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**New England States Committee on Electricity Informal Challenges to  
Mystic's April 2021 Informational Posting**

August 2, 2021

In accordance with the protocols contained in Schedule 3A to the Amended and Restated Cost-of-Service Agreement among Constellation Mystic Power, LLC (“Mystic”), Exelon Generation Company, LLC, and ISO New England Inc. (“Agreement”),<sup>1</sup> the New England States Committee on Electricity (“NESCOE”) submits the following Informal Challenges to the Informational Posting that Mystic made available on April 1, 2021 (“2021 Informational Posting”).

**I. INTRODUCTION**

Section I.B.1.i of Schedule 3A requires Mystic to file on or before April 1, 2021, “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). . . . 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 . . . .”

In the 2021 Informational Posting, Mystic provided:

- A cover letter;

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<sup>1</sup> Schedule 3A is referred herein to as “the Protocols.” Capitalized terms not defined in this Informal Challenge are intended to have the meaning given to such terms in the Protocols (and if not defined in the Protocols, then the meaning given to such terms in the Agreement).

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- Attachment A, a list of 2022 capital expenditure (“CapEx”) projects related to the Mystic 8 & 9 units (the “Mystic 8&9 Template”), and for the Everett Marine Terminal (“Everett” or “EMT”) (the “EMT Template”);
- Attachment B, the Affidavit of Michael Brown and Abigail Piollo-Alam (“Affidavit”);
- Attachment C, which Mystic described as “[a] version of the Methodology including the total costs of the 2022 CapEx Projects[;]”<sup>2</sup> and
- Attachment D, a confidentiality agreement.

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

NESCOE has reviewed the 2021 Informational Posting and the responses to its information and document requests through the lens of the Protocols and the orders of the Federal Energy Regulatory Commission (“FERC” or the “Commission”). Below, NESCOE submits Informal Challenges related to Mystic’s 2022 CapEx projects (Section II) and to other aspects of the Informational Posting (Section III).

**II. ATTACHMENT A - 2022 CAPEX PROJECTS**

The 2021 Informational Posting is when Mystic needs to support its proposed 2022 CapEx projects (*i.e.*, capital expenditures to be incurred June 1, 2022 – December 31, 2022): “Capital expenditures that will be incurred during the term *will be supported prior to their incurrence* and are subject to a true-up adjustment to the actual costs in accordance with the

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<sup>2</sup> Mystic stated: “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” and 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.”

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protocols . . . .”<sup>3</sup> Indeed, the Protocols make clear that Interested Parties may *not* wait until the true-up process to challenge projected capital expenditures: “For capital expenditures previously identified as being necessary to meet the reliability need, this [2023] filing will only true-up the amount for each capital expenditure to actuals, not whether a capital expenditure should have been designated as necessary to meet the reliability need.”<sup>4</sup>

The Protocols describe what Mystic needs to do to support CapEx projects:

If the Filing will support the capital expenditures that will be incurred during the Term it shall:

1. Provide an explanation of need that explains why the capital expenditure is necessary in order to meet the obligations of the Agreement;
2. Demonstrate that the expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Agreement; and
3. Include a description of the project(s), the need for the project(s), the alternatives considered with respect to the least-cost alternatives, the expected start and completion date(s), and the project costs.
4. Identify whether either of the following occurred for projects that it is proposing to expense over the term of the Agreement, and if so explain why: (a) the project was scheduled for before the Term but delayed into the Term, or (b) the project was scheduled for during the Term but should have been completed prior to the Term.<sup>5</sup>

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<sup>3</sup> Schedule 3A, Section I (emphasis supplied).

<sup>4</sup> Schedule 3A, Section I.B.3.ii. *See also id.* at I.B.4.i (2024 filing) and I.B.5.i (2025 filing).

<sup>5</sup> Schedule 3A, Section II.2.A. Aspects of these provisions are under review at the U.S. Court of Appeals for the D.C. Circuit in Case. No. 20-1343.

