

172 FERC ¶ 61,045
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

Constellation Mystic Power, LLC

Docket No. ER18-1639-003

ORDER ON COMPLIANCE AND DIRECTING FURTHER COMPLIANCE

(Issued July 17, 2020)

1. On December 20, 2018, the Commission accepted the executed cost-of-service agreement among Constellation Mystic Power, LLC (Mystic), Exelon Generation Company, LLC (Exelon), and ISO New England Inc. (ISO-NE) (Mystic Agreement), subject to condition, effective June 1, 2022, as requested, and directed a compliance filing within 60 days.¹ On March 1, 2019, Mystic submitted its compliance filing. As discussed below, we accept, in part, and reject, in part, the compliance filing and direct a further compliance filing within 60 days of the date of this order.

I. Background

2. To ensure a sufficient supply of capacity, ISO-NE operates a Forward Capacity Market (FCM), which requires resources to offer their supply into an annual Forward Capacity Auction (FCA). Resources that clear the auction receive a Capacity Supply Obligation to be fulfilled for a one-year period, starting three years later. An existing resource seeking to retire must submit a Retirement De-list Bid 11 months before the FCA corresponding to the period for which it intends to retire. If ISO-NE determines that a resource is needed because the absence of the capacity would result in a violation of Northeast Power Coordinating Council, Inc. or North American Electric Reliability Corporation (NERC) criteria or other ISO-NE system rules, it may request that the resource stay in service. If the resource owner chooses to remain in service, it may choose either to receive the Commission-accepted Retirement De-List Bid as compensation or to file a cost-of-service rate with the Commission under Federal Power Act (FPA) section 205.² Once the reliability need is resolved, the resource will retain its

¹ *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 (2018) (December 2018 Order). *Constellation Mystic Power, LLC*, 172 FERC ¶ 61,043 (2020).

² Once ISO-NE has informed a resource that it is needed for reliability, it has 10 days to decide whether to remain in service or retire. The resource must then elect to

Capacity Supply Obligation through the end of the capacity commitment period for which it was retained for reliability and then must retire.

3. Exelon owns the Mystic Generation Station in Boston, including the Mystic 8 and 9 combined-cycle generators, which have a combined winter seasonal capacity rating of just over 1,700 MW. The only fuel source for Mystic 8 and 9 is re-gasified liquefied natural gas (LNG) purchased from the Everett Marine Terminal (Everett), located adjacent to the Mystic Generation Station. Everett provides Mystic 8 and 9 with a fuel source that is not subject to the region's historical interstate natural gas pipeline constraints.³ Exelon currently owns Everett. On March 23, 2018, Exelon submitted Retirement De-List Bids for Mystic 8 and 9. Through those bids, Exelon notified ISO-NE of its intention to retire the generators at its Mystic Generation Station when the existing Capacity Supply Obligations associated with the Mystic Generation Station expire on May 31, 2022.⁴

4. In January 2018, ISO-NE published an Operational Fuel-Security Analysis (OFSA),⁵ which evaluated the level of operational risk posed to the bulk power system under various fuel-mix scenarios. In the OFSA, which was completed prior to Exelon submitting the Retirement De-List Bids for Mystic 8 and 9, ISO-NE concluded that it would need Mystic 8 and 9 for the winter of 2024-25 to maintain reliability. Subsequent to the OFSA and Exelon's submission of the Mystic 8 and 9 Retirement De-List Bids, ISO-NE conducted an analysis similar to that performed in the OFSA to assess implications to system operations if Mystic 8 and 9 were retired or otherwise unable to operate during the 2022-23 and 2023-24 capacity commitment periods (Mystic Retirement Studies). In the Mystic Retirement Studies, ISO-NE concluded that unacceptable reliability impacts would occur with the loss of Mystic 8 and 9. ISO-NE further concluded that, if Mystic 8 and 9 retired, Everett might no longer be financially

receive either the Commission-accepted Retirement De-List Bid or a cost-of-service rate within six months of ISO-NE filing the FCA results with the Commission. ISO-NE Tariff, § III.13.2.5.2.5.1(b). As relevant here, Mystic has elected to be compensated under a cost-of-service rate.

³ See *ISO New England Inc.*, 164 FERC ¶ 61,003, at P 4 (2018) (Waiver Order).

⁴ December 2018 Order, 165 FERC ¶ 61,267 at P 7.

⁵ ISO-NE, *Operational Fuel-Security Analysis* (Jan. 2018), https://iso-ne.com/static-assets/documents/2018/01/20180117_operational_fuel-security_analysis.pdf.

viable and that, if Everett also retired, the region's risk of operating reserves depletion and load shedding would increase, as would the length and severity of such events.⁶

5. On May 1, 2018, in Docket No. ER18-1509-000, ISO-NE requested waiver of multiple provisions of its Transmission, Markets and Services Tariff (Tariff) to enable it to enter into a cost-of-service contract with Exelon to retain Mystic 8 and 9 in order to meet the region's fuel security needs during the capacity commitment periods associated with FCA 13 and FCA 14 (i.e., June 2022 through May 2024).⁷ The Commission rejected the request for waiver, stating that, rather than seeking a waiver of existing Tariff provisions, ISO-NE's request "creates an entire process that is not in the [Tariff] in order to allow for a cost-of service agreement to meet regional fuel security concerns."⁸

6. The Commission found, however, that the OFSA and Mystic Retirement Studies indicated that the Tariff may be unjust and unreasonable because it contained no mechanism to address ISO-NE's fuel security concerns.⁹ The Commission instituted a proceeding under FPA section 206,¹⁰ directing ISO-NE to submit interim Tariff revisions that provide for the filing of a short-term, cost-of-service agreement to address demonstrated fuel security concerns and to submit by July 1, 2019 permanent Tariff revisions reflecting improvements to its market design to better address regional fuel security concerns or show cause as to why the Tariff remained just and reasonable.¹¹

7. On May 16, 2018, pursuant to section 205 of the FPA,¹² in Docket No. ER18-1639-000, Mystic filed the Mystic Agreement with the Commission.¹³ The Mystic Agreement provides cost-of-service compensation to Mystic for continued operation of Mystic 8 and 9. Fuel supply for Mystic 8 and 9 is provided by Everett under the terms of the Fuel Supply Agreement, a cost-of-service agreement between Mystic and its affiliate,

⁶ December 2018 Order, 165 FERC ¶ 61,267 at P 8.

⁷ Waiver Order, 164 FERC ¶ 61,003 at P 12.

