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

August 31, 2022

On April 1, 2022, as updated on June 21, 2022, Constellation Mystic Power, LLC ("Mystic") submitted for posting on the ISO New England Inc. ("ISO-NE") webpage its 2022 Informational Posting (the "Second Annual Posting"). On August 1, 2022, Mystic received Informal Challenges from the Eastern New England Consumer-Owned Systems ("ENECOS"). Mystic's responses to those Informal Challenges are provided herein.

Informal Challenge:

ENECOS Information Challenge No. 2022-1
(Claimed Mystic 8 and 9 "Rate Base Capex" 2004-2017)

The claimed "rate base capex" asserted in Attachment B (Mystic 8&9), Schedule D, page 1, Column C, lines 5-18 for the period from July 1, 2004 through and including December 31, 2017 has not been supported with any accounting or other records or other information. These claimed capital expenditures appear to consist primarily, if not entirely, of costs that should have been characterized and recorded as operation and maintenance ("O&M") expenses in the year incurred, rather than capital expenditures.[1] Mystic has failed to produce any evidence that its claimed "rate base capex" for this period was booked in accordance with Uniform System of Accounts Electric Plant Instruction No. 10, which would be required to conform to the original cost accounting required for cost-based rates.[2]

Mystic has refused to respond to information requests seeking evidentiary support for its claimed "rate base capex" based on its contention that inquiries concerning these claimed values were foreclosed by issue preclusion or claim preclusion or both.[3] That contention has been rejected repeatedly and consistently by the Commission.[4] Given Mystic's complete failure to provide

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[1] See, e.g., *Northern Natural Gas Co.*, 121 FERC ¶ 61,002 at P 24 (2007) ("the fact that [a particular expenditure] is an expensive maintenance procedure does not alter the fact that it is maintenance. For instance, in the SoCal Edison proceeding, the Commission found that $58 million of sleeving (pipe/tube modification) costs could not be capitalized as plant in service"), *citing So. Cal. Edison Co.*, 40 FERC ¶ 61,124 at p. 61,370 (1987). *See also Dow Corning Corp.*, 59 FERC ¶ 61,191 at p. 61,666 (1992); *Unison Transformer Svcs., Inc.*, 48 FERC ¶ 61,327 at pp. 62,077-78 (1989).

[2] *See*, *e.g.*, *Lawrenceburg Power*, 173 FERC ¶ 61,166 at PP 43-52 (2020); *Constellation Mystic Pwr., LLC*, 165 FERC ¶ 61,267 at PP 65-66 (2018), *reh'g den.* 172 FERC ¶ 61,044 at PP 105-112 (2020); *PacifiCorp*, 124 FERC ¶ 61,046 at PP 28-31 (2008).

[3] See, e.g., Mystic's responses to Information Request Nos. ENC-MYS-1.4 and ENC-MYS- 2.1, ENC-MYS-2.2, and ENC-MYS-2.3.

[4] *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 at PP 64, 178 (2018) ("We find that . . . Mystic must true up all items that may be modified without filing an FPA section 205 filing (i.e., ROE)"); *Constellation Mystic Pwr., LLC*, 172 FERC ¶ 61,044 at P 86 (2020) (Commission disagreed "with Mystic's assertion that rate base items as of the end of the test period have been fully litigated and the results found just and reasonable," and repeated its December 2018

discovery on this issue, Mystic has failed to sustain its burden of establishing the justness and reasonableness of its claimed inputs identified in this challenge.

In addition, because the plant accounting practices applied by Mystic 8 and 9 are in several respects inconsistent with Uniform System of Accounts Electric Plant Instruction No. 10,[5] it appears that the amounts shown above substantially overstate Mystic 8 and 9's net electric plant in service. Under the principles explained by the Commission in its prior orders in this proceeding, accounting inconsistent with the requirements of the Uniform System of Accounts during periods when a generation facility is operating under market-based rates must be conformed to the requirements of the Uniform System of Accounts when the facility changes to cost-of-service rates.[6] Mystic's failure to do so with what appear to be historical operation and maintenance costs over the operating history of Mystic 8 and 9 overstates the rate base on which Mystic claims depreciation and return on equity (plus income tax allowance) for the period July 1, 2004 through December 31, 2017 in the amounts shown in the following table.

Disputed Mystic Claimed "Rate Base Capex" from April 1, 2022, Informational Posting (as updated June 21, 2022) Attachment C, Schedule D, page 1		
Line	Period	Amount
5	7/1/2004-6/30/2005	$ 14,425,792
6	7/1/2005-6/30/2006	$ 93,466
7	7/1/2006-6/30/2007	$ 15,612,344

holding that "the gross plant-in-service and accumulated depreciation values determined in Mystic's corrected original cost test are subject to true-up"); *Constellation Mystic Power, LLC*, 172 FERC ¶ 61,045 at PP 47-48 (2020) ("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"); *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,011 at PP 24-25, *reh'g denied*, 179 FERC ¶ 62,179 (2022).

[5] **[Begin CUI-PRIV-HC]** [redacted] **[End CUI-PRIV-HC]**.

[6] *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 at P 65 (2018) ("In other words, we are calculating how the assets would be valued now if USofA accounting had been required throughout the assets' life"), *reh'g denied*, 172 FERC ¶ 61,044 at PP 105-111 (2020), *order on compliance filing*, 172 FERC ¶ 61,045 at PP 45-47 (2020). *PacifiCorp*, 124 FERC ¶ 61,147 at PP 28-31 (2008).

