Lazor claims that NESCOE misreads a statement in the Proxy Statement suggesting that named executive officers and its vice presidents are treated exactly the same for variable compensation purposes, he goes on in the next paragraph to state that the variable compensation for named executives and vice presidents are determined “similarly” without any discussion about what, if anything, differentiates them. *See* Affidavit of Sasha Lazor, at 6–7.

<sup>32</sup> *Pacific Gas and Elec. Co.*, 165 FERC ¶ 63,001 at PP 842–47.

<sup>33</sup> *See* Formal Challenge, at 6–7.

different than the “Earnings from Operations” metric challenged in *Pacific Gas and Electric* and Eversource does not appear to contend to the contrary. Indeed, these two metrics self-evidently provide an incentive for utility employees to chase shareholder profits over customer benefits, especially given the fact that they are weighed more than 50 percent more heavily than operational goals (another fact that Eversource apparently does not contest) that do provide customer benefits.<sup>34</sup> In addition, the regulatory outcomes that are the basis of “Strategic Initiatives and Regulatory Outcomes” are also listed on the Proxy Statement and are heavily-slanted towards regulatory outcomes in rate cases and other cost recovery proceedings in terms of their financial benefits to Eversource.<sup>35</sup> Accordingly, Eversource’s argument that the Commission lacks a sufficient factual record to grant NESCOE’s Formal Challenge is without merit.

**C. NESCOE’s Formal Challenge Is Fully Consistent with the Cases that Eversource Cites When Those Cases Are Properly Construed.**

In addition to Eversource’s challenges to NESCOE’s evidence, Eversource also cites several cases in an attempt to evade the application of the Commission’s holding in *Pacific Gas and Electric*. However, the holdings of the cases that Eversource cites in its Response are, when properly construed, consistent with the Commission’s decision in *Pacific Gas and Electric* and NESCOE’s Formal Challenge.

First, Eversource cites *Williams Natural Gas Co.*, 77 FERC ¶ 61,277 (1996).<sup>36</sup> In *Williams*, the Commission allowed costs for cash awards and stock awards to executives “based

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<sup>34</sup> See *id.*, at 10.

<sup>35</sup> See *id.*, Attachment 5, at 52.

<sup>36</sup> Eversource Response, at 15, citing *Williams Natural Gas Co.*, 77 FERC ¶ 61,277 (1996).

upon each individual executive’s achievement of specific performance objectives.”<sup>37</sup> There was, however, no claim in *Williams* that these awards were based on financial targets. Accordingly, *Williams* stands for no more than the general proposition that reasonable incentive compensation based on utility performance is recoverable. Importantly, NESCOE does not challenge the amount of incentive compensation paid to the Eversource Entities’ employees that is based on performance objectives related to providing service to ratepayers—NESCOE only challenges the portion that is based on achieving Eversource financial targets.

Similarly, Eversource cites two related cases in a matter concerning Entergy Services, Inc.<sup>38</sup> Unlike *Williams*, the challengers in the *Entergy* matters did allege that the utility sought to collect incentive compensation based on financial targets. However, the Commission rejected the challengers’ claims because the challengers provided no evidence to support their claims.<sup>39</sup> Here, by contrast, NESCOE *has* provided evidence that the Eversource Entities collect expenses for incentive compensation based on financial targets and has included an accompanying affidavit that quantifies the amount of the expense specifically attributable to those financial targets. This evidence is derived from information that the Eversource Entities themselves produced in response to NESCOE’s Informal Challenge. Thus, unlike the complainant in the *Entergy* cases, NESCOE has fully supported its claims with evidence that is now part of the record of this proceeding.

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<sup>37</sup> *Id.* at ¶ 61,279.

<sup>38</sup> Eversource Response, at 15, citing *Entergy Services, Inc.*, 126 FERC ¶ 61,101, at P 31 & n.19 (2009) and *NRG Energy, Inc. v. Entergy Services, Inc.*, 126 FERC ¶ 61,053, at P 32 & n.25 (2009).

<sup>39</sup> *NRG Energy, Inc.*, 126 FERC ¶ 61,053, P 33 (denying complaint because challenger “has not provided any evidence that would support its argument” and reasoning that challenge “has not submitted affidavits, documents, or testimony that would attest to the accuracy of its allegations, and such evidence is required by our rules.”); *Entergy Services, Inc.*, 126 FERC ¶ 61,101, at P 31 (dismissing complaint because challengers did not provide any “specific data to support their claim that Entergy is inappropriately flowing through executive bonuses.”).