⁸ *Id.* P 47.

⁹ *Id.* P 49.

¹⁰ 16 U.S.C. § 824e (2018).

¹¹ Waiver Order, 164 FERC ¶ 61,003 at P 55.

¹² 16 U.S.C. § 824d.

¹³ See Constellation Mystic Power, LLC, FERC FPA Electric Tariff, [Cost of Service Agreement, Rate Schedule FERC No. 1, 1.0.0.](#)

Constellation LNG, LLC (Constellation LNG) (Everett Agreement). Because Everett is not a jurisdictional entity, the Everett Agreement is not on file with the Commission and is not a jurisdictional rate. Nevertheless, Mystic included the Everett Agreement as an attachment to the Mystic Agreement transmittal letter, along with a cost-of-service study and testimony substantiating the components of Everett's full cost-of-service rate to demonstrate the "prudence" of Mystic's fuel costs.¹⁴

8. On July 13, 2018, the Commission accepted the Mystic Agreement, suspended it for a nominal period to become effective June 1, 2022, as requested, subject to refund and subject to the outcome of the Commission proceedings that ultimately resulted in the development and acceptance of interim Tariff provisions governing fuel security agreements.¹⁵ The Commission noted that "ISO-NE submitted evidence showing that, if Mystic 8 and 9 do not provide capacity during the capacity commitment periods associated with FCA 13 and FCA 14, ISO-NE will not be able to ensure fuel security in the region."¹⁶ However, while the Commission accepted the Mystic Agreement, provided guidance and made certain findings, it set several contested issues for hearing and settlement judge proceedings.¹⁷ The Commission directed the Presiding Judge to conduct hearing procedures and certify the record to the Commission without issuing an initial decision.¹⁸ On October 12, 2018, the Presiding Judge certified the record to the Commission.¹⁹ Participants then submitted initial briefs and reply briefs to the Commission.

9. In the December 2018 Order, the Commission accepted the Mystic Agreement, subject to condition, to become effective June 1, 2022. The Commission also directed Mystic to submit a further compliance filing, within 60 days and directed additional briefing on the issue of return on equity (ROE). On March 1, 2019, Mystic submitted its

¹⁴ Mystic Transmittal Letter, Docket No. ER18-1639-000 at 18.

¹⁵ *Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022 (2018) (July 2018 Order). ISO-NE submitted proposed interim Tariff revisions on August 31, 2018, which the Commission accepted on December 3, 2018. *ISO New England Inc.*, 165 FERC ¶ 61,202 (2018).

¹⁶ July 2018 Order, 164 FERC ¶ 61,022 at P 4.

¹⁷ *See id.* PP 19-20, 34-38, 41.

¹⁸ *Id.* P 12.

¹⁹ Certification of Record in *Constellation Mystic Power, LLC* of Presiding Administrative Law Judge Steven L. Sterner, Docket No. ER18-1639-000 (October 12, 2018).

compliance filing. Concurrently on March 1, 2019, in Docket No. ER19-1164-000, Mystic submitted Amendment No. 1 to the Mystic Agreement, proposing an early termination right for Mystic and Exelon and an additional termination right for ISO-NE. On January 9, 2020, the Commission rejected Mystic's proposed amendment.²⁰

II. Notice of Filing, Responsive Pleadings and Motion for Release of Privileged Information

10. Notice of Mystic's March 1, 2019 compliance filing was published in the *Federal Register*, 84 Fed. Reg. 8328 (March 7, 2019), with interventions and protests due on or before March 22, 2019.

11. No motions to intervene were filed. Connecticut Parties,²¹ Eastern New England Consumer-Owned Systems (ENECOS),²² Massachusetts Attorney General (Massachusetts AG), National Grid USA (National Grid), New England States Committee on Energy (NESCOE), and Public Systems²³ filed comments or protests.

12. On March 22, 2019, Concord Municipal Light Plant, Reading Municipal Light Department, and Wellesley Municipal Light Plant (collectively, Concord), filed a motion for release of material from a protective order.

13. On April 8, 2019 Mystic filed an answer to the protests and to Concord's motion for release of material from a protective order.

²⁰ *Constellation Mystic Power, LLC*, 170 FERC ¶ 61,006 (2020).

²¹ Connecticut Parties consist of Connecticut Public Utilities Regulatory Authority, Connecticut Department of Energy and Environmental Protection, and Connecticut Office of Consumer Counsel.

²² ENECOS consist of Braintree Electric Light Department, Concord Municipal Light Plant, Georgetown Municipal Light Department, Hingham Municipal Lighting Plant, Littleton Electric Light & Water Department, Middleborough Gas & Electric Department, Middleton Electric Light Department, Norwood Light & Broadband Department, Pascoag (Rhode Island) Utility District, Reading Municipal Light Department, Taunton Municipal Lighting Plant, Wellesley Municipal Light Plant and Westfield Gas & Electric Department.

²³ Public Systems consist of Massachusetts Municipal Wholesale Electric Company and New Hampshire Electric Cooperative, Inc.

III. Procedural Matters

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Mystic's answer because it has provided information that assisted us in our decision-making process.

IV. Substantive Matters

15. We accept, in part, and reject, in part, the compliance filing and direct a further compliance filing within 60 days of the date of this order, as discussed below.

A. Clawback Mechanism

1. Compliance Filing

16. In the December 2018 Order, the Commission directed Mystic to "revise the [Mystic] Agreement to include a clawback provision like the mechanism described in the MISO tariff."²⁴ To comply with this directive, Mystic proposes to add section 2.4 to the Mystic Agreement, which requires Mystic to refund "all costs, less depreciation, for repairs and capital expenditures of Mystic 8 and/or 9 (as appropriate) that were expensed because they were reasonably determined to be the least-cost-commercially reasonable option consistent with Good Utility Practice to meet the obligations of the reliability need" in the event that Mystic 8 and 9 continue to operate or return to service after the Mystic Agreement.²⁵

2. Comments and Protests

17. ENECOS and NESCOE argue that Mystic's proposed clawback mechanism does not reflect the MISO tariff language that the Commission required Mystic to use as a

²⁴ December 2018 Order, 165 FERC ¶ 61,267 at P 208. MISO Tariff section 38.2.7.e(ii) provides as follows: "The Market Participant that owns or operates an SSR Unit must refund to the Transmission Provider with interest at the FERC-approved rate, all costs, less depreciation, for repairs and capital expenditures that were needed to continue operation of the Generation Resource or SCU and to meet applicable regulations and other requirements (including environmental) while the Generation Resource or SCU was subject to an SSR Agreement if the owner: (1) rescinds its decision to Suspend or to Retire the unit while it is designated a SSR; (2) rescinds its decision to Suspend following its previous designation as an SSR Unit; or (3) returns a unit to service following its previous designation as an SSR Unit and later retirement of the unit."