8	7/1/2007-6/30/2008	$ 7,263,741
9	7/1/2008-6/30/2009	$ 1,275,933
10	7/1/2009-6/30/2010	$ 9,542,480
11	7/1/2010-6/30/2011	$ 28,136,869

Disputed Mystic Claimed "Rate Base Capex" from April 1, 2022, Informational Posting (as updated June 21, 2022) Attachment C, Schedule D, page 1		
Line	Period	Amount
12	7/1/2011-6/30/2012	$ 4,269,211
13	7/1/2012-6/30/2013	$ 11,334,186
14	7/1/2013-6/30/2014	$ 21,049,177
15	7/1/2014-6/30/2015	$ 29,772,177
16	7/1/2015-6/30/2016	$ 16,036,590
17	7/1/2016-12/31/2016	$ 9,666,594
18	1/1/2017-12/31/2017	$ 18,576,222
	Total for Challenge	$187,054,782

Mystic's "Rate Base Capex" claims are properly subject to challenge here in light of "[t]he Commission's long-standing precedent . . . that, under formula rates, parties have the right to challenge the inputs to or the implementation of the formula at whatever time they discover errors in the inputs to or implementation of the formula."[7] As Mystic has failed to support its assertion that it is entitled to include these claimed expenditures in rate base (see Response to Information Request ENC- MYS-2.1), these amounts should be rejected and removed from Mystic's claimed rate base.

Mystic Response:

In light of the decision in *Constellation Mystic Power LLC v. FERC*, Mystic commits to provide ENECOS with information previously provided and responsive to ENECOS's requests here. As these documents show, the costs included in rate base are costs classified as capital costs by the various owners of Mystic. This is not new information. In the 2018 Mystic proceeding, Mystic submitted cost-of-service testimony from Mystic witness Alan C. Heintz explaining how the true-up mechanism would true up capital expenditures placed into service in years 2018 through 2024. Attached to Mr. Heintz's testimony was Exhibit No. MYS-0024, titled "Net Book Value for Mystic 8 & 9 Based on Original Cost." This exhibit provided a listing of capital expenditures for Mystic 8 & 9 dating back to the initial expenditures, in 2002, supporting construction of the units. Despite possessing this information for four years, ENECOS has yet to identify "errors in the inputs to or

[7] *See Constellation Mystic Pwr., LLC*, 179 FERC ¶ 61,011 at PP 24-25 (2022); *Ameren Corp.*, 147 FERC ¶ 61,225 at P 27 (2014), *citing American Elec. Pwr. Svc. Corp.*, 124 FERC ¶ 61,306 at P 35 (2008).

implementation of the formula" as ENECOS is required to do by the very cases it cites.

Moreover, the USofA does not apply to Mystic, as the Commission has granted Mystic an express waiver of the requirement to follow that accounting system. *See*, *e.g.*, *Sithe Fore River Dev. LLC*, Docket Nos. ER01-41-000, *et al.* (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 USofA); *Mystic Dev., LLC*, 114 FERC ¶ 61,200 at P 61 (2006) (denying request to revoke USofA waivers during prior RMR period). But in any event, Mystic's accounting practices related to the capitalization of costs are consistent with the USofA.

ENECOS Informal Challenge No. 2022-2
(Claimed Mystic 8 and 9 "Rate Base Capex" 2018-2022)

All claimed rate base capex shown on Attachment B, Mystic 8 and 9 Schedule D for the period from January 1, 2018 through and including December 31, 2021 (as updated through Mystic's June 21, 2022 update) consists in whole or in part of costs that should have been booked as O&M expenses incurred prior to the term of the COSA, and are therefore not recoverable under the COSA. These amounts have not been shown to have been booked consistently with the requirements of the Uniform System of Accounts Electric Plant Instruction No. 10 and Operating Expense Instruction No. 2, which would be required to conform to the original cost accounting required for cost-based rates.

Disputed Mystic Claimed "Rate Base Capex" from April 1, 2022, Informational Posting (as updated June 21, 2022) Attachment C, Schedule D, page 1		
Line	Period	Amount
19	1/1/2018-12/31/2018	$10,301,690
20	1/1/2019-12/31/2019	$15,639,839
21	1/1/2020-12/31/2020	$13,633,537
22	1/1/2021-12/31/2021	$6,391,730
23	1/1/2022-12/31/2022	950,000
	Total for Challenge	$46,916,796

The information detail provided in support of the "rate base capex" that is the subject of this challenge (Workpaper 3 to Mystic's June 21, 2022 Update) presents a monthly listing of expenditures by "project" designation, unaccompanied by any explanation of how or why these amounts are designated as capital expenditures.[8] This is insufficient to substantiate that these expenditures are characterized correctly as "capital," let alone that they conform to Commission requirements for differentiating between (1) operation and maintenance expenditures, and (2) additions to utility plant, as set forth in *inter alia* Electric Plant Instruction No. 10 and Operating Expense Instruction No. 2 of the Uniform System of Accounts, or that offsetting accounting entries

[8] According to Mystic's Response to Information Request ENC-MYS-1.5:

