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**Subject to Non-Disclosure Agreement re Mystic’s April 1, 2024 Informational Posting**

**Constellation Mystic Power, LLC**  
**Responses to the Informal Challenges of the**  
**Eastern New England Consumer-Owned Systems**

**August 26, 2024**

On April 1, 2024, Constellation Mystic Power, LLC (“Mystic”), submitted for posting on the ISO New England Inc. (“ISO-NE”) webpage its 2024 Informational Posting (the “Fourth Informational Posting”) concerning the inputs to the Annual Fixed Revenue Requirement (“AFRR”) and Supplemental Capacity Payment (“SCP”) established under Schedules 3 and 3A of the Amended and Restated Cost of Service Agreement (“COSA”) among Mystic, Constellation Energy Generation, LLC (“CEG”), and ISO-NE.<sup>1</sup>

On July 31, 2024, Mystic received Informal Challenges from the Eastern New England Consumer-Owned Systems (“ENECOS”). Mystic acknowledges receipt of ENECOS’s recent Informal Challenges, has carefully reviewed ENECOS’s submissions, and offers the following responses.

**Informal Challenges:**

**ENECOS Informal Challenge No. 2024-1**

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<sup>1</sup> See Constellation Mystic Power, LLC, FERC Electric FPA Tariff, Cost of Service Agreement, Rate Schedule FERC No. 1 (“Mystic Agreement”).

<sup>2</sup> *Constellation Mystic Pwr., LLC*, 165 FERC ¶ 61,267 at P 151 (2018), *reh’g denied*, 172 FERC ¶ 61,044 (2020).

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**Mystic's Response:**

The Informal Challenge process is governed by the Protocols outlined in Schedule 3A, Section II.4.B of the Mystic Agreement. According to this section, Informal Challenges must be specific to the inputs, explanations, allocations, and calculations related to the current cost data being reviewed. This process is intended to focus on the accuracy, prudence, and consistency of the data relevant to the filing year in question, in this case, calendar year 2023, as outlined in Schedule 3A, Section II.2.A.

ENECOS Informal Challenge No. 2024-1 pertains to 2024 cost information provided as part of confidential settlement discussions that are ongoing before a settlement ALJ in Docket No. ER18-1639-027. Because the information is confidential settlement information related to a different year, Mystic is not responding to this challenge herein and has redacted it for purposes of posting both ENECOS's challenges and these responses.

ENECOS's concerns related to 2024 costs should be addressed during the Global Settlement discussions as memorialized in the *Memorandum of Understanding to Fully Resolve Docket No. ER18-1639-027 and All Pre-Term CapEx Disputes* ("MOU"), dated July 2, 2024, and in the absence of a Global Settlement, through Mystic's 2025 informational process.

**ENECOS Informal Challenge No. 2024-2  
(Annualization of Rate Base)**

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**Mystic's Response:**

See above response to ENECOS's Informal Challenge No. 2024-1. ENECOS's Informal Challenge No. 2024-2 solely relates to 2024 cost data provided as confidential settlement materials. Accordingly, Mystic has redacted the settlement confidential information and is not providing a response to this challenge through this Informal Challenge process.

**ENECOS Informal Challenge No. 2024-3  
(Allocation of Administrative & General Costs)**

Mystic's formula for the allocation of indirect A&G overheads has not been sufficiently justified. Because the labor component of that formula is based on a limited amount of labor, Mystic's use of its current formula for allocating indirect overheads tends to attribute A&G costs incurred for other aspects of Constellation's operations to Mystic and Everett.

As shown on WP7 Corp A&G of the formula rate, the Company is including labor for the Wind and Solar, South and West, Northeast and MidAtlantic areas of the business for the basis (denominator) of the calculation of the allocation factor. Settlement Confidential Information Removed  
Settlement Confidential Information Removed However, there is additional labor from the Power Corp and Billed & Allocated/Embedded portions of the Company that are not included in the denominator. These labor costs should be included in the total basis of determining the allocation factor, as these are all costs that are included as part of Constellation's Power Corp departments. This appears to be a cherry picking of data to increase the amount of Corporate A&G overhead costs allocated to Mystic 8 and 9 and Everett to be included for recovery through the AFRR formula rate in Schedule 3A to the COSA.