²⁵ Mystic Agreement, section 2.4; *see also* Mystic Transmittal Letter at 6.

model. ENECOS and NESCOE ask the Commission to require Mystic's clawback mechanism to follow MISO's tariff language more closely. ENECOS and NESCOE argue that Mystic does not provide a justification for limiting the clawback to items that were expensed.²⁶

18. While NESCOE acknowledges the need to modify terminology from the MISO clawback provisions to make it consistent with ISO-NE Tariff terminology, it argues that the proposed changes go beyond these necessary modifications with no explanation in five respects.²⁷ First, NESCOE claims that Mystic replaced MISO's tariff language that requires a resource owner to refund all costs, less depreciation, for repairs and capital expenditures "that were needed to continue operation of the Generation Resource . . . and to meet applicable regulations and other requirements (including environmental)"²⁸ with proposed language obligating it to refund all costs, less depreciation, for repairs and capital expenditures "that were expensed because they were reasonably determined to be the least-cost-commercially reasonable option consistent with Good Utility Practice."²⁹ NESCOE asserts that the standard in the MISO tariff language is straightforward: if Mystic recovered costs for capital expenditures and repairs related to operating its resource, all of these costs should be refunded to consumers. NESCOE argues that Mystic's proposed change seeks to narrow the clawback mechanism and introduce a materially different standard with a higher bar to issue refunds. NESCOE claims that the language (e.g. "consistent with Good Utility Practice") that Mystic borrows from ISO-NE's tariff is not applicable here and has never been raised or discussed in connection with the clawback mechanism. Moreover, NESCOE contends that the standard of review Mystic proposes for the clawback mechanism differs from the standard of review used in the true-up process, asserting that the conflicting standards create confusion and could result in a lower refund for ratepayers.

19. Second, NESCOE contends that Mystic's proposed revisions do not include the language in the MISO tariff that requires refunds for repairs and capital expenditures that were needed to meet applicable regulations and other requirements (including environmental) during the cost-of-service period.³⁰

²⁶ ENECOS Protest at 13-14; NESCOE Protest at 3.

²⁷ NESCOE Protest at 3.

²⁸ *Id.* at 4 (citing MISO Tariff, § 38.2.7.e(ii)).

²⁹ *Id.* at 3-4 (citing Mystic Agreement, section 2.4).

³⁰ *Id.* at 6.

20. Third, NESCOE argues that Mystic's proposed conditions for when the clawback provision would apply are ambiguous and require further clarification to meet the Commission's directive. Fourth, NESCOE complains that Mystic uses an undefined term: "Mystic 8 & 9's Owner and Lead Market Participant."³¹ Finally, NESCOE argues that Mystic's proposed clawback provision has no means to ensure that customers or the Commission can review and verify that the amounts proposed to be refunded are accurate. To address this shortcoming, NESCOE asks the Commission to direct Mystic to include a provision that would require Mystic to file the refund amounts and supporting details with the Commission.³²

21. Several parties argue that Mystic's compliance filing is deficient because it does not apply to Everett.³³ Public Systems argues that, given Mystic's proposal to recover the costs of repairs for Everett in addition to Mystic 8 and 9 and that ratepayer-funded repairs and improvements will provide benefits to Everett's owner, the Commission's reasoning in the December 2018 Order requires a clawback for Everett as well. Public Systems explains that the Commission relied on Trial Staff's recommendation that a clawback provision is needed "in the event that Mystic...decided not to retire Mystic 8 and 9 or Everett" and that no party disputed that the clawback provision should include Everett.³⁴ Public Systems also states that the December 2018 Order and the record in the proceeding demonstrate that Mystic explicitly contemplated including Everett in the clawback provision.³⁵

22. Connecticut Parties argue that the Commission has jurisdiction to direct Everett to refund money collected from ratepayers because, if the Commission can require ratepayers to pay for capital expenditures on the Everett facility, then the Commission

³¹ *Id.* at 7 (citing Mystic Agreement, section 2.4).

³² *Id.* at 7-8.

³³ Connecticut Parties Protest at 6; ENECOS Protest at 13; Public Systems Protest at 2; NESCOE Protest at 4-8.

³⁴ Public Systems Protest at 3 (citing December 2018 Order, 165 FERC ¶ 61,267 at PP 200, 202 n.430 (describing the clawback proposal sponsored by the New England States Committee on Electricity as including Everett)).

³⁵ *Id.* at 3 (citing Ex. S-0022 REVISED at 14:30-15:3 & Ex. S-0023 at 2 ("Exelon confirms that it is willing to agree to a clawback process to refund certain capital expenditures if Everett continues in service after the Mystic Agreement terminates."); Ex. MYS-0053 at 6:20-22 (discussing potential clawback of capital additions, "whether at Mystic or Everett"); Tr. 898:14-899:1 (Schnitzer)).

could also require Mystic to refund that money.³⁶ Massachusetts AG argues that the projects associated with the capital expenditures for Everett would benefit Everett long after the Mystic Agreement terminates; therefore, if Everett reenters the market, ratepayers would have effectively subsidized Everett. Massachusetts AG claims that the clawback mechanism for expenses related to Everett is important because ratepayers will cover 91% of Mystic's costs despite record evidence that Mystic 8 and 9 can utilize no more than 39.16% of Everett's capacity. If the Commission agrees with Mystic that the Commission's jurisdictional authority is limited and it cannot require Mystic to include expenses related to Everett in the clawback mechanism, then Massachusetts AG asks the Commission to reject Mystic's proposal to recover rates through the Fuel Supply Charge, which reflects the expensing of Everett's capital expenditures during the Mystic Agreement, as unjust and unreasonable.³⁷

3. Answer

23. Mystic argues that the December 2018 Order does not require it to duplicate the MISO clawback provision exactly.³⁸ Mystic asserts that NESCOE's request to include a provision in the clawback to require Mystic to file the refund amounts so that they can be reviewed and verified as accurate with the Commission is beyond the scope of this compliance filing.