With respect to Attachment B (PUBLIC) (Mystic 8&9), Schedule D, page 1, Column C, Lines 19-23, the dollar amounts displayed are supported in the WP3 Rate Base CapEx tab of Attachment B (Mystic 8&9). The project descriptions and associated dollar amounts in the WP3 Rate Base CapEx tab of Attachment B (Mystic 8&9) were taken from monthly (i.e., contemporaneous) internal financial reporting systems that track capital spend.

appropriately reflecting the removal of replaced property units from service, reducing net plant in service, and appropriately classifying expenses have in fact been made.[9]

Mystic Response:

In its December 2018 order in this proceeding, the Commission directed Mystic to recalculate the plant-in-service value for Mystic 8 & 9. Specifically, the Commission directed Mystic to (1) use a 2.74% depreciation rate for the life of the assets; and (2) apply the Original Cost Test each time the assets changed ownership. *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 at P 64 (2018). The Commission's statements regarding the USofA were limited to the application of the Original Cost Test. The Commission did not in that order, or at any time before or since, direct Mystic to conform its accounting in all respects to the USofA. As Mystic explained above, and as it explained in its response to ENECOS's Formal Challenges last year, the USofA does not apply to Mystic, as the Commission has granted Mystic an express waiver of the requirement to follow that accounting system. *See, e.g.*, *Sithe Fore River Dev. LLC*, Docket Nos. ER01-41-000, *et al.* (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 USofA); *Mystic Dev., LLC*, 114 FERC ¶ 61,200 at P 61 (2006) (denying request to revoke USofA waivers during prior RMR period).

In any event, the Protocols clearly state how Mystic is required to update the net plant value for January 1, 2018 - December 31, 2021, and ENECOS's challenge is not consistent with those instructions. Pursuant to Schedule 3A, Section I.B.2.ii, Mystic was required in the Second Annual Posting to update net plant "to include actual capital expenditures and depreciation incurred between January 1, 2018 and December 31, 2021." The Methodology implements this instruction in Schedule D. With a fixed depreciation rate, the only input on Schedule D of the Methodology is for the addition of "Rate Base CapEx" for each year (Column C), indicating that the accounting exercises ENECOS appears to be contemplating are not appropriate here. In other words, without changing the Methodology (i.e., the filed rate) there would be no means by which to make the kind of "offsetting accounting entries" and other reductions to the net plant figure ENECOS claims.

With respect to the classification of property as capital, Mystic designates a unit of property as either capital or O&M according to the company's Capitalization – Property, Plant and Equipment Accounting Policy, which Mystic has provided to Interested Parties in this Informational Process. *See* response and attachment to 2022 ENC-MYS-1-2. Mystic also explained this accounting policy in the 2021 Informational Process and provided expert testimony showing that the capitalization requirements are consistent with the USofA. To the extent ENECOS has a concern about any specific unit of property included in "WP3 Rate Base CapEx," it should support that contention with more than an allegation that a unit of property should have been booked as O&M. Such information will allow Mystic to better understand ENECOS's position.

Mystic also notes that net plant values, like all parts of the rate other than "RMR CapEx," are

[9] *See*, *e.g.*, *Midwest Indep. Trans. System Op., Inc.*, *Ameren Ill., Inc.*, Opinion No. 534, 148 FERC ¶ 61,206 at PP 266-268 (2014); *Northern Natural Gas Co.*, 121 FERC ¶ 61,002 at PP 17-28 (2007); *Boston Edison Co.*, 78 FERC ¶ 62,131 at p. 64,508 (1997).

subject to the Commission's normal "prudence" standard under the Mystic Agreement. *See, e.g.*, Mystic Agreement, Schedule 3A, Section II.4.D (explaining that challenges are limited to issues necessary to determine, among other things, the "prudence of actual costs and expenditures"); *id.*, Section II.4.G (explaining that, with respect to any litigation in response to a Formal Challenge, "nothing herein is intended to alter the burdens applied by FERC with respect to prudence challenges"); *see also Potomac-Appalachian Transmission Highline, LLC*, 158 FERC ¶ 61,050 at P 99 (2017) (noting that when Formula Rate Protocols do not "alter the burdens applied by FERC with respect to prudence challenges," FERC will apply its longstanding prudence jurisprudence). Under the Commission's "longstanding prudence jurisprudence," the Commission "presumes that all expenditures are prudent so the utility need not justify in its case-in-chief the prudence of all of its costs." *Potomac*, 158 FERC ¶ 61,050 at P 100. A party must create "serious doubt" as to the prudence of an expenditure to rebut that presumption, where serious doubt is "more than a bare allegation of imprudence." *Id.*

ENECOS Informal Challenge No. 2022-3
(Characterization of Campus Segregation Project)

Mystic claims its "Campus Segregation Project" as "RMR Capex," characterizing the cost of that activity as a capital expenditure that it proposes to expense during the term of the COSA. The Campus Segregation Project involved the reconfiguration of the steam boiler associated with Mystic Unit 7 (which was retired May 31, 2021) and related facilities to enable the Unit 7 boiler to serve as a source of cooling steam for the blades of the Mitsubishi 501G combustion turbines in Mystic 8 and 9, during start-up and before the heat recovery steam generators associated with each of those units are producing steam. This activity was estimated to cost $8,250,000. When completed in October 2021, the total cost exceeded that amount by about $300,000. Mystic's justification for expensing the cost of the Campus Segregation Project under the COSA is its assertion that the Project would not have been undertaken but for Mystic's entry into the COSA. The factual premise for Mystic's claim to cost recovery for this activity does not withstand scrutiny. The Campus Segregation Project should have been classified as pre-COSA operation and maintenance expense, and is not recoverable under the COSA.