**Mystic's Response:**

ENECOS appear to challenge the calculation of the "Mystic 8&9 / Power Fleet Labor Allocator" on Schedule I of the Methodology (the "Asset Allocator"), which affects the corporate overhead costs allocated to Mystic and Everett on Schedule H. If we understand ENECOS's position correctly, ENECOS argue that the Asset Allocator overstates Mystic's share of overhead costs because the denominator of that calculation (i.e., the "Power Fleet Labor/Labor Related" costs on Line No. 8 of Schedule I) incorrectly excludes certain Power OpCo labor costs. Specifically, ENECOS contend that the "additional labor from the Power Corp and Billed

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& Allocated/Embedded portions of the company,” shown on WP7, should have been included in the denominator of the formula.

We disagree. A portion of Constellation's corporate overhead costs is allocated to Mystic and Everett on Schedule H. These overhead costs are divided into three categories: (1) Constellation “corporate” (e.g., human resources and the legal department overhead costs for the company);<sup>9</sup> (2) the “Commercial” organization within Constellation (e.g., power trading); and (3) the “Power OpCo” organization within Constellation (i.e., the non-nuclear power generation business unit that includes Mystic and Everett). *See* Schedule H, Line Nos. 10-27. None of the Nuclear OpCo overhead costs are allocated to Mystic/Everett.

The Asset Allocator is the final allocator applied on Schedule H for each of the three categories mentioned above. By this stage, other allocators on Schedule H have already removed (a) overhead costs unrelated to power generation and (b) overhead costs related to the nuclear business. When the Asset Allocator is applied on Schedule H (Line Nos. 16, 21, and 26), it is applied to a pool of dollars representing the overhead costs from “Corporate,” “Commercial,” or “Power OpCo” attributable to the non-nuclear power generation business. The Asset Allocator then further narrows that pool to reflect Mystic's (or Everett's) share of the non-nuclear power generation business. Using labor costs as a proxy, the Asset Allocator is calculated by comparing Mystic/Everett labor costs to the entire Power OpCo fleet's labor costs.

To illustrate why the other costs that ENECOS reference—i.e., the “Power Corp and Billed & Allocated” costs—are properly excluded from the derivation of the Asset Allocator, consider a simplified example. Suppose the Power OpCo fleet consists of five assets, each with labor costs of \$20. Mystic's labor costs would represent 20% of the fleet (\$20/\$100), and thus the Asset Allocator would be 0.2. In addition to these directly-billed labor costs, there are other Power OpCo labor costs that are not billed directly to an asset but rather remain at the “Power Corp” level. These costs represent overhead costs attributable to the entire fleet rather than a specific site or asset (e.g., a senior manager responsible for the entire fleet). By definition, these “Power Corp” costs are allocated to all the assets in the fleet, including Mystic and Everett, and thus a portion of these costs is attributable to Mystic and Everett. Assume those costs total \$100.

If the “Power Corp” labor costs (\$100) are added to the denominator (and only the denominator) of the Asset Allocator calculation, as ENECOS suggest, Mystic's share of the Power OpCo organization's costs would drop to 10% (\$20/\$200), instead of 20%. Such an outcome would be clearly incorrect, though, as it would imply that none of the “Power Corp” costs are related to Mystic. By comparing Mystic's costs only to the other directly billed costs, the Asset Allocator as Mystic has calculated it accurately reflects Mystic's share of the non-nuclear power generation business. Alternatively, if we were to include the Power Corp costs in the calculation, a portion of such costs would have to be included in the numerator as well, given that some of these costs are by definition attributable to Mystic/Everett. If we assume that 20% of the “Power Corp” overhead costs are attributable to Mystic, including these costs in the

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<sup>9</sup> Note: “corporate” overhead is referred to as “Constellation Overhead” in Schedule H.

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formula would also yield a 20% result:  $[20 + (0.2 * 100)] / 200 = 0.2$ . In other words, excluding these costs produces the same result as appropriately allocating them in the formula.

For the allocation of Mystic/Everett’s share of the Power OpCo’s overhead costs (see Line Nos. 24-27 of Schedule H), we note that the “other” Power Corp costs identified by ENECOS are precisely the costs being allocated on Schedule H.