24. Mystic contends that it has complied with the Commission's directive regarding the application of the clawback to Everett. Mystic asserts that the Commission was silent on its application to Everett and that protestors' arguments on the clawback should be addressed on rehearing rather than compliance. Mystic explains that its proposed clawback mechanism deviates from the MISO tariff language because the Tariff requires a demonstration that a capital expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the reliability need identified by ISO-NE.³⁹

4. Determination

25. We find that Mystic has complied with the Commission's directive to include a clawback mechanism in the Mystic Agreement. Contrary to the arguments raised by ENECOS and NESCOE, in the December 2018 Order, the Commission was not

³⁶ Connecticut Parties Protest at 9.

³⁷ Massachusetts AG Comments at 9-10, 12.

³⁸ Mystic Answer at 11.

³⁹ *Id.* (citing ISO-NE Tariff § III.13.2.5.2.5.2(b)).

ambiguous regarding when the clawback mechanism would apply. The Commission stated that “a resource owner that re-enters the market after its cost-of service agreement ends (i.e., it does not retire) is required to ‘refund . . . all costs, less depreciation, for repairs and capital expenditures that were needed to continue operation of the [resource].’”⁴⁰ We reiterate that, if for any reason Mystic 8 and/or 9 do not retire immediately following their retention for fuel security⁴¹ and/or transmission reliability⁴² and if Mystic 8 and/or 9 re-enter the market as either a New Generating Capacity Resource or Existing Generating Capacity Resource, then the clawback mechanism would apply. NESCOE is correct that the Commission intended to require the clawback mechanism to apply if Mystic 8 and/or 9 reenter the market. However, we also find Mystic’s proposed conditions in section 2.4 of the Mystic Agreement consistent with the Commission’s intent in the December 2018 Order. Specifically, we interpret the clause in section 2.4 of the Mystic Agreement “on other than a cost-of-service basis” to mean other than retention for fuel security or transmission reliability. We interpret the clause “returns either unit to service following termination of [the Mystic] Agreement” to include future participation of Mystic 8 and/or 9 as either a new or existing resource in ISO-NE. Thus, we do not find that further changes to Mystic’s proposed language are required to comply with the Commission’s directives on this issue.

26. Similarly, we do not find that Mystic needs to provide further support on its other proposed deviations from the clawback language in the MISO tariff. We agree with protestors that any attempt to narrow the conditions under which the clawback mechanism would apply beyond those described in this order would be inconsistent with the directive in the December 2018. However, we do not interpret Mystic’s proposed deviations from the MISO Tariff as doing so. As the Commission has stated, capital expenditures that are expensed over the term of the Mystic Agreement and that benefit Mystic 8 and 9 beyond the term of the Mystic Agreement must be refunded if Mystic 8 and/or 9 continue to operate beyond this term.⁴³ We interpret Mystic’s proposed deviations from the MISO tariff language as consistent with the terminology used in the ISO-NE Tariff, i.e. ISO-NE Tariff § III.13.2.5.2.5.2(b), rather than narrowing the scope of the expenditures subject to refund. We reiterate that “all costs, less depreciation, for repairs and capital expenditures” means *all* costs, including those identified by protestors related to compliance with environmental and other regulations. For these reasons, we find that Mystic has complied with this aspect of the December 2018 Order.

⁴⁰ December 2018 Order, 165 FERC ¶ 61,267 at P 208.

⁴¹ See ISO-NE Tariff, § III.13.2.5.2.5A.

⁴² See ISO-NE Tariff, § III.13.2.5.2.5.

⁴³ See December 2018 Order, 165 FERC ¶ 61,267 at P 149.

27. Regarding NESCOE's request that the Commission require Mystic to make an informational filing detailing refund amounts, we agree with Mystic that this is beyond the scope of the compliance filing. In the December 2018 Order, the Commission did not require Mystic to make an informational filing regarding refund amounts. Nor is there a requirement in the MISO tariff for such a filing. As such, NESCOE's argument should have been made in its request for rehearing of the December 2018 Order.

28. Regarding the application of the clawback mechanism to Everett, the Commission addressed this issue in its order on rehearing of the December 2018 Order and found that it does not apply to capital expenditures to Everett.⁴⁴ Therefore, it is not necessary to address commenters' arguments to the contrary here.

B. True-up Mechanism

1. Compliance Filing

29. In the December 2018 Order, the Commission directed Mystic to apply "the true-up mechanism . . . to all items with the exception of items that are fixed or must be modified by filing an FPA section 205 filing."⁴⁵ To comply with this directive, Mystic proposes revisions to Rate Schedule 3A to the Mystic Agreement, which contains procedures for the true-up process and a cost-of-service template for use during the true-up process.⁴⁶

30. Mystic proposes revisions to Rate Schedule 3A to comply with the three compliance directives related to the true-up process. First, Mystic proposes to revise section II.A2.A of Schedule 3A to demonstrate that certain projects were not unduly delayed from prior to the term of the Mystic Agreement into the term of the Mystic Agreement. Second, Mystic proposes to modify Rate Schedule 3A to allow the true-up of all annual fixed revenue requirement (AFRR) components and of all revenues.⁴⁷ Third, Mystic proposes an updated AFRR methodology to account for ROE, capital structure and cost of debt, Mystic's gross-plant-in service value, excess deferred income

⁴⁴ *Constellation Mystic Power, LLC*, 172 FERC ¶ 61,044 (2020) .

⁴⁵ December 2018 Order, 165 FERC ¶ 61,267 at P 174.

⁴⁶ Mystic Transmittal Letter at 3. We note that Rate Schedule 3A, which deals with the true mechanism, differs from Rate Schedule 3, which deals with supplemental capacity payments.

⁴⁷ Mystic states that, because Schedule 3A has been integrated into the Mystic Agreement, the revenue credit schedules have been deleted to avoid double counting. Mystic Transmittal Letter at 13-14.

taxes, taxes other than income taxes, auxiliary boiler and critical infrastructure protection (CIP) compliance costs, Everett's rate base, and Everett's LNG fuel inventory.⁴⁸ With respect to taxes other than income, Mystic explains that, although the Commission noted that property taxes are subject to the true-up and that "Mystic may not recover property tax expenses associated with Mystic 7 land,"⁴⁹ Mystic proposes to include these property taxes in a line item in its populated methodology because, as Mystic states, "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

2. Comments and Protests

31. NESCOE argues that the proposed true-up mechanism does not include all items subject to true-up except for those that are fixed or require an FPA section 205 filing to change, as the Commission directed.⁵¹ NESCOE claims that there are at least four instances in which the revised Schedule 3A refers to "items subject to True-Up as specified in Section II," even though section II does not specify which items are subject to true-up.⁵² NESCOE contends that the proposed Schedule 3A refers to "Section II.A" in error.⁵³ Therefore, NESCOE asks the Commission to strike the references to section II and section II.A from Schedule 3A.⁵⁴

32. Section II.A.2.4 of Schedule 3A provides that "Mystic can provide an explanation ... to demonstrate that it has not or is not unduly delaying a project into the Term."⁵⁵ NESCOE argues that the use of the word "can" in sub-section II.A.2.4 does not require Mystic to provide information and explanation of any capital expenditures to be incurred during the term, which conflicts with the informational posting requirement that requires

⁴⁸ *Id.* at 14-18.