Exelon's press release issued August 21, 2020 stated Mystic 7 was retired May 31, 2021.[10] Mystic 8 had a Capacity Supply Obligation through May 31, 2022. Mystic thus needed a source of start-up steam for Mystic 8 following the retirement of Mystic 7, regardless of whether or not it entered into the COSA. This brings the Campus Segregation Project within the Commission's rationale for denying recovery of Exelon's cost of acquiring the Everett Marine Terminal – the purpose of the expenditure was to enable completion of Mystic 8's Capacity Supply Obligation. *Constellation Mystic Pwr., LLC*, 165 FERC ¶ 61,267 at PP 148-149 (2018), *reh'g denied*, 172 FERC ¶ 61,044 at PP 117-119 (2020), *review pending sub nom. Constellation Mystic Pwr., LLC v. FERC*, No. 20-1343 (D.C. Cir. filed Sept. 8, 2020).

Mystic's internal presentation and description of the Campus Segregation Project **[BEGIN CUI-PRIV-HC]** [redacted] **[END CUI-PRIV-HC]** the Campus Segregation Project fits squarely with the definition of maintenance set forth in Operating Expense Instruction No. 2 of the Uniform System of Accounts (18 C.F.R. Part 101), which reads in relevant part as follows:

> The cost of maintenance chargeable to the various operating expense and clearing accounts includes labor, materials, overheads, and other expenses incurred in maintenance work. A list of work operations applicable generally to utility plant is included hereunder. . . .

[10] https://www.exeloncorp.com/newsroom/statement-regarding-the-retirement-ofmystic-generating-station-in-2024.

> * * * *
>
> 4. Rearranging and changing the location of plant not retired.
>
> 5. Repairing for reuse materials recovered from plant.
>
> * * * *
>
> 7. Net cost of installing, maintaining, and removing temporary facilities to prevent interruptions in service.

Notwithstanding Mystic's efforts to portray or characterize the Campus Segregation Project as somehow integral to its performance under the COSA, the Campus Segregation Project is actually a pre-Agreement operation and maintenance expense that should not be allowed cost recovery of any kind under the COSA. As the Commission has already found this issue to be within the appropriate scope of challenges to the Mystic's 2022 True-Up filing,[11] it is appropriately resolved in this proceeding and has already been ruled by the Commission to fall outside of the scope of matters pending the settlement judge proceedings in subdocket No. ER18-1639-015.

Mystic Response:

This challenge appears to be a repetition of a challenge to the same project in the 2022 CapEx proceeding, Subdocket No. ER18-1639-015. *See* ENECOS's Formal Challenge No. 3, pp. 16-17 ("On August 21, 2020, Exelon issued a public statement confirming its intention to retire Mystic Unit 7 effective May 31, 2021. As Mystic 8 has a Capacity Supply Obligation to ISO-NE through May 31, 2022, and Unit 7 appears to have been the only remaining source of steam for start-up cooling of the Mystic 8 and 9 turbine blades, the timing of the "Campus Segregation Project" also tends to confirm that it is operation and maintenance work that will be completed prior to the Effective Date of the COSA that is undertaken, at least initially, for reasons unrelated to the COSA. For this reason, the costs of the Campus Segregation Project should not be recoverable under the COSA."). The Commission directed that the treatment of campus segregation costs be resolved in the settlement and hearing processes ordered in that proceeding. *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,011 at P 26.

There are no changed facts at issue in this informational process. The Campus Segregation Project was submitted as a 2022 RMR CapEx Project with Mystic's 2021 Informational Filing. Mystic did not update 2022 RMR CapEx Projects in the Second Annual Posting because neither the Protocols nor the Methodology calls for such an update. The Methodology, at Schedule D, provides that the line item for "2022 RMR CapEx" is to be updated with a "Projection" in 2021, as Mystic did, and with actuals in 2023, as Mystic will do.

Accordingly, Mystic understands ENECOS's resubmittal of substantially the same challenge to be in the nature of a placeholder. For its part, and for the same reason, Mystic incorporates by reference Mystic's response to ENECOS's challenges on this topic in Subdocket No. ER18-1639-015. Rather than inefficiently relitigate the same issue, Mystic recommends that the outcome of

[11] *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,011 at PP 24-25.

Subdocket No. ER18-1639-015 with respect to Campus Segregation be applied to the instant challenge and is willing to agree to that treatment if ENECOS is.

ENECOS Informal Challenge No. 2022-4
(Combustion Turbine Comprehensive Rotor Inspections)

Mystic claims the cost of "comprehensive rotor inspections" for three of the four Mitsubishi 501G combustion turbines associated with Mystic 8 and 9, together with the cost of acquiring and installing a refurbished rotor for the fourth combustion turbine, as "RMR Capex," characterizing the cost of that activity as a capital expenditure that it proposes to expense during the term of the COSA. Mystic asserts that its decision to perform the CRIs is driven by "heightened performance obligations" it associates with the COSA,[12] and relies on that assertion as justification for characterizing the full cost of the CRIs as capital expenditures to be recovered from ISO-NE customers during the last seven months of 2022.