Finally, Eversource mistakenly relies on *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267, P 88 (2018).<sup>40</sup> In *Constellation Mystic Power*, Constellation Mystic Power, pursuant to Section 205, sought approval of a cost-of-service contract for continued operation of the Mystic 8 and 9 natural gas-fired generating units.<sup>41</sup> For its true up provision, Constellation Mystic Power proposed protocols modeled on the formula rate protocols for transmission owners in MISO.<sup>42</sup> In that case, NESCOE argued that Constellation Mystic Power should cap employee incentives “at 21 percent of base pay based on a comparison of annual overtime percentage at comparable utilities and other factors.”<sup>43</sup> NESCOE also asked the Commission to “disallow incentive pay based entirely on financial performance because such pay should be based on performance measures that benefit customers, not shareholders....”<sup>44</sup> Although the Commission rejected NESCOE’s requests in that docket, the rejection was procedural rather than substantive.<sup>45</sup> Specifically, the Commission held that “NESCOE’s concerns regarding recovery of excessive expenses is a prudency challenge that is appropriately raised during the true-up process.”<sup>46</sup> Here, NESCOE properly raises its claims in a formal challenge to an Annual Update—the RNS and LNS analogue to the “true-up process” in *Constellation Mystic Power*. Accordingly, Eversource’s claim that *Constellation Mystic Power* militates against NESCOE’s Formal Challenge here is without merit.

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<sup>40</sup> Eversource Response, at 16, citing *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 at P 88 (2018).

<sup>41</sup> *Constellation Mystic Power*, 165 FERC ¶ 61,267 at P 1.

<sup>42</sup> *Id.* at P 165.

<sup>43</sup> *Id.* at P 80.

<sup>44</sup> *Id.* at P 81.

<sup>45</sup> Although the Commission was critical of some of NESCOE’s evidence in that proceeding—namely, the use of state public utility commissions decisions—the Commission did not find that the incentives based on financial performances provided to benefits to consumers. *See id.* at PP 87–88.

<sup>46</sup> *Id.* at P 86.

**D. Eversource Has No Answer of Substance for NESCOE’s Alternative Relief.**

In its Formal Challenge, NESCOE requested in the alternative that, if the Commission found that it could not grant NESCOE’s requested relief without a change to the formula rate then it should institute a narrow Section 206 proceeding to clarify that incentive compensation based on financial targets is not recoverable. In response, Eversource repeats its claim that there is insufficient evidence to support a Section 206 filing. As NESCOE has stated *supra* and in its Formal Challenge, NESCOE has provided sufficient evidence in its Formal Challenge (1) to show that the Eversource Entities’ request includes incentive compensation based on financial targets that benefit shareholders and (2) to quantify the amount of the expense that the Eversource Entities seek to recover through their Annual Update that is attributable to financial targets that benefit shareholders and not customers.

Eversource also makes a “gotcha” claim that NESCOE’s alternative argument “betrays” that NESCOE’s Formal Challenge “is an attempted end run around the requirements of FPA Section 206.”<sup>47</sup> This claim is not the deep psychological reveal that Eversource seems to believe it is. Rather, Eversource and several transmission owners have made a persistent habit of claiming that many inquiries into the Annual Update, as well as many challenges to the same,<sup>48</sup> are attacks on the formula rate. NESCOE’s request for alternative relief is simply a reasonable response to an objection that Eversource was almost certain to raise in response to any formal challenge whatsoever. Indeed, during the information exchange period here, the Eversource

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<sup>47</sup> Eversource Response, at 1, 20.

<sup>48</sup> In particular, in response to the recent formal challenge from the Maine OPA discussed *supra*, certain of the NETOs, including the Eversource Entities, argued that questions and documents regarding the NETOs’ asset condition processes were inappropriately “directed to ascertaining whether the Formula Rate is just and reasonable.” *ISO-NE Inc.*, 192 FERC ¶ at P 17. The Commission found that these arguments were meritless as to several of these inquiries and compelled the NETOs to respond to the challenged discovery. *Id.* at PP 42–43, 55.

Entities levied the following common objection to three information requests that NESCOE propounded on incentive compensation:

The Company objects to this request because it seeks information beyond the scope of the information exchange process prescribed in the formula rate protocols, *see* ISO New England Open Access Transmission Tariff Att. F Appendix C § V.1, and is inappropriately directed to ascertaining whether the Formula Rate is just and reasonable to the extent that it provides for recovery of employee incentive compensation.<sup>49</sup>

Thus, even when NESCOE was simply asking questions about Eversource’s incentive compensation expense, the Eversource Entities stonewalled NESCOE and preemptively challenged the questions themselves on the grounds that NESCOE must be “inappropriately” plotting a challenge to the formula rate. Eversource similarly raised this same argument in response to NESCOE’s Informal Challenge. Given Eversource’s responses to discovery and its position in its Written Responses, NESCOE reasonably predicted that Eversource would once again make the meritless claim that NESCOE’s Formal Challenge was an attack on the formula rate. In response to that inevitability, NESCOE reasonably pointed out that, even if the Commission found that Eversource’s argument had merit—which it does not—the Commission could and should act pursuant to Section 206 to make a modest change to the formula rate to make clear that the NETOs should not be collecting expense for incentive compensation expense that exclusively benefits shareholders.

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<sup>49</sup> *See* Formal Challenge, Attachment 3, Selected Responses to NESCOE’s Third through Fifth Sets of Data Requests, at CL&P’s Response to NESCOE-5-4 through 5-6; NSTAR East’s Response to NESCOE-3-4 through 3-6; NSTAR West’s Response to NESCOE-5-4 through 5-6; PSNH’s Response to NESCOE-5-5 through 5-7.

### III. CONCLUSION

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

Respectfully Submitted,

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Dated: May 7, 2026

## 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 May, 2026.

*/s/ Nathan Forster*

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