⁴⁹ *Id.* 17 (citing December 2018 Order, 165 FERC ¶ 61,267 at P 92).

⁵⁰ *Id.*

⁵¹ NESCOE Protest at 2-3 (citing December 2018 Order, 165 FERC ¶ 61,267 at P 208).

⁵² *Id.* at 13 (citing Mystic Compliance Filing, Attachment B, at 59 and 61).

⁵³ *Id.* (citing Mystic Compliance Filing, Attachment B, at 62 and 64).

⁵⁴ *Id.* at 13-14.

⁵⁵ Mystic Agreement Schedule 3A, section II.A.2.4.

Mystic to provide this information.⁵⁶ Therefore, NESCOE recommends that the word “can” be replaced with “shall.”⁵⁷ NESCOE also points out a typo in sub-section II.A.2.A.4, asking that “If either (a) of (b)” be replaced with “If either (a) or (b).”⁵⁸ Similarly, National Grid states that section II.2.A.4 of Schedule 3A should be modified to require that Mystic provide both information about and an explanation for capital expenses that were intended to be completed, or should have been completed, before the term of the Mystic Agreement but delayed until or completed during the term. National Grid notes that the December 2018 Order required Mystic to provide a demonstration that Mystic is not delaying projects it would have undertaken sooner until the term of the Agreement with the purpose of recovering excessive costs from ratepayers.⁵⁹

33. NESCOE asserts that Mystic does not properly exclude property taxes associated with Mystic 7, contrary to the Commission’s directive.⁶⁰ Specifically, NESCOE contends that what Mystic refers to as the “Populated Methodology,” the projected property taxes in the line item labeled “Taxes Other Than Inc[ome] RES,” reflects the same property tax projection of \$15,500,445 that Mystic filed originally. NESCOE asserts that Mystic’s inclusion of property tax expenses associated with Mystic 7 in its AFRR, based on the theory that they will be taken care of in the true-up, is inconsistent with the Commission’s directive in the December 2018 Order.⁶¹ NESCOE asks the Commission to direct Mystic to modify the definition of AFRR in the Mystic Agreement to comply with the Commission’s directive on this issue, which NESCOE provides proposed language to operationalize through modifications to the AFRR and Schedule 3A, section I.A.⁶²

34. National Grid agrees with NESCOE’s proposed revisions. In addition, National Grid asks the Commission to direct Mystic to remove references to section I in Schedule

⁵⁶ NESCOE Protest at 15.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ National Grid Comments at 2 (citing December 2018 Order, 165 FERC ¶ 61,267 at P 174).

⁶⁰ NESCOE Protest at 10 (citing December 2018 Order, 165 FERC ¶ 61,267 at P 92).

⁶¹ *Id.*

⁶² *Id.* at 10-12.

3A because that section does not specify items that are subject to true-up.⁶³ National Grid concurs with NESCOE that this same language should be included in the Informational Filing requirement described in section II.6.A of Schedule 3A because parties need to receive information regarding projects that were delayed into the term of the Mystic Agreement but should have been completed at an earlier date.⁶⁴ NESCOE and National Grid explain that section II.6.A requires Mystic to submit an informational filing that includes information needed to determine, “whether a capital expenditure collected as an expense during the Term [of the Mystic Agreement] is necessary in order to meet the obligations of the [Mystic] Agreement” in order to be consistent with the Commission’s directive.⁶⁵ NESCOE asks that the obligation to provide the information in section II.2.A.4 be part of the informational filing to allow interested parties to review that information. To this end, NESCOE suggests inserting a new clause to section II.6.A in between the existing part (5) and (6) of the section that states as follows: “(6) if a capital expenditure is collected for a project scheduled for before the Term but delayed into the Term, or the project was scheduled for during the Term but should have been completed before the Term, information and an explanation of why the capital project was performed during the Term.”⁶⁶

3. Mystic Answer

35. Mystic asserts that arguments related to true-up inputs are beyond the scope of this proceeding.⁶⁷ Mystic explains that it submitted a template with blank highlighted spaces for items that would be projected in 2022 and true-up in subsequent proceedings to comply with the Commission’s compliance direction to apply the true-up mechanism to all items except those that must be modified by an FPA section 205 filing (i.e., ROE). Mystic claims that ENECOS’s and NESCOE’s concerns regarding the values used in the populated methodology are premature because the template is only illustrative, which it claims is standard practice for formula rates. Mystic argues that ENECOS’s argument that Mystic cannot recover future capital expenditures and cannot rely on projections in the true-up proceeding is an inappropriate, late-filed request for rehearing.

⁶³ National Grid Comments at 3.

⁶⁴ *Id.* at 2.

⁶⁵ *Id.*; NESCOE Protest at 15-16.

⁶⁶ NESCOE Protest at 16.

⁶⁷ Mystic Answer at 12–14.

4. Determination

36. We find that Mystic complies with the Commission's directive in the December 2018 Order regarding the true-up mechanism. We reject protestors' requests for further changes to the true-up mechanism. In the December 2018 Order, the Commission stated that all items are subject to true-up except those that must be made through an FPA section 205 filing (i.e., ROE). We do not find it necessary for Mystic to re-state which items are subject to true-up in every instance or cross-reference to the true-up throughout the Mystic Agreement in order to comply with this directive. We also find that Mystic's inclusion of blank fields in the spreadsheet on the issue (e.g., taxes) is sufficient to comply with this directive. The true-up process is designed to address precisely these types of issues in the future. For these reasons, we find that Mystic has complied with the directive to demonstrate, at the time of the true-up, that it has not unduly delayed capital expenditures.