**ENECOS Informal Challenge No. 2024-4  
(Prudency of Managing Materials and Supplies)**

Mystic has not provided sufficient information to confirm whether the management of its Materials and Supplies is prudent. The total annual amount of Materials and Supplies has increased each year of the COSA:<sup>10</sup>

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- Total 2022 Materials and Supplies: \$23,970,020.19
- Total 2023 Materials and Supplies: \$24,096,472.50

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Prudent operating practice would have recognized the impending decommissioning and retirement of Mystic 8&9. A prudent operator would therefore have managed its Materials and Supplies balance in a way that would limit the amount of excess inventory at the end of the generating facility’s service life. Instead, Mystic has maintained and grown its inventory balance over the term of the COSA. Mystic’s bald assertion of these amounts, in the face of impending decommissioning of Mystic 8 and 9, is manifestly insufficient to support recovery of a return of and on these claimed costs during the term of the COSA.<sup>11</sup>

**Mystic’s Response:**

Before substantively responding to this challenge, Mystic makes two initial points of clarification.

First, Mystic notes that the stated values in Schedule F reflect a “snapshot in time” of the inventory at the time the report is pulled. They do not necessarily reflect year over year “growth” of the inventory, nor does an increase in value necessarily reflect “growth.” The number of individual items in inventory did go down year over year between 2022 and 2023, even though the associated dollar value increased. While Mystic has not evaluated the reason for the increased dollar amount, personnel at Mystic who manage Supply & Procurement anecdotally noted a marked increase in inflation in the past several years, which likely accounts for part of the increase.

<sup>10</sup> See Excel file **Settlement Confidential Information Removed** at tab “WP5 Materials and Supplies,” sum of column R.

<sup>11</sup> *Constellation Mystic Pwr., LLC*, 187 FERC ¶ 61,099 at PP 82-83, 100-106 (2024).

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Second, the challenge erroneously refers to Mystic's recovery "of and on" the listed amounts. This statement is inaccurate. Mystic does receive a return on the Materials & Supplies inventory balance because that value is included in rate base. Mystic does not, however, earn a return *of* that balance. Rather, Mystic only recovers the cost of materials as an expense if and when they are removed from inventory and used in the Facility. Specifically, the costs would be recovered as an O&M expense.

Turning now to the substantive allegation of imprudence, Mystic maintains that it has reasonably managed its inventory. Constellation's Procurement & Supply group works together with Mystic Plant management to ensure that the Mystic 8&9 units have adequate on-site supply of materials, including spare parts and consumables (e.g., o-rings, gadgets), necessary to keep the units reliably operating. Supply and Procurement shepherds this process. The Plant owns the inventory. Supply and Procurement only procures items at the direction of the Plant, either through a direct request for a particular purchase or, in some cases, based on a pre-arranged automatic authorization to replace an item that has been removed from inventory.

The type and amount of supplies maintained on site is set based on the long standing experience of Mystic's engineering and operations and maintenance personnel. In general, items are removed from inventory when used at the plant and are replenished. For certain items, particularly higher dollar items, there is a "minimum" and "maximum" parameter of how many of the item should be maintained in the inventory. These values are based on, e.g., the number of the item used in the units, manufacturer specifications, and the experience of Mystic's personnel. This practice ensures that the site maintains sufficient, but not excessive materials in case of equipment failures. For other smaller dollar items, e.g., gaskets, there are no minimum and maximum values as these items can often only be purchased in bulk. These are replenished as needed.

A limited amount of items (e.g., industrial gasses) are automatically replenished based on existing long-term contracts. All other procurement requests are individually reviewed and approved by a person in the Supply & Procurement group. And as noted above, Supply & Procurement can only procure items at the direction of Plant management.

ENECOS's argument appears to be that Mystic should have altered this practice to account for the impending retirement of the units. However, Mystic operates under the Mystic Agreement, which imposes heightened reliability obligations. As noted in the Mystic Agreement, ISO-NE determined that the Mystic units were needed for reliability purposes and that they may be required to run out-of-economic merit order to address fuel security risks that threaten the reliability of the ISO-NE transmission system.<sup>12</sup> The Mystic Agreement mandates physical performance, with substantial penalties if performance standards are not met. Mystic, therefore, maintained a level of materials and supplies that its operators deemed necessary to meet these obligations.