The unit-specific costs and completion dates for these activities are summarized in the following table: **[BEGIN CUI-PRIV-HC]**

[redacted]

[END CUI-PRIV-HC] is unusual and inadequate engineering justification for the comprehensive rotor inspections ("CRI") for these four Mystic combustion turbines. This is particularly true given (i) the relatively brief period of projected continued operation (retirement anticipated as of May 31, 2024), (ii) the magnitude of costs involved, and **[BEGIN CUI-PRIV-HC]** [redacted][14] **[END CUI-PRIV-HC]** should have enabled management of any issue as to the condition of these rotors for the

[12] Mystic's April 1, 2021 Informational Posting, Attachment B (Affidavit of Michael Brown and Abegail Piollo-Alam) at P 12.

[13] GT82 was the combustion turbine that received a refurbished rotor.

[BEGIN CUI-PRIV HC]

[14] [redacted] **[END CUI-PRIV HC]**

duration of the term of the COSA at a cost substantially lower than three CRIs and the purchase of a refurbished rotor. In addition, **[BEGIN CUI-PRIV-HC]** [redacted] **[END CUI-PRIV-HC]**

A Mitsubishi Hitachi Power Systems comprehensive rotor inspection results in the manufacturer's certification of the rotor for 100,000 operating hours or twelve years, whichever occurs first. This is substantially in excess of the anticipated continued operation of these four rotors. The record provided contains no specific technical analysis of the Mystic turbines, at best limited pre-CRI inspection on only one of the four rotors. The limited information concerning industry practices of manufacturers (e.g., General Electric, Siemens, and Mitsubishi) for comprehensive rotor inspections does not furnish appropriate technical support for the incurrence of costs of this magnitude to support rotor certification substantially in excess of what is required for the June 1, 2022, through May 31, 2024, term of the COSA.

[BEGIN CUI-PRIV-HC] [redacted] **[END CUI-PRIV-HC]** were undertaken for the purpose of preventing failure. The comprehensive rotor inspections thus fall squarely within the scope of Operating Expense Instruction No. 2, item 3, and should therefore be treated as pre-COSA operation and maintenance expenses which are not recoverable under the COSA. As the Commission has already determined this issue to be within the appropriate scope of challenges to the Mystic's 2022 True-Up filing,[15] it is appropriately resolved in this proceeding and has already been ruled by the Commission to fall outside of the scope of matters pending the settlement judge proceedings in subdocket No. ER18-1639-015.

Mystic Response:

For the same reasons described above in the response to ENECOS Informal Challenge No. 2022-3, the CRI Projects should be addressed in the ongoing settlement proceedings in Docket No. ER18-1639-015. ENECOS made the same argument related to the need for the CRI Projects in its 2021 Formal Challenges, ENECOS 2021 Formal Challenges at 14-19, and the Commission considered it and set it for hearing, along with the Campus Segregation Project. *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,011 at PP 18, 26.

[15] *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,011 at PP 24-25.

As with Campus Segregation, Mystic understands ENECOS's resubmittal of substantially the same challenge to be in the nature of a placeholder. For its part, and for the same reason, Mystic incorporates by reference Mystic's response to ENECOS's challenges on this topic in subdocket No. ER18-1639-015. Rather than inefficiently relitigate the same issue, Mystic recommends that the outcome of subdocket No. ER18-1639-015 with respect to CRIs be applied to the instant challenge and is willing to agree to that treatment if ENECOS is.

ENECOS Informal Challenge No. 2022-5
(Claimed Mystic 8 and 9 "RMR Capex")

Mystic shuttles various "projects" between what it calls "pre-term rate base" and "Rate Base Capex" on which it claims a return, and "RMR Capex" for which it claims complete reimbursement over the term of the COSA. Mystic has also asserted that the Schedule 3A Protocols do not require it to update its claimed 2022 "RMR Capex" in its 2022 True-Up.[16] These assertions make it impossible to verify which claimed costs fall into which category, and to ascertain which criteria apply to determining the recoverability of claimed costs (for example, pre-term maintenance costs that are inappropriately characterized as "Rate Base Capex" should be eliminated from the calculation of net plant in service for calculating Mystic's AFRR, but O&M costs during the term of the COSA and "RMR Capex" are both recoverable under the COSA rate formulae). In addition, Mystic's refusal to update its identification of claimed "projects" as "out of scope" for a particular True-Up essentially guarantees that costs will be double-charged under the COSA – subject to later refund, assuming that contesting parties have the resources and stamina to catch and correct the double charge in a subsequent True-Up.

For these reasons, to the extent that Mystic's claimed 2022 "RMR Capex" exceeds the amount stated in Mystic's June 21, 2022, update of the populated Mystic 8 and 9 template, at Schedule D, line 26 ($38,958,959), ENECOS object to the characterization of any additional amount not disclosed in the pending 2022 True-Up as "RMR Capex" cost recoverable in full during the term of the COSA.