C. Rate Base and Capital Investments

1. Compliance Filing

37. In the December 2018 Order, the Commission directed Mystic to "reflect the impact of an original cost test for each time [Mystic 8 and 9] changed ownership since the units were first devoted to public service."⁶⁸ To comply with this directive, Mystic proposes to compare the arm's-length purchase price values attributed to Mystic 8 and 9 based on the fair market valuation of the units at the time to the depreciated original cost.⁶⁹

2. Comments and Protest

38. Several parties contend that Mystic improperly applied the original cost test required in the December 2018 Order.⁷⁰ Public Systems states that Mystic's compliance filing does not account for the fact that Mystic 8 and 9 changed ownership in 2004, when a group of creditors acquired the units from the then-owner in exchange for extinguishing the debt owed by those owners.⁷¹ Connecticut Parties assert that Mystic's argument that

⁶⁸ December 2018 Order, 165 FERC ¶ 61,267 at P 64.

⁶⁹ Mystic Transmittal Letter at 15 (citing December 2018 Order, 165 FERC ¶ 61,267 at P 64).

⁷⁰ Public Systems Protest at 2; Connecticut Parties Protest at 1-6; Massachusetts AG Comments at 2-4; ENECOS Protest at 6-10.

⁷¹ Public Systems Protest at 2.

the 2004 change of ownership did not fall within the scope of the Commission's directive because that change in ownership was not an arms-length transaction is incorrect.⁷² Massachusetts AG contends that the ownership of Mystic 8 and 9 (along with other assets) was transferred from an Exelon Corporation subsidiary to EBG Holdings in May 2004 and that the December 2018 Order stipulates that the original cost test should be used for each time that the Mystic 8 and 9 changed ownership, which Mystic has failed to do.⁷³ Connecticut Parties disagree with Mystic's characterization of the change in ownership as a transfer rather than a purchase because Mystic 8 and 9 were exchanged for the removal of debt.⁷⁴ ENECOS argues that the transfer in lieu of foreclosure that took place in May 2004 and the impairment charge are related events in which plant assets changed hands in an arms-length transaction; therefore, Mystic should use the original cost test to determine the purchase price of the plant.⁷⁵

39. ENECOS claims that Mystic's original cost analysis also overstates the rate base by failing to reflect past recoveries of the claimed capital investment and transfer prices for Mystic 8 and 9 required by the Commission's original cost test. ENECOS alleges that, in July 2003, Exelon recouped its equity in Mystic 8 and 9 and used an impairment charge booked against the plant values of those units as accumulated depreciation to realize a federal tax deduction.⁷⁶ ENECOS argues that the capital recovery implicit in this transaction would have reduced the rate base reported by Mystic and therefore Mystic's proposed revisions overstate rate base.⁷⁷

40. ENECOS asks the Commission to reject Mystic's representations of prior years' rate base CapEx in ascertaining the current net book value of Mystic 8 and 9 for rate base because Mystic does not provide support for approximately \$200 million of claimed rate base capital expenditures. ENECOS contends that a possible misattribution of maintenance expenses as capital expenditures and a failure to reflect retirement of

⁷² Connecticut Parties Protest at 1- 6.

⁷³ Massachusetts AG Comments at 2 – 4.

⁷⁴ Connecticut Parties Protest at 5-6.

⁷⁵ ENECOS Protest at 6; *see also* Concord Motion for Release of Protected Material, discussed *infra* at PP 59-62.

⁷⁶ ENECOS Protest at 2. While ENECOS states that Exelon/Mystic's rate base is overstated, ENECOS's comments only imply that one of the reasons for the overstatement is the non-application of the original cost test to the imputed value of the collateral (Mystic 8 and 9).

⁷⁷ *Id.* at 5.

components replaced in major maintenance activities could account for a substantial portion of the \$200 million discrepancy. ENECOS argues that disparities in other capital investments in Mystic 8 and 9 and long-term service agreements have increased the net book value of Mystic 8 and 9.⁷⁸

41. NESCOE asserts that the accumulated depreciation does not appear to be calculated correctly. NESCOE argues that, although schedule D includes capital expenditures dating back to 2002, Mystic does not provide any support for including these additions in the rate base or explain if these additions are net of retirements. NESCOE contends that Mystic added, among other expenditures, approximately \$250 million of capital expenditures from 2002 through 2017.⁷⁹ NESCOE asks the Commission to ensure that Mystic has removed any undepreciated amounts associated with capital retirements from its rate base, arguing that, if the facilities that have been replaced by these capital improvements remain in the rate base, their inclusion will inappropriately inflate the rate base.⁸⁰

42. ENECOS claims that Mystic improperly used projected capital expenditures in its stated AFRR, which is contrary to Commission precedent that does not permit the recovery of future projected capital expenditures in rates. ENECOS states that Mystic's use of AFRRs undermines the Commission's requirement to capture in a formula rate the changes in revenue requirements due to developments between the acceptance of the Mystic Agreement and the start of its first term.⁸¹ Therefore, ENECOS asks the Commission to require Mystic to remove any stated AFRR based on claimed costs incurred beyond December 31, 2017 from the Mystic Agreement and replace those references with: (1) a stated AFRR determined in the current proceeding and (2) a reference to the formulary determinations of additions or subtractions to rate base between January 1, 2018 and December 31, 2021.⁸²

⁷⁸ *Id.* at 9-10.

⁷⁹ NESCOE Protest at 9.

⁸⁰ *Id.* at 9-10.

⁸¹ ENECOS Protest at 11-12.

⁸² *Id.* at 12.

3. Mystic Answer

43. Mystic asserts that it properly applied the Commission's original cost test set forth in the December 2018 Order.⁸³ Mystic states that, in the December 2018 Order, the Commission limited the scope of prior transfers subject to the original cost test to those that were at arm's length and had a purchase price. Mystic argues that the transfer was not at arms' length because it was a transfer in lieu of foreclosure of a high-cost asset after the default of its owner that was settled for the amount of the outstanding debt. Mystic adds that no party alleges that there was an actual purchase price for Mystic 8 and 9. Mystic argues that the absence of a purchase price is further evidence that the transaction was not at arm's length.⁸⁴

44. Mystic claims that it properly included in its rate base calculation historical rate base capital expenditures that were not contested and were not the subject of a compliance directive in the December 2018 Order. Mystic argues that ENECOS's request is a collateral attack on the December 2018 Order and is beyond the scope of this compliance proceeding.⁸⁵

4. Determination

45. We find that Mystic has not complied with the December 2018 Order because Mystic should have included the transfer in lieu of foreclosure in its original cost study. In the December 2018 Order, the Commission required Mystic to conduct the lesser-of test any time Mystic 8 and 9 changed ownership. Because the units changed ownership as a consequence of the transfer in lieu of foreclosure, Mystic should have included the transaction in the original cost study. We reject Mystic's assertion that the transfer in lieu of foreclosure did not represent a sale or purchase. Even assuming *arguendo* that the assets were transferred without the rigorous negotiation described by Massachusetts AG or ENECOS, the sale occurred when Exelon secured the project financing.⁸⁶ Exelon's creditors agreed to sell Exelon capital at the cost of a return on that capital or, under certain conditions, the assets that secured the capital the creditors provided. The record contains no evidence to suggest that the creation of the project financing was anything other than a rigorously negotiated, arms-length transaction. Therefore, the sale price in

⁸³ Mystic Answer at 2.

