

June 8, 2021

VIA ELECTRONIC MAIL

Noel Symons
Colin B. Francis
McGuire Woods LLP
888 16th Street NW, Suite 500
Black Lives Matter Plaza
Washington, DC 20006

Dear Noel and Colin:

We are writing to follow up on our email of May 4, 2021. As you know, we determined not to withdraw any of the information requests that NESCOE submitted seeking information and documentation of Mystic's April 1, 2021 informational posting.

We have reviewed Mystic's Objections and Responses to NESCOE's First Set of Information and Document Requests provided May 13, 2021. We continue to believe that the information NESCOE sought is relevant and not outside the scope of the information exchange process. Mystic chose to populate the template in the April 1, 2021 informational posting with data other than capital expenditures, and as discussed below, the protocols permit discovery of and challenges to any update of projected costs.

In response to a number of NESCOE's information requests, Mystic provided the following objection:

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

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

Term but should have been completed prior to the Term.”

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

Although Mystic made a good faith effort, nonetheless, to respond to three of those requests,¹ Mystic did not provide any responses to NES-MYS-1-08, NES-MYS-1-09, and NES-MYS-1-11 through NES-MYS-1-28.²

NESCOE has reviewed the letter from John P. Coyle to Noel H. Symons dated May 25, 2021, regarding Mystic’s objections to data requests of the Eastern New England Consumer-Owned Systems (“ENECOS”) (“ENECOS response”). NESCOE generally shares the views of and concerns expressed by ENECOS’ counsel. NESCOE agrees that the information requests to which Mystic has objected on the basis that they are “outside of the scope of this information exchange process” are, in fact, properly within the scope of the information exchange process.

Section I.B.1 of the Schedule 3A Protocols states that for the 2021 informational filing:

Owner shall file on or before April 1, 2021, in accordance with the Informational Exchange and Challenge Procedures detailed below, appropriate support for the capital expenditures and costs that will be collected as an expense during the Term in calendar year 2022 (June 1, 2022 to December 31, 2022) as detailed

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

² The objection quoted above was Mystic’s sole objection to a number of responses (*i.e.*, NES-MYS-1-08, 1-09, 1-11, 1-15, 1-16, 1-18, 1-19, and 1-27). With the exception of the objection to NES-MYS-1-28, about which Mystic raised a more specific objection, the remaining responses also included objections such as “vague,” “unduly burdensome,” and “overbroad.”

below. **The Annual Fixed Revenue Requirement, the Maximum Monthly Fixed Cost Payment, and the Fixed O & M/Return on Investment component of the Monthly Fuel Cost Charge for the relevant period of the Term in Schedule 3 will be updated in accordance with the Methodology** and shall exclude true-up of investment and expense items disallowed by the Commission, if any.

Pursuant to Section II.2.A of the Schedule 3A Protocols:

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

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

As pointed out in the ENECOS response, Mystic's April 1, 2021 informational posting did indeed provide an update of projected costs. In the memorandum accompanying its April 1, 2021 informational posting, Mystic stated (at n.2) that this posting "only requires an explanation of 2022 CapEx Projects; it does not require full updated projected costs or a true-up. Accordingly, the populated Methodology included as Attachment C is being included for informational purposes only and only reflects the addition of the costs of the 2022 CapEx Projects."

Mystic's protocols do not make an exception for an update of projected costs that is provided "for informational purposes only." Had Mystic solely provided the 2022

CapEx Projects, rather than a fully updated populated Methodology, this dispute about what is within and outside the scope of the information exchange process may have been avoided. But as it stands, NESCOE has questions about Mystic's April 1, 2021 informational posting that remain unanswered.

Mystic's position that the populated version of the Methodology it provided with the April 1, 2021 informational posting shielded from review and challenge because it was provided "for informational purposes only" is not supported by the cited protocol provisions. That Mystic is required to update the capital expenditures for the June 1-December 31, 2022 period in the April 1, 2021 informational posting does not mean that other components of the updated charges may escape scrutiny. Additionally, Mystic's position that it provided a populated version of the Mystic Methodology "for informational purposes only" cannot be reconciled with what Mystic provided in the April 1, 2021 informational posting—*i.e.*, a populated template with inputs that differed from what it filed in 2018.³

Without being able to seek full discovery of the April 1, 2021 informational posting, NESCOE is hindered from being able to assess whether the charges proposed therein are consistent with the FERC-approved methodology, prudent and otherwise just and reasonable. Accordingly, in order to preserve its rights under the protocols, NESCOE may need to submit a preliminary challenge this year on any unexplained issues (including but not limited to those items that are the subject of Mystic's objections). NESCOE is not willing to wait until the 2022 informational filing process to submit such a challenge only to risk being told that it is "too late" to review and challenge aspects of the annual update that were submitted with the April 1, 2021 informational posting.

Please let us know if you have any questions regarding our position or if you would like to discuss this further.

/s/ Phyllis G. Kimmel

Phyllis G. Kimmel
Attorney for NESCOE

Sincerely,

/s/ Jason Marshall

Jason Marshall
NESCOE General Counsel

³ Mystic stated in its transmittal memorandum (at n.2) that "[t]he version of the Methodology used is the same as the populated Methodology submitted as Attachment C-1 to Mystic's September 15, 2020 compliance filing submitted in Docket No. ER18-1639-007, which is currently pending before the Commission." However, Mystic's decision not to answer questions about this version of the populated template makes it impossible for NESCOE or other interested parties to review and challenge these inputs.