The prudence of Mystic's materials and supply management should be evaluated in the context of an operator managing under these stringent requirements, which demand that Mystic

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<sup>12</sup> See Mystic Agreement, Recital, Section F.

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8&9 be available to provide reliability service throughout the entire Term of the Mystic Agreement. ENECOS’s position, which assumes a standard retirement scenario without these heightened reliability risks, misapplies the prudence standard.<sup>13</sup>

**ENECOS Informal Challenge No. 2024-5  
(Property Tax Paid on Real Property Not Included in Company’s Rate Base)**

The real property (land) associated with Mystic 8&9 is not included in the Company’s gross plant as part of rate base. However, the Company has included 100 percent of the property tax expense associated with Mystic 8&9 in the calculation of the formula rate, which includes the property tax associated with the real property for both Mystic 8&9 and Mystic 7. See Excel File “Attachment B-1 PropTax Settlement – COS Cal\_CUI-PRIV-HC.” Mystic’s property tax expense should be adjusted to remove a portion of property tax paid on real property that is not included in the Company’s claimed rate base.

**Mystic’s Response:**

Mystic disagrees with the assertion that Mystic cannot recover its actual property taxes assessed to it for the parcel of land on which the Mystic 8&9 units are located simply because the land itself is not included in the rate base. Under the Mystic Agreement, Mystic is entitled to recover all reasonable costs, including fixed and ongoing costs, operation and maintenance (“O&M”) expenses, depreciation, *and taxes other than income taxes*, as part of its cost-of-service formula.<sup>14</sup>

Mystic has fully supported its actual property tax expense for calendar year 2023, as required by the Protocols. In response to Information Requests, Mystic provided detailed supporting documentation during discovery, including actual invoices and calculations reflecting the impact of the sale of the Mystic 7 parcel. Specifically, in response to NESCOE 1-2, Mystic referenced and attached the following documents:

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<sup>13</sup> See, e.g., *Potomac Elec. Power Co.*, 169 FERC ¶ 61,172 at P 43 (2019) (noting that under the Commission’s well-established prudence standard, “[t]he Commission will not disallow costs as imprudent if they are costs ‘which a reasonable utility management . . . would have made, in good faith under the same circumstances, and at the relevant point in time’)” quoting *Columbia Gas Transmission, LLC*, 158 FERC ¶ 61,092 at P 8 (2017) (quoting *New England Power Co.*, 31 FERC ¶ 61,047, at 61,084 (1985)).

<sup>14</sup> *Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022 at P 5 (2018) (emphasis added).

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In the course of responding to NESCOE 1-2, Mystic identified a minor error in the property tax expense included in the Fourth Informational Posting. The correct Mystic property tax value for 2023 should have been [BEGIN CUI//PRIV-HC] [REDACTED] [END CUI//PRIV-HC] Mystic noted this error and also provided support for the updated/corrected value in its response to NESCOE 1-2. Notably, ENECOS do not appear to be contesting the actual amount of property taxes that Mystic paid in 2023.

Property taxes are a legitimate operating expense that are properly expensed through a cost-of-service rate. In fact, the original *Mystic Order* acknowledged that property taxes could be included, as FERC only disallowed property taxes specifically related to Mystic 7.<sup>15</sup> Further, recovery of property taxes is consistent with general FERC accounting and ratemaking principles. Under Mystic’s GAAP accounting, property taxes are booked as taxes other than income tax. Constellation has a waiver from FERC’s Uniform System of Accounts (“USofA”),<sup>16</sup> though Mystic notes that this treatment is consistent with the USofA and also FERC ratemaking principles. Under the USofA, “taxes other than income” includes property tax associated with utility property.<sup>17</sup> There is no further limitation on costs to be included in the account. The account instructions do not specify that such taxes can only be booked to the account if corresponding values for the land are booked to the utility’s plant account. Additionally, the FERC Cost-of-Service Rates Manual recognizes property taxes as recoverable non-income taxes. Thus, Mystic’s inclusion of property taxes in the formula rate is consistent with standard cost-of-service principles.<sup>18</sup>

Mystic understands that ENECOS’s issue is not the recovery of property taxes, generally. Rather, it appears that ENECOS are arguing that Mystic should not be able to recover its legitimate and demonstrated property taxes as an operating expense because the underlying land is not part of the rate base. Under 18 C.F.R. Part 101, the definition of “plant” includes land and land rights, which means that land can be treated as part of the utility’s rate base. Specifically, 18 C.F.R. Part 101 states that land and land rights should be included in the cost of land accounts, including special assessments and related costs. Therefore, to achieve the purpose of the Mystic Agreement – to ensure that Mystic recovers fixed and ongoing costs in exchange for it remaining operational beyond its requested retirement date – the more appropriate course

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<sup>15</sup> *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 at P 92 (2018) (“*Mystic Power*”).