⁸⁴ *Id.* at 3-8.

⁸⁵ *Id.* at 9-10.

⁸⁶ ENECOS Protest at 7; Massachusetts AG Protest at 5-6.

the transfer in lieu of foreclosure is the valuable consideration given in exchange for the Mystic 8 and 9 facilities (i.e., the outstanding debt forgiven).

46. We clarify that the 2002 GAAP impairment taken by Exelon on the Mystic 8 and 9 units is irrelevant for the purposes of the original cost study. Mystic is correct in referring to the Commission's finding in the December 2018 Order that "[t]he claimed impairments do not represent a write-off that was previously authorized by the Commission. Accordingly, we will not require Mystic to take into consideration previously recognized GAAP impairments."⁸⁷ We also find that ENECOS's argument asserting that Mystic must include this impairment in its original cost study is a collateral attack on the December 2018 Order.

47. In the December 2018 Order, the Commission stated that Mystic's corrected original cost study would form the basis of its gross plant-in-service and accumulated depreciation values, *subject to true-up*.⁸⁸ At the time of the true-up, Mystic must adequately support its claimed gross plant-in-service and accumulated depreciation values. Specifically, the inputs to formula rates must be transparent,⁸⁹ and costs recovered under a formula rate must be reasonable and prudently incurred.⁹⁰ We find, however, that the cost inputs underlying Mystic's gross plant-in-service values (and, by extension, its accumulated depreciation values) are appropriately addressed in the true-up process. Accordingly, we decline to make findings on them here.

48. We find that ENECOS's reliance on Order No. 441 is misplaced. In Order No. 441, the Commission rejected the use of projected plant additions in a depreciation study. We also find that ENECOS's argument that Commission precedent does not permit recovery of future projected capital expenditures in rates does not square with codified ratemaking standards that allow for using projected Period II or Test Year costs to calculate rates.⁹¹ Further, it is not clear that the relief sought by ENECOS differs from the Commission's directive in the December 2018 Order. The Commission's clarification "that the true-up mechanism applies to *all items* with the exception of items

⁸⁷ December 2018 Order, 165 FERC ¶ 61,267 at P 71.

⁸⁸ *Id.* P 64 (emphasis added).

⁸⁹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149, at P 83 (2013), *reh'g denied*, 146 FERC ¶ 61,209 (2014).

⁹⁰ *Black Hills Power, Inc.*, 148 FERC ¶ 61,035, at P 3 (2014).

⁹¹ *See, e.g.*, 18 C.F.R. 35.13(d)(2) (2019).

that are fixed or must be modified by filing an FPA section 205 filing (*i.e.*, ROE)”⁹² necessarily includes any capital expenditures, whether incurred prior to the term of the Mystic Agreement period or capitalized during the term of the Mystic Agreement and expensed.

49. For these reasons, we direct Mystic to submit a compliance filing within 60 days of the date of this order to reflect the transfer in lieu of foreclosure in its original cost study.

D. Audit Rights

1. Compliance Filing

50. In the December 2018 Order, the Commission directed Mystic to “expand [section 6.2 of the Mystic Agreement] to allow ISO-NE to access all information in Everett’s possession.”⁹³ The Commission also directed Mystic to adopt the sliding scale revenue crediting mechanism for third party sales to ensure record-keeping of third party sales for the purposes of verifying how revenues should be credited.⁹⁴ To comply with these directives, Mystic proposes revisions to section 6.2 of the Mystic Agreement to give ISO-NE rights to review the books and records of Constellation LNG, LLC and Distrigas of Massachusetts, LLC and to maintain a record of third-party sales and revenue credits.⁹⁵

2. Comments and Protests

51. NESCOE argues that Mystic’s insertion of “Constellation LNG, LLC” and “Distrigas of Massachusetts LLC” only at the beginning of section 6.2 of the Agreement fails to comply fully with the December 2018 Order and could be interpreted as limiting ISO-NE’s contractual rights to audit sales.⁹⁶ NESCOE states that these entities must also be referenced in later provisions in the Mystic Agreement to ensure that ISO-NE has audit rights for gas purchases in connection with Everett, and NESCOE suggests that the Agreement could be remedied by adding “affiliates of” when referring to Constellation

⁹² December 2018 Order, 165 FERC ¶ 61,267 at P 174.

⁹³ *Id.* P 195.

⁹⁴ Mystic Transmittal Letter at 8 (citing December 2018 Order, 165 FERC ¶ 61,267 at P 134).

⁹⁵ *Id.* at 8-9.

⁹⁶ NESCOE Protest at 17.

LNC, LLC and Distrigas of Massachusetts LLC. NESCOE provides a suggested set of conforming changes in redline to section 6.2.⁹⁷

3. Determination

52. As stated in the rehearing order, the Commission has the authority to review Everett's books and records because Everett is owned by an affiliate of Mystic.⁹⁸ The Commission's directive in the December 2018 Order to "expand [section 6.2 of the Mystic Agreement] to allow ISO-NE to access all information in Everett's possession" is not limited to sales.⁹⁹ To the extent Exelon denies ISO-NE access to its subsidiaries' (either Mystic or Everett) books and records, ISO-NE may file a complaint under FPA section 206 with the Commission.

E. Other Issues

1. Comments and Protests

53. NESCOE's protest identifies a number of typographical errors and minor inconsistencies in Mystic's compliance filing.¹⁰⁰

2. Determination

54. We encourage Mystic to correct any ministerial or typographical errors, such as those identified by NESCOE, when it makes its further compliance filing.