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As discussed below, Mystic has not supported a number of the 2022 CapEx projects. The Affidavit states that “because the Mystic Agreement requires an updated projection of costs in April of 2022 and a true-up to actual costs in 2023, interested parties will have ample opportunity to review the actual, final costs when they are known.”<sup>6</sup> However, as noted above, the Protocols specify that the time to challenge projected CapEx projects on the basis that they are not needed for reliability or other reasons related to Mystic’s fulfilling its obligations under the Agreement, is now—at the time of the relevant Informational Posting, not in the future.

Accordingly, NESCOE includes below Informal Challenges related to CapEx projects that Mystic has failed to adequately support.

**A. Mystic 8&9 Template**

**1. CapEx Projects Lacking Project Approval**

As shown in Attachment A, there are a number of CapEx projects that are included in the Mystic 8&9 Template where Mystic has provided no supporting information:

- MYD8 BOP Capital (Row 6) (see also A.3, below)
- MYD8 GT 81/82 Exp Jts 01 (Row 8)
- MYD8 Capital Valves (Row 9)
- MYD8 ST 85 Valves (even) (Row 10)
- MYD8 Steam Attemperators (Row 11)
- MYD8 LCB II Replacement (Row 16)

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<sup>6</sup> Attachment B, Affidavit at P 10.

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- MYD8 Compressors (Row 20)
- MYD9 Capital Motors (Row 26)
- MYD9 Capital Valves (Row 27)
- MYD9 Steam Attemperators (Row 28); and
- MYD9 LCB II Replacement (Row 32).

Rather, Mystic has simply stated with respect to each of these CapEx projects: “Project need and cost estimates determined through long range planning process, as described in Affidavit submitted with this informational posting. Any supplemental information on final cost and alternatives studied will be provided in subsequent informational filings after project approval obtained.”<sup>7</sup>

Because Mystic has provided no supporting information about these capital expenditures in the 2021 Informational Posting, there is no way for NESCOE to verify if Mystic has made the requisite demonstrations regarding its right to recover these costs under the Agreement. As such, these projects are unsupported and the costs cannot be incurred until they have been supported in accordance with the Protocols.

**2. Comprehensive Rotor Inspections (CRIs) of Gas Turbine 81, 82, 93, and 94 (Rows 18, 19, 23, 35)**<sup>8</sup>

Mystic provided information discussing the need for comprehensive rotor inspections (“CRIs”) of its four gas turbines. However, Mystic has not demonstrated that these costly CRIs

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<sup>7</sup> Attachment A, Mystic Template, Column L of Rows 6, 8, 9, 10, 11, 16, 20, 26, 27, 28, and 32.

<sup>8</sup> Source: NES-MYS-1-02; NES-MYS-3-02; NES-MYS-3-03; NES-MYS-3-04; NES-MYS-3-05.

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need to be performed before or during the Term in order to keep the Mystic units running for the additional two years of the Term under the Agreement. Rather, these capital expenditures appear

[BEGIN CUI-PRIV//HC] 

[END CUI-PRIV//HC] Nor has Mystic demonstrated that the CRI expenditures are the least-cost commercially reasonable option consistent with Good Utility Practice.

**3. BOP Capital (Row 6)**<sup>9</sup>

Mystic has set aside a certain amount capital of expenditures for “emergent material conditions.” Mystic has indicated that it maintains this contingency in case it is needed. However, as noted above, Mystic is required to support any capital expenditures prior to their being incurred. Because there is no supporting information on these contingency capital expenditures, there is no way to determine whether they are or will be related to the reliability need under the Agreement or if they will be the least-cost commercially reasonable option consistent with Good Utility Practice.

**B. EMT Template**

As is the case with the unsupported CapEx projects in the Mystic 8&9 Template, Mystic includes many items in the EMT Template that are likewise unsupported.

The EMT CapEx projects that NESCOE identifies below suffer from two additional problems. First, Mystic has not demonstrated that the costs are related to extending Mystic’s operations by the two-year period covering the Agreement. Rather, these EMT CapEx projects are routine in nature and appear related to extending Everett’s operations beyond the Term of the

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<sup>9</sup> Source: NES-MYS-01, subpart a.