<sup>16</sup> *See, e.g., Sithe Fore River Dev. LLC*, Docket Nos. ER01-41-000, (Nov. 29, 2000) (letter order) (granting waiver of USofA); *Constellation Mystic Power, LLC*, Docket Nos. ER10-2281-000, *et al.* (Oct. 27, 2010) (letter order) (same); *Exelon Corp.*, 138 FERC ¶ 61,167 at P 132 (2012) (finding that Mystic did not need to record acquisition of Mystic 8&9 under the USofA); *Mystic Dev., LLC*, 114 FERC ¶ 61,200 at P 61 (2006) (denying request to revoke USofA waivers during prior RMR period).

<sup>17</sup> *See* 18 C.F.R. pt. 101, FERC USofA, “Special Instructions” to 408.1 “Taxes other than income taxes, utility operating income” (“These accounts shall include the amounts of ad valorem, gross revenue or gross receipts taxes . . . and all other taxes assed by Federal, State, county, municipal, or other local governmental authorities, except income tax”); FERC, Cost-of-Service Rates Manual at 22, <https://www.ferc.gov/sites/default/files/2020-08/cost-of-service-manual.pdf> (June 1999) (“Non-Income Taxes” includes “property taxes or ad valorem taxes . . . on the value of real estate, and personal property.”).

<sup>18</sup> *See* FERC, Cost-of-Service Rates Manual (June 1999).

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would be to add the associated costs of the land into rate base. Mystic would agree to include the land in its rate base to align with the matching principle asserted by ENECOS. This inclusion would address the concern that property taxes should align with rate base costs and would ensure full recovery of Mystic’s costs.

That being said, in light of the recently achieved settlement in principle and executed MOU between Mystic, ENECOS, and others related to pre-Term rate base, Mystic suggests the best course would be to continue including the actual incurred property tax as an expense, as Mystic has done, rather than seek to relitigate what is or is not in rate base as ENECOS challenge would do, or add land costs to rate case per Mystic’s comment above.

**ENECOS Informal Challenge No. 2024-6  
(EMT Contracting and Materials)**

Mystic has not provided sufficient information to confirm whether certain EMT Contracting and Materials costs would result in inequitable cost recovery from ISO-NE ratepayers. On May 17, 2024, the Massachusetts Department of Public Utilities approved four gas supply agreements for sales out of Everett, each of which has a term extending from June 2024 through March or May 2030. *See* Dkt No. DPU 24-25 – *Boston Gas dba National Grid*; Dkt No. DPU 24-26 – *Eversource Gas of Massachusetts*; Dkt No. DPU 24-27 – *NStar Gas*; and Dkt No. DPU 24-28 – *Fitchburg Gas & Elec. Light Co.* Thus, to the extent Mystic has incurred costs under the COSA for projects that provide significant benefits after the end of the COSA term, those costs should be assigned to those who benefit from the upgrades. *See, e.g., Midcontinent Ind. Sys. Operator, Inc.*, 161 FERC ¶ 61,059 at P 55 (2017) (explaining that “the Commission’s concern is ensuring that costs incurred under a [System Support Resource (“SSR”)] Agreement for upgrades that provide significant benefits after the end of SSR service are assigned to those who benefit from those upgrades.”).

The following list includes examples of projects that appear to be site improvements or otherwise completed to support the continued use of the Everett Facility by the Massachusetts gas utilities:<sup>19</sup>

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Without additional support and explanation from Mystic, these projects bear no apparent relationship to the operation of Mystic 8 and 9 and should therefore be eliminated from any cost recovery under the COSA.

**Mystic's Response:**

Redacted information in ENECOS Informal Challenge No. 2024-6. refers to 2024 cost data provided as confidential settlement materials. See above response to ENECOS's Informal Challenge No. 2024-1.