F. Motion to Release Protected Material

1. Motion for Release

55. Concord filed a motion for release of certain material from the protective order issued on July 5, 2006 in Mystic Development, LLC, Docket No. ER06-427-000 (Protective Order).¹⁰¹ Concord requests that the Commission release the documentary response to data request AG-MYSTIC-60 (Bates pages MYS 12876 through MYS

⁹⁷ *Id.* at 17-18.

⁹⁸ *See* December 2018 Order, 165 FERC ¶ 61,267 at P 105 & n.225.

⁹⁹ *Id.* P 195.

¹⁰⁰ NESCOE Protest at 18-20.

¹⁰¹ Mystic Development, LLC, Order Adopting Protective Order, Docket No. ER06-427-000 (July 5, 2006) (Protective Order).

12883). Concord states that this document contains a statement attributed to Exelon of the net book value of the Mystic 8 and 9 units as of August 31, 2004, following the transfer of those units to Exelon's project finance lenders in lieu of foreclosure on May 25, 2004. Concord attaches this information to the privileged version of its motion. Concord asserts that the release of this information is justified and required for two reasons.¹⁰²

56. First, Concord argues that the net book value of Mystic 8 and 9 is a matter currently in controversy in connection with this compliance filing. Second, Concord contends that this document no longer satisfies the Protective Order's standard for protected status. Concord asserts that the Protective Order's first criterion for release—whether the assertedly protected materials customarily are treated by that participant as sensitive or proprietary and are not available to the public—is not applicable to data relating to the cost-of-service of a party seeking Commission acceptance of a cost-based rate. Concord argues that it is unreasonable for a party to expect that information concerning the net book value of assets on which it proposes to earn a regulated return of and on capital not enter the public domain.¹⁰³ Concord claims that the second criterion under which the Protective Order grants protected status (i.e., if disclosed freely, the material governed by it would, if disclosed freely, subject the party providing it, or its customers, to risk of competitive disadvantage or other business injury) cannot be met because Mystic Development LLC (the party that provided the document in discovery) no longer exists.¹⁰⁴

57. Concord is amenable to the Commission covering this document under the protective order in Docket No. ER18-1639-000 to eliminate any confidentiality concerns.¹⁰⁵

2. Mystic's Answer

58. Mystic argues that the document that Concord seeks to remove from the Protective Order is irrelevant and outside the narrow scope of Mystic's compliance filing because the Commission has declined to consider GAAP impairments, including this one.¹⁰⁶

¹⁰² Concord Motion at 1-2.

¹⁰³ *Id.* at 2.

¹⁰⁴ *Id.* at 2-3.

¹⁰⁵ *Id.* at 2, 4.

¹⁰⁶ Mystic Answer at 8 (citing December 2018 Order, 165 FERC ¶ 61,267 at P 71).

3. Determination

59. We deny Concord's motion to remove the document in question from the restrictions of the Protective Order issued in Docket No. ER06-427-000. Concord is, in effect, asking the Commission to disclose information for which a party previously sought protected treatment. In *Independent Market Monitor*, the Commission "balance[d] the need for public disclosure [of] information against the harm that that disclosure could cause"¹⁰⁷ and found that, in that case, the balance tilted in favor of disclosure because "release of . . . the material for which the above-named parties seek privileged treatment is necessary for the Commission to carry out our responsibilities [i.e., ruling on a complaint] and set forth the reasons for our ruling."¹⁰⁸ Concord has not shown why such a balancing process here should lead to disclosure.

60. With regard to the possibility of harm that could arise from disclosure, the Protective Order in Docket No. ER06-427-000 allowed parties to designate as protected "those materials which customarily are treated by that Participant as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Participant or its customers to risk of competitive disadvantage or other business injury."¹⁰⁹ The information at issue here—Mystic's earlier statement as to the value of its units—appears to fall within that definition. Because the Protective Order already designated such material as potentially requiring protection from disclosure, we will assume that Mystic could potentially be damaged by its disclosure.

61. Concord also has not shown the need for public disclosure that it seeks. Concord will still be able to bring this information to the Commission's attention because it has already filed the document that it seeks to disclose as an attachment to the privileged version of its motion. Thus, Concord can make arguments to the Commission regarding Mystic's earlier statements as to the net book value of the Mystic 8 and 9 units in 2004, so long as it does so in confidential pleadings. We have stated above that we will not take into consideration here the 2002 GAAP impairment taken by Exelon on the Mystic 8 and 9 units, which is the point that Concord wishes to contest by using Mystic's 2004 statement as to the net book value of the Mystic 8 and 9 plants.¹¹⁰ Therefore, we will not

¹⁰⁷ *Indep. Market Monitor for PJM Interconnection, L.L.C. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,198, at P 8 (2019).

¹⁰⁸ *Id.* P 1.

¹⁰⁹ See Protective Order at 1.

¹¹⁰ See *supra* P 46.

need to address Mystic's 2004 statements in making its public ruling on the net book value of Mystic 8 and 9.

62. Concord's two arguments as to why the Commission should release the information are not relevant to the balancing test. Concord's first argument—that it is “unreasonable” for a party to expect that information as to the value of assets on which it proposes to earn a regulated return of and on capital remain confidential—does not address or counteract the fact that the Protective Order gave parties the ability to seek confidential treatment for this type of information. Concord's second argument—that Mystic Development, LLC cannot be injured by the release of this information, since that entity is no longer in existence—ignores the fact that release of the information still has the potential to injure the current owner of the Mystic 8 and 9 units, Exelon. Moreover, Concord has not shown that it will be harmed by keeping the information confidential. For these reasons, we deny Concord's motion.

The Commission orders:

(A) Mystic's compliance filing is hereby accepted, in part, and rejected, in part, as discussed in the body of this order.

(B) Mystic is hereby directed to submit a further compliance filing, within 60 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Glick is dissenting with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Constellation Mystic Power, LLC

Docket No. ER18-1639-003

(Issued July 17, 2020)

GLICK, Commissioner, *dissenting*:

1. As explained in my dissents from the concurrently issued orders in this proceeding,¹ I believe that the Commission orders giving rise to the compliance filing addressed today exceeded the Commission's jurisdiction under the Federal Power Act. Accordingly, I dissent from this order addressing that compliance filing on the same basis.

For these reasons, I respectfully dissent.

Richard Glick
Commissioner

¹ *Constellation Mystic Power, LLC*, 172 FERC ¶ 61,044 (2020) (Glick, Comm'r, dissenting); *Constellation Mystic Power, LLC*, 172 FERC ¶ 61,043 (2020) (Glick, Comm'r, dissenting).