Mystic Response:

Mystic is not arbitrarily shuttling projects between pre-Term rate base (i.e., Rate Base CapEx) and RMR CapEx. Rather, Mystic is following the Protocols, and ENECOS's arguments amount to a collateral attack on the Protocols. In all but two cases (discussed below), cost recovery treatment for a capital project is based on when the project goes into service. If a capital project goes into service before the Term, it is treated as pre-Term rate base. If a project goes into service during the Term, and the project meets the RMR CapEx standard in the Mystic Agreement, the entire project is treated as RMR CapEx. Mystic Agreement, Schedule 3A, Section II.2.A. Mystic cannot predict with perfect foresight what capital projects will be necessary and when they will be placed into service, which means that, through the annual true-up filing process, some projects will be moved from one recovery treatment to the other, some projects will be removed altogether, and others will be added. Projects that were planned to be completed pre-Term that are delayed into the Term require submission of additional information related to the timing. *See* Mystic Agreement, Schedule 3A, Section II.2.A

The exception to the "in-service" rule for cost recovery treatment described above is the two "but for" projects. These are capital projects that were undertaken and completed prior to the Term but that would not have been pursued *but for* the Mystic Agreement. Full cost recovery (i.e., RMR CapEx treatment) for these necessary capital projects is appropriate given that they were only pursued because of the Mystic Agreement obligation, and because rate base treatment for the two

[16] Mystic Response to Information Request ENC-MYS-2.9.

years in the Term would result in only a small fraction of the cost being recovered before Mystic is retired. *See Constellation Mystic Power, LLC*, 172 FERC ¶ 61,044, at P 87 (2020) (holding that Mystic is not precluded from recovering capital expenditures incurred prior to the term).

Mystic did not provide an updated projection for 2022 RMR CapEx in this year's filing because the Methodology requires instead that 2022 RMR CapEx be estimated in 2021 and then updated in 2023 with actuals. Refer to the "Notes" column in the Mystic Agreement, Methodology, Schedule D, Line 26. Even if the Methodology did not dictate the approach taken by Mystic, efficiency would not be served by proposing an updated 2022 RMR CapEx number in this proceeding while the 2022 RMR CapEx projects are currently pending in litigation before the Commission as part of last year's annual filing process. For purposes of this Second Annual Posting, the 2022 Mystic RMR CapEx is unchanged from last year (i.e., $38,958,959). Any questions identified by ENECOS or others in connection with changes to that amount in the 2023 posting can be addressed in the informational process associated with the 2023 posting.

With respect to "double recovery," Mystic notes that the true-up mechanism is designed to prevent such an issue. For example, if a project was initially projected in 2021 as 2022 RMR CapEx, but the project ended up going into service prior to the Term such that it should be treated instead as pre-Term rate base, the Protocols contemplate making this adjustment in the 2023 true-up filing. Mystic Agreement, Schedule 3A, Section I.B.3.ii. The true-up requires Mystic to recalculate 2022 expenditures based on actuals and refund, with interest, any overcollection. *Id.* Mystic further notes that the Protocols require Mystic to (1) identify whether a RMR CapEx project was scheduled for before the Term but delayed into the Term (and if so, explain why); and (2) indicate whether any RMR CapEx project was scheduled during the Term but should have been completed prior to the Term.

Finally, Mystic notes that the Protocols specifically provide for subsequent support of projects not previously identified as RMR CapEx. *See, e.g.*, Schedule 3A, Section I.B.3.ii ("For capital expenditures previously identified as being necessary to meet the reliability need, this 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. Emergent capital expenditures will be subject to review as to whether they are necessary to meet the reliability need under the Informational Exchange and Challenge Procedures.").

ENECOS Informal Challenge No. 2022-6
(Claimed Everett Marine Terminal "Rate Base Capex" 2018-2022)

Mystic claims a total of **[BEGIN CUI-PRIV-HC]** [redacted]

[redacted]

[END CUI-PRIV-HC] The compilation of these claimed "Rate Base Capex" expenditures in Workpaper 3 accompanying Attachment B to Mystic's April 1, 2022 Update demonstrates two flaws. First, the Commission found "that it is unjust and unreasonable to include in rate base or cost-of-service any cost unrelated to the operation of Mystic" and directed "Mystic to identify these costs and exclude them from Everett's gross plant-in-service and accumulated depreciation when calculating the Fuel Supply Charge."[17] The listing of expenditures provided in Workpaper 3 (Rate Base Capex) to Mystic's EMT Populated Template fails entirely to comply with the Commission's directive to identify costs unrelated to the operation of Mystic and exclude them from Everett's plant in service. Without limiting the generality of this observation, the following table provides examples of claimed Everett "Rate Base Capex" that bear no apparent relationship to the operation of Mystic 8 and 9: **[BEGIN CUI-PRIV-HC]**

[redacted]

[17] *Constellation Mystic Pwr., LLC*, 165 FERC ¶ 61,267 at P 151 (2018), *reh'g denied*, 172 FERC ¶ 61,044 (2020).

[redacted]

[END CUI-PRIV-HC]

Second, to the best of ENECOS' ability to determine based on the limited information provided by Mystic, the claimed "Rate Base Capex" for Everett Marine Terminal for the period January 1, 2018 through December 31, 2022, to the extent not comprised of items unrelated to the operation of Mystic, consists entirely of maintenance expenses that should have been charged to operation and maintenance accounts when incurred, consistent with the requirements of Operating Expense Instruction No. 2 of the Uniform System of Accounts (18 C.F.R. Part 101). These historical maintenance expenses are not eligible for recovery under the COSA.