As it relates to 2023 cost data, Mystic disagrees with ENECOS's Informal Challenge No. 2024-6, which, as an initial matter, inaccurately frames the issue as relating to Everett "Contracting and Materials" when the challenge actually pertains to Rate Base CapEx projects. ENECOS question the prudence of these expenditures and/or whether the recovery is appropriate if certain projects will provide a benefit beyond the Term of COS. ENECOS's challenge: 1) is either premised on the wrong standard of review or applies the standard incorrectly; and 2) is an argument that ENECOS raised in last year's formal challenge process that FERC explicitly rejected.

Mystic has adequately supported the referenced 2023 Everett Rate Base projects. As in years past, Mystic provided a list of capital projects in Everett Workpaper 3. Mystic also responded to Information Requests posed by ENECOS and NESCOE. In response to ENECOS-1-21, Mystic stated that Everett completed three phases of the Heated Vent Hot Water Service Piping Replacement Projects: 1) **[BEGIN CUI//PRIV-HC]** [REDACTED] **[END CUI//PRIV-HC]**; 2) Phase II was completed during the Term and included in the 2022 Everett capital projects as part of a settlement; and 3) Phase III is part of the 2023 Everett Rate Base CapEx Projects. Moreover, in response to NESCOE 1-10, Mystic referenced and attached the following supporting documents:<sup>20</sup>

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<sup>20</sup> In response to ENECOS 1-21, Mystic also referenced Mystic's response to NES-MYS-01-10 and corresponding confidential attachments 6 through 14 for more information on each Everett 2023 capital project, including the Hot Water Phase III project.

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Additionally, Mystic notes that it answered every question sent by ENECOS during the Information Request process. Of note, ENECOS did not avail themselves of that process with respect to the 2023 Everett rate base projects by asking any further Information Requests. Nonetheless, in an effort to resolve this challenge, Mystic is now providing additional information on *all* projects, including those not directly questioned by Interested Parties, with relevant documentation attached. See “Response to ENC Inf. Ch. 2024-6\_2023 EMT Project Info\_CUI-PRIV-HC”, attached to these responses.

The real thrust of ENECOS’s argument is not the sufficiency of evidence supporting these projects, but rather is a retread of arguments ENECOS have made before to try to reduce or eliminate recovery of legitimate capital expenses at Everett during the Term of the Mystic Agreement.

First, to the extent ENECOS are challenging the prudence of these capital investments, ENECOS apply the wrong standard or apply the prudence standard incorrectly. Pursuant to the 2022 RMR CapEx Settlement,<sup>21</sup> all capital projects at Everett over the entire Term, including calendar year 2023, are added to rate base rather than getting fully expensed.<sup>22</sup> Different evidentiary standards apply to these different classifications of capital projects.

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<sup>21</sup> See *Constellation Mystic Power, LLC*, Settlement Agreement to Resolve Formal Challenges to 2021 Informational Filing (sub-docket -015), and Request for Action by September 1, 2023, Docket No. ER18-1639-021 (filed Mar. 15, 2023) (“2022 RMR CapEx Settlement”).

<sup>22</sup> As originally filed and accepted by the Commission, Mystic had the right to seek full cost recovery of Everett capital projects during the Term. At the same time, the Commission originally declined to implement a “claw back” on Everett costs should Everett remain operational after the Term. The D.C. Circuit remanded the claw back issue to FERC to reconsider whether Everett costs should be subject to a claw back if the Facility continued operations. *Constellation Mystic Power, LLC v. FERC*, 45 F.4th 1028 (D.C. Cir. 2022). The 2022 RMR CapEx Settlement resolved the then-open claw back issue by removing Mystic’s ability to fully recover Everett capital costs during the Term, instead treating them as rate base. See *Constellation Mystic Power, LLC*, 187 FERC ¶ 61,099 at P 33 (2024). (“[T]he 2022 RMR CapEx Settlement Agreement resulted in the Mystic Agreement no longer providing recovery for any Everett 2023 RMR CapEx. Section 2.3.1 of the 2022 RMR CapEx Settlement Agreement provides