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Agreement.<sup>10</sup> Mystic's position appears to be that *any* repair that will take place prior to the Term of the Agreement is necessary for the sole purpose of meeting its reliability obligations under the Agreement, including where a repair would have been needed prior to the Term and where a repair could be postponed until after the Term. Second, even if Mystic can demonstrate that the capital expenditures are related to the reliability need under the Agreement (which NESCOE believes it has not), in light of the lack of a clawback provision, Mystic has not explained why these capital expenditures should be treated as expense to be recovered during the two-year period instead of being capitalized, added to rate base, and recovered over an extended period beyond the Term.

**1. EMT CapEx Projects Lacking Project Approval**

As is the case with the Mystic CapEx projects discussed above (*see* Section A.1, above), there are a number of Everett CapEx projects shown in Attachment A that are included in the EMT Template where Mystic has provided no supporting information. (For the items with an asterisk, Mystic provided some information in response to NESCOE's information and documents requests, and these items are discussed in more detail below.)

- \*Recoat LNG Storage Tanks (incl Outer Shell Welds) (Row 6) (*see* B.2, below)
- Liquid Level Gauge Replacement (Row 13)
- \*Cryo Insulation (Row 14) (*see* B.8, below)
- BOP Maintenance Capital (Row 15)

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<sup>10</sup> The issue of whether Mystic has an obligation to refund costs paid by ratepayers related to Everett if Everett remains in operation beyond the Term of the Agreement is pending on appeal in the D.C. Circuit.

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- Cryogenic Valve Replacement (Row 17)
- BOP Capital Valves (Row 18)
- BOP Capital Motors (Row 19)
- BOP Capital Pumps (Row 20)
- MV Electrical System Replacemt (Row 22)
- Firewater Main Repl/Upgrade (Row 23)
- \*Forward Bollard (Row 25) (see B.4, below)
- \*Secondary Feed (Row 26) (see B.5, below)
- Structural Suppt Upgr-Conduit (Row 27)
- \*Mooring Hooks (Row 28) (see B.4, below)
- \*Tank Base Heater Replacment (Row 30) (see B.7, below)

Here, again, the EMT Template just notes: “Project need and cost estimates determined through long range planning process, as described in Affidavit submitted with this informational posting. Any supplemental information on final cost and alternatives studied will be provided in subsequent informational filings after project approval obtained.”<sup>11</sup>

Because Mystic has not provided sufficient supporting information about these capital expenditures in the 2021 Informational Posting, there is no way for NESCOE to verify if Mystic has made the requisite demonstrations regarding its right to recover these costs under the

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<sup>11</sup> EMT Template, Column L (for the rows specified above).



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Agreement. For the same reasons as discussed above with respect to unsupported Mystic CapEx projects (see Section A), NESCOE includes these CapEx projects in this Informal Challenge.

**2. Recoat LNG Storage Tanks (incl Outer Shell Welds) (Row 6)<sup>12</sup>**

NESCOE understands that Mystic is treating the recoating of the EMT LNG storage tanks as an O&M expense, rather than as a capital expenditure, and that Mystic is intending to expense approximately [BEGIN CUI//PRIV-HC] [REDACTED]

[REDACTED] [END CUI//PRIV-HC] Mystic states that the project was reclassified as O&M. Specifically, the approximately [BEGIN CUI//PRIV-HC] [REDACTED]

[REDACTED] [END CUI//PRIV-HC], were not treated as O&M, but rather as capital costs.

This means that there is [BEGIN CUI//PRIV-HC] [REDACTED] [END CUI//PRIV-HC] in EMT's rate base on which Mystic will collect a return. If Mystic is going to treat this recoating project as an O&M expense, then the amounts expended previously by EMT on it should likewise be treated as O&M expense and should be removed from EMT's rate base. Otherwise, Mystic benefits from this change in accounting by recovering a portion of the costs of the project as an expense during the two-year Term of the Agreement, in addition to recovering a return on the other portion of the costs of the project that was completed prior to the Term of the Agreement.