Mystic Response:

First, ENECOS attempts to create a standard that does not exist by quoting a sentence from a Commission order out of context. The paragraph in question cites to Commission Trial Staff Exhibit No. S-0001 at 20:6-11. In that Exhibit, Commission Trial Staff referred to a specific asset **[BEGIN CUI//PRIV-HC]** [redacted] **[END CUI//PRIV-HC]**, which Commission Trial Staff contended had "nothing" to do with the operations of Mystic. The Commission agreed, and through Paragraph 151 of the Hearing Order directed Mystic to remove the costs from Everett's historical rate base (which was, in any event, set equal to zero for different reasons). *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267, at P 151 (2018). In its March 1, 2019, Compliance Filing, Mystic complied with this directive by removing the costs from the historical rate base and adding a note to the Methodology providing that such costs were excluded. March 1, 2019 Compliance Filing, Transmittal Letter at 17-18. The Commission further directed that the historical plant balance for Everett be set to zero, and thus no costs associated with the **[BEGIN CUI//PRIV-HC]** [redacted] **[END CUI//PRIV-HC]** would have been included even absent this finding. Mystic sought clarification of the Commission's statement in P 151 of the Hearing Order, specifically requesting the Commission to clarify that "in line with the record evidence, [] no further exclusions are required." *Constellation Mystic Power, LLC*, Request for Rehearing at 76, Docket No. ER18-1639-000 (filed Jan 22, 2019). The Commission clarified in July 2020 that it did not intend to exclude Everett's incremental capital expenditures (i.e., capital expenditures made after the purchase of Everett but prior to the Term) from inclusion in rate base. *Constellation Mystic Power, LLC*, 172 FERC ¶ 61,044 at P 117 (2020).

ENECOS appears to be suggesting, without any grounding in the Protocols, that Mystic make an affirmative showing that each of Everett's incremental capital expenditures since the acquisition in 2018 are related to the operation of Mystic in order to include them in rate base. This is not the standard argued for by Commission Trial Staff and addressed in the Commission's 2018 order, nor is it consistent with the Commission's statement in 2020 that "[t]he Commission did not intend to exclude Everett's incremental capital expenditures made after the purchase of Everett (but prior to the term of the Mystic Agreement) from inclusion in Everett's gross plant account." Furthermore, as each of the capital investments was prudently incurred consistent with Good Utility Practice in order to keep Everett safely and reliably operating, which in turn allows it to act as the source of fuel supply for Mystic, these projects should be included in rate base even if that were the standard (which it is not). Finally, Mystic confirms that none of the projects identified above are investments in the **[BEGIN CUI//PRIV-HC]** [redacted] **[END CUI//PRIV-HC]**

For the sake of completeness, Mystic further notes that it disagrees with ENECOS's premise that Mystic is not following the USofA, for the reasons given above (i.e., Mystic is not required to follow the USofA).

ENECOS Informal Challenge No. 2022-7
(Claimed Everett Marine Terminal "RMR Capex" 2022-2023)

In its June 21, 2022, update of its populated template for the Everett Marine Terminal, Mystic claims the amounts shown in the following table as "RMR Capex" eligible for recovery in full during the term of the COSA: **[BEGIN CUI//PRIV-HC]**

[redacted]

[END CUI-PRIV-HC] To the extent that the following claimed COSA Year 2022 "Rate Base Capex," identified in the September 21, 2021 update to Mystic's EMT Template was completed prior to May 31, 2022, it is properly characterized as maintenance expense and is ineligible for recovery under the COSA: **[BEGIN CUI-PRIV-HC]**

[redacted]

[END CUI-PRIV-HC] In addition, the following activities identified variously as either COSA Year 2022 or COSA Year 2023 "Rate Base Capex"[18] have not been shown to be related to the operation of Mystic. Mystic's assertion that these costs are appropriately characterized as "Rate Base Capex" fails to implement the Commission's finding "that it is unjust and unreasonable to include in rate base or cost-of-service any cost unrelated to the operation of Mystic" and its direction that Mystic "identify these costs and exclude them from Everett's gross plant-in-service and accumulated depreciation when calculating the Fuel Supply Charge."[19] [**BEGIN CUI-PRIV-HC]**

[redacted]

[18] Refer to (1) updated Attachment A to 2022 True-Up, and (2) Workpaper 8 to Mystic's June 21, 2022, Update to its populated EMT Template.

[19] *Constellation Mystic Pwr., LLC*, 165 FERC ¶ 61,267 at P 151 (2018), *reh'g denied*, 172 FERC ¶ 61,044 (2020).

[redacted]

[END CUI-PRIV-HC]

Mystic Response:

ENECOS appears to be confusing “Rate Base CapEx” with “RMR CapEx” in a number of places in this Informal Challenge. In the Second Annual Posting, $8,385,000 was identified as 2022 EMT “RMR Capex,” not “Rate Base CapEx” as the chart above indicates. Refer to Mystic Agreement, Methodology, Schedule D, Line 9. Similarly, the items identified in the second and third charts in this ENECOS Informal Challenge No. 2022-7 are RMR CapEx projects, not Rate Base CapEx as the charts suggest.