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Mystic’s agreement to limit recovery of all Everett Projects during the Term to rate base was a major concession in the 2022 RMR CapEx Settlement agreement that resolved Formal Challenges to Mystic’s 2021 Informational Filing. For example, the total cost of capital projects in 2023 at Everett is \$4,093,433.<sup>23</sup> Had Mystic sought recovery of these projects as RMR CapEx, it would have sought recovery for the full \$4,093,433 and would have needed to demonstrate that the projects met the least-cost, commercially reasonable and necessary standard to meet the terms of the Mystic Agreement.<sup>24</sup> Instead, consistent with the 2022 RMR CapEx Settlement, Mystic is seeking to recover the costs as rate base items, and only recover a fraction of its actual capital expense, \$421,289.<sup>25</sup>

In light of this “rate base” treatment of Everett capital projects, the applicable standard is prudence, as made clear in the 2022 RMR CapEx Settlement.<sup>26</sup> The prudence standard is highly deferential and presumes expenditures are prudent unless a challenger raises serious doubt. Under FERC’s longstanding prudence jurisprudence, the utility does not need to justify the prudence of all its costs in its case-in-chief. A challenger must raise “serious doubt” about the prudence of an expenditure, and this doubt must be more than a bare allegation.<sup>27</sup> If serious doubt is raised, the utility then bears the burden of dispelling it. This standard places a high burden on challengers like ENECOS to prove that a reasonable utility manager, under the same circumstances and acting in good faith, would not have made the same decision and incurred the same costs. ENECOS have not met this burden, as their challenge consists of broad assertions unsupported by evidence. This presumption of prudence is well-supported by FERC

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that “Everett’s ‘2023 RMR CapEx’ value shall be set equal to \$0.”[] Therefore, none of Everett’s capital costs (in 2023 or otherwise) will be “fully reimbursable” during the Term as RMR CapEx. . . . Mystic will recover a portion of those costs by virtue of their addition to Everett’s rate base and the collection of the associated depreciation expense.”)

<sup>23</sup> See Attachment B\_EMT Populated 1 April 2024\_(2023ActualsUpdate)\_CUI\_PRIV\_HC, Schedule D, Line No. 14.

<sup>24</sup> See Mystic Agreement, Schedule 3A, Section II.4.D (explaining that Informal and Formal Challenges are limited to determining whether a capital expenditure incurred during the Term is “the least-cost commercially reasonable option consistent with Good Utility Practice to meet the obligations of the Mystic Agreement”).

<sup>25</sup> This value reflects the total cost of the 2023 Everett Rate Base Project Costs multiplied by the after-tax rate of return of 6.94%. We note that this math reflects the currently on file ROE of 9.19%. Application of the 9.0% ROE that Mystic, ENECOS and others recently settled to and are seeking Commission approval of in Docket No. ER24-2804-000 would result in total annual recovery of \$416,189 as related to the 2023 Everett Rate Base Projects.

<sup>26</sup> Mystic Agreement, Schedule 3A, Section II.3.B (permitting Interested Parties to challenge “the prudence of actual costs and expenditures” and the “actual amount of any capital expenditure”).

<sup>27</sup> *Potomac-Appalachian Transmission Highline, LLC*, 158 FERC ¶ 61,050 at PP 99-100 (2017).

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precedent,<sup>28</sup> including FERC’s recent Order on Rehearing and Clarification<sup>29</sup> where the Commission affirmed that Mystic is entitled to a presumption of prudence,<sup>30</sup> and that serious doubt cannot be established through a “bare allegation of imprudence.”<sup>31</sup>

ENECOS’s underlying assumption appears to be that capitalization decisions at Everett should assume the terminal will shut down at the end of the Term. Mystic has consistently made clear that it was possible for Everett to continue operations, and that continued operations would be beneficial to the region.<sup>32</sup> The terminal’s future remained uncertain throughout the entire Term, however, with Everett receiving approval of the LDC contracts on May 17, 2024. Everett’s capital decisions were consistent with the expectations of a prudent operator maintaining reliable operations over time. The investments reflect prudent operation of the Everett Facility and align with its ongoing role in supporting the region’s energy needs. Moreover, Mystic has provided the necessary documentation and complied with filing requirements to support these projects.