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<sup>12</sup> Source: NES-MYS-1-01, subpart I; NES-MYS-3-01.

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**3. HA (Bypass for SCR (HAB) Repl) (Row 24)<sup>13</sup>**

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

Additionally, Mystic has not demonstrated that the costs of this project are associated with EMT providing fuel service to Mystic only during the Term of the Agreement. Rather, these are general repair costs that predate the Agreement and are unrelated to Mystic’s obligations under the Agreement.

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<sup>13</sup> Source: NES-MYS-1-04, subpart b; NES-MYS-3-06; NES-MYS-3-07; ENC-MYS-1-11.

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**4. Forward Bollard (Row 25) and Mooring Hooks (Row 28)<sup>14</sup>**

Based on the information provided by Mystic in response to NESCOE information requests, Mystic has not demonstrated that replacing the forward bollard or the mooring hooks are projects needed during the Term of the Agreement for Mystic to meet its reliability obligations under the Agreement.

Indeed, Everett has been in continuous operations, even since the failure identified on January 24, 2020, and yet to this date, these capital expenditures have “not yet been presented to management for funding authorization.” In light of this, Mystic has not demonstrated why these projects could not wait until after the end of the Term. And Mystic has likewise not demonstrated that these capital expenditures are related to Mystic’s meeting the reliability need under the Agreement. From the information provided, these appear to be routine repairs that may or may not need to be completed during the Term, and that will last for decades beyond the Term. Additionally, Mystic had not demonstrated that these expenditures are reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice.

Accordingly, to the extent that Mystic does demonstrate a need for the forward bollard or mooring hooks to be replaced now, there is no justification to expense these capital costs during the Term of the Agreement. These are long-term projects that will last for decades, and these types of capital investments should be treated as a capital expense with costs recovered over time, not just during the Term of the Agreement.

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<sup>14</sup> Source: NES-MYS-1-04, subparts c and f; NES-MYS-3-08; NES-MYS-3-10.

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**5. Secondary Feed (Row 26)<sup>15</sup>**

This capital project relates to [BEGIN CUI//PRIV-HC] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED] [END CUI//PRIV-HC] Mystic has not supported ratepayers bearing these capital expenses as they go well beyond what Mystic would need to meet the reliability need under the Agreement.

**6. Heated Vent Hot Water Piping (Row 29)<sup>16</sup>**

NESCOE understands that this CapEx project relates to replacement of hot water piping between heaters and LNG Storage tank heated vents. Mystic has indicated that the damage to

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<sup>15</sup> Source: NES-MYS-1-04, subpart d; NES-MYS-3-09.

<sup>16</sup> Source: NES-MYS-1-04, subpart g; NES-MYS-3-11.

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the piping has already been repaired. There appears to be no basis, therefore, for Mystic to recover these capital costs as expenses during the Term of the Agreement, rather than including them in EMT's rate base and recovering them over the life of the project.

As with the case of the forward bollard and mooring hooks, as far as NESCOE can tell based on the information provided, these repairs appear related to extending Everett's operations and will clearly benefit Everett long past the Term of the Agreement.

**7. Tank Base Heater Replacement (Row 30)<sup>17</sup>**

NESCOE's understanding of the tank base heater replacement project is that [BEGIN  
CUI//PRIV-HC] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CUI//PRIV-

HC] Additionally, Mystic has not demonstrated that this expenditure is reasonably determined to be the least-cost commercially reasonable option consistent with Good Utility Practice.

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<sup>17</sup> Source: NES-MYS-1-04, subpart h; NES-MYS-3-12; NES-MYS-3-13.

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**8. Cryo Insulation (Row 14)**<sup>18</sup>

To date, Mystic has not provided any supporting data for this project. Mystic has said that documentation of the Cryogenic Insulation Project is expected to be available in the first quarter of 2022.

Given the lack of data, it is impossible to know whether the costs are justified and in compliance with the cost recovery provisions of the Agreement and the Commission's orders.

**III. ATTACHMENT C**

**A. General Challenge and Reservation of Rights**

NESCOE submitted a number of information requests and document requests to Mystic regarding Attachment C. *See* NES-MYS-1-08 through NES-MYS-1-28; NES-MYS-2-01; and NES-MYS-3-16.

With the exception of NES-MYS-1-10 and NES-MYS-3-16, Mystic did not provide responses to any of these questions. For most of the 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

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<sup>18</sup> Source: NES-MYS-1-07; NES-MYS-3-14.

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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.<sup>[19]</sup>

NESCOE disagrees and believes 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.

The Protocols state that for the 2021 Informational Posting:

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 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*

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<sup>19</sup> E.g., Mystic objection to NES-MYS-1-08.

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*with the Methodology* and shall exclude true-up of investment and expense items disallowed by the Commission, if any.<sup>[20]</sup>

The Protocols further state that:

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.<sup>[21]</sup>

Mystic’s position that the populated version of the Methodology it provided with the 2021 Informational Posting is shielded from review and challenge because it was provided “for informational purposes only” is not supported by the cited Protocol provisions. The requirement that Mystic update its capital expenditures for the June 1-December 31, 2022 period in the 2021

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<sup>20</sup> Protocols, Section I.B.1.i (emphasis supplied).

<sup>21</sup> Protocols, Section II.2.A.



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Informational Posting does not relieve Mystic from the obligation to support the non-CapEx costs it seeks to recover under the Agreement.

Because Mystic did not provide responses to many of the questions that NESCOE had regarding the 2021 Informational Posting, there is no way to determine that Mystic has demonstrated that the charges proposed therein are consistent with FERC's orders approving the Agreement and the FERC-approved methodology, are prudent and otherwise just and reasonable. Accordingly, NESCOE submits this Informal Challenge on the unexplained costs about which NESCOE requested information and that are the subject of Mystic's objections.

**B. Specific Challenges**

In addition to the general challenge above, NESCOE challenges the following items in Attachment C, which have been modified from either the original 2018 filing or from Mystic's various compliance filings. Because Mystic has provided no information in response to requests, it is difficult to unwind and understand what Mystic has done in Attachment C.

As one example, it appears that Schedules A, D and E include the same adjustments as were made in Mystic's September 2020 compliance filing; however, Schedule I—which affects Schedule E—was not updated in the September 2020 compliance filing, as far as NESCOE can tell. In short, Mystic has not provided any information to allow NESCOE to understand how the inputs were derived (regardless of Mystic's claim that the entirety of Attachment C was provided “for informational purposes only”).

Because Mystic has not provided responses to NESCOE's information and document requests, there is no way to determine whether these changes are correct, in accordance with

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FERC’s orders (both addressing the underlying Agreement and Mystic’s compliance filings) and otherwise in accordance with the Agreement and just and reasonable.

**1. Schedule A and Schedule D**

Mystic has provided no information so that NESCOE can verify the net book values for Mystic 8&9 plant in service at 12/31/2017 and the associated depreciation expense.<sup>22</sup> It has also not provided any of the requested labor and labor related expense information in order to determine the reasonableness of the capitalized portion of these expenditures that have or will become components of the total CapEx projects.

**2. Schedule A and Schedule E**

The adjusted net book values for Mystic 8&9 on Exhibit D in the 2021 filing carry over to the computation of accumulated deferred income taxes (“ADIT”)/excess deferred income taxes (“EDIT”), resulting in a significant change to the ADIT and EDIT calculations compared to Mystic’s original filing.<sup>23</sup>

**3. Schedule I**

Schedule I was not adjusted in Attachment C based on new plant amounts. This is inconsistent with the adjustments to Schedule A, D and E. The Mystic 8&9 gross plant detail amounts used to develop plant allocators have not been adjusted to reflect the adjusted gross plant costs on Schedule D in this filing.<sup>24</sup>

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<sup>22</sup> See NES-MYS-1-11; NES-MYS-1-12; and NES-MYS-1-13.

<sup>23</sup> See NES-MYS-1-14 and NES-MYS-1-15.

<sup>24</sup> See NES-MYS-1-16 and NES-MYS-1-17.