Second, to the extent ENECOS are challenging Mystic’s ability to recover Everett capital costs that may provide a benefit post-Mystic Agreement, ENECOS’s argument has been flatly rejected by FERC and is in direct conflict with the 2022 RMR CapEx Settlement. First, FERC has previously rejected arguments from ENECOS in the 2022 Formal Challenge process that sought to impose a requirement that Everett costs be shown to directly tie to Mystic. In the 2022 Formal Challenge Order, FERC concluded that similar arguments raised by ENECOS regarding Mystic’s capital expenditures did not meet the burden required to overcome the presumption of prudence. Specifically, FERC stated:

“We agree with Mystic that there are no provisions in the Mystic Agreement that require Mystic to show that Everett costs included in the Mystic Agreement have

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<sup>28</sup> See *New England Power Co.*, 31 FERC ¶ 61,047 (1985), *aff’d sub. nom. Violet v. FERC*, 800 F.2d 280 (1st Cir. 1986); *Minn. Power & Light Co.*, 11 FERC ¶ 61,312 (1980); *Ind. Mun. Power Agency v. FERC*, 56 F.3d 247 (D.C. Cir. 1995); see also *Delmarva Power & Light Co.*, 172 FERC ¶ 61,174 at P 44 (2020) (denying formal challenge and stating that “the party challenging the prudence of an expenditure” must “raise ‘serious doubt’ as to the prudence of an expenditure”) (“*Delmarva*”), *reh’g denied*, 172 FERC ¶ 61,175 (2020).

<sup>29</sup> See *Constellation Mystic Power, LLC*, 187 FERC ¶ 61,099 (2024).

<sup>30</sup> *Id.* at P 84.

<sup>31</sup> *Id.* at P 84 & n.221 (quoting *La. Pub. Serv. Comm’n v. Sys. Energy Res., Inc.*, 181 FERC ¶ 61,135 at P 177 & n.265 (2022)).

<sup>32</sup> See *Constellation Mystic Power, LLC*, Attachment C – Affidavit of Jonathan Lauck on Behalf of Constellation Mystic Power, LLC in Support of September 15, 2021 Capital Expenditures Informational Filing, Docket No. ER18-1639-000 (filed Nov. 17, 2021); see also *Constellation Mystic Power, LLC*, Emergency Motion of Constellation Mystic Power, LLC and Constellation Energy Generation, LLC for Partial Directed Disposition on Remand, Docket No. ER18-1639-019 (filed Nov. 22, 2022) (“Emergency Motion”) (emphasizing Everett’s role as a critical fuel supply source for both Mystic and the broader New England region, capable of supplying 35% of New England’s natural gas demand on peak winter days, and expressing hope that Everett can continue to operate post-Mystic Agreement to support both electric and gas reliability in the region).

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been undertaken to serve Mystic. The Mystic Agreement requires Mystic to support capital expenditures incurred during the term of the Mystic Agreement with a description of the project(s), including project costs and alternative projects considered, an explanation of why the capital expenditures are necessary to meet the obligations of the Mystic Agreement, and a demonstration that such capital expenditures are the least-cost commercially reasonable option consistent with Good Utility Practice.”<sup>33</sup>

Second, ENECOS’s argument is a clear attempt to re-impose a “claw back” on Everett. As noted above, the Everett claw back issue was resolved via settlement, which FERC accepted on August 1, 2023.<sup>34</sup> Reimposing a claw back here – even if called something different – would directly contradict the settled resolution of the 2021 annual informational process.

In conclusion, the current treatment of these rate base projects is consistent with the applicable standard of review and the concessions made during past settlement negotiations. Furthermore, the 2022 Formal Challenge Order already addressed and rejected similar arguments. The proper inquiry is whether Everett personnel reasonably determined that the projects were prudent. Mystic has provided additional support for these projects in an attempt to offer additional explanation of why the projects were undertaken. To the extent ENECOS have more specific questions related to prudence, Mystic is happy to entertain those requests.

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<sup>33</sup> *Constellation Mystic Power, LLC*, Order Granting in Part and Dismissing in Part Formal Challenges Subject to Refund, and Establishing Hearing and Settlement Judge Procedures, 185 FERC ¶ 61,170 (2023) (“2022 Formal Challenge Order”).

<sup>34</sup> *See Constellation Mystic Power, LLC*, 184 FERC ¶ 61,070 (2023).