As noted above in response to ENECOS Informal Challenge No. 2022-5, Mystic did not provide an updated projection for 2022 RMR CapEx in this year’s filing because the Methodology requires that 2022 RMR CapEx be estimated in 2021 and then updated in 2023 with actuals. Refer to the “Notes” column in the Mystic Agreement, Methodology, Schedule D, Line 26. To the extent a project was initially projected in 2021 as 2022 RMR CapEx, but the project ended up going into service prior to the Term such that it should be treated instead as pre-Term rate base (i.e., Rate Base CapEx), the Protocols contemplate making this adjustment in the 2023 true-up filing. The true-up requires Mystic to recalculate 2022 expenditures based on actuals and refund, with interest, any overcollection. Mystic Agreement, Schedule 3A, Section I.B.3.ii.

ENECOS provides no support for its claim that a capital expenditure should be reclassified as “maintenance expense” and thus become ineligible for recovery if the capital project goes into service prior to the Term. The Commission has clarified that Mystic is entitled to recover in rate base the “incremental capital expenditures made after the purchase of Everett (but prior to the term of the Mystic Agreement) . . . .” *Constellation Mystic Power, LLC*, 172 FERC ¶ 61,044 at P 117 (2020). A project’s classification as CapEx or O&M is determined based on Constellation’s Accounting Policy, not when the project goes into service. The in-service date determines the type of recovery under the Agreement (e.g., a capital project that goes into service before the Term is treated as rate base, while the same capital project would be expensed as RMR CapEx if it went into service during the Term). Refer to Mystic’s response to ENECOS Informal Challenge No. 2022-5.

Finally, as noted above, Mystic already excludes a portion of the fixed costs of Everett from its revenue requirement, as 9% of Everett’s total fixed costs are excluded from the Fixed O&M/Return on Investment component of Mystic’s fuel supply cost. *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267, at PP 133-34 (2018) (allowing Mystic to recover only 91% of the fixed costs of Everett). The purpose of this exclusion is to account for and exclude a portion of Everett’s fixed costs (namely, the liquids business) that is unrelated to operating Mystic. In response to the 2018 Commission order cited by ENECOS above, Mystic sought clarification that "in line with the record evidence, [] no further exclusions are required." *Constellation Mystic Power, LLC*, Request for Rehearing at 76, Docket No. ER18-1639-000 (filed Jan 22, 2019). The Commission clarified in July 2020 that it did not intend to exclude Everett's incremental capital expenditures (i.e., capital expenditures made after the purchase of Everett but prior to the Term) from inclusion in rate base. *Constellation Mystic Power, LLC*, 172 FERC ¶ 61,044 at P 117 (2020).

ENECOS Informal Challenge No. 2022-8
(Fixed Gas Transportation Charges)

Schedule B to Mystic's June 21, 2022, update of its Everett Marine Terminal populated template shows as fixed O&M charges the following commitments for firm interstate and intrastate pipeline transportation reservations: **[BEGIN CUI-PRIV-HC]**

[redacted]

[END CUI-PRIV-HC]

These payments support firm transportation service for sales of vaporized LNG to parties other than Mystic. The Commission eliminated any revenue credit for third-party sales of vaporized LNG from the COSA in its July 17, 2020 Order in *Constellation Mystic Pwr., LLC*, 172 FERC ¶ 61,044 at P 66 (2020). In light of the Commission's elimination of revenue credits for third-party sales of vaporized LNG under the COSA, it is no longer just and reasonable to allow Mystic to recover under the COSA the cost of firm transportation service used to support those sales.[20] Accordingly, the cost of those firm transportation arrangements should be eliminated from recovery under the COSA.

Mystic Response:

The current Methodology, as accepted by the Commission, provides for recovery of "Fixed Pipeline Transportation" costs as part of the Fixed O&M cost for Everett. Mystic Agreement, Methodology, Schedule B (EMT), Line 7. To the extent ENECOS believes the existing Mystic Agreement is unjust and unreasonable, the appropriate avenue to challenge it would be in a Federal Power Act section 206 complaint with the Commission. Neither Mystic nor ENECOS has the authority to alter the filed rate through the annual true-up process. *See* Mystic Agreement, Schedule 3A, Section II.4.I ("No party shall seek to modify the Methodology under the Challenge Procedures set forth in these protocols and Filings shall not be subject to challenge by anyone for

[20] *Constellation Mystic Pwr., LLC*, 165 FERC ¶ 61,267 at P 134 n. 303 (2018) ("As a general rule, the equitable treatment of costs vis-à-vis revenue credits is as follows: if certain costs are included (or excluded) in the revenue requirement, then revenue credits associated with those costs should be included (or excluded) as well (and vice versa). If costs are included but related revenue credits are excluded, then the resulting rate results in double-recovery.").

the purpose of modifying the Methodology. Any modifications to the Methodology will require, as applicable, a Federal Power Act section 205 or section 206 filing.").

Moreover, Mystic points out that the firm transportation service allows Constellation to make daily third-party sales that are required to clear any excess in the tank to make room for an additional previously-scheduled cargo delivery, and any profit from those sales is credited 100% to Mystic ratepayers.

ENECOS Informal Challenge No. 2022-9
(Recovery of Meals and Entertainment and Charitable Contributions)

[BEGIN CUI-PRIV-HC] [redacted] **[END CUI-PRIV-HC]**. Recovery of charitable contributions in cost-of-service rates is contrary to Commission policy. *Trunkline Gas Co.*, 90 FERC ¶ 61,017 at 61,064-61,065 (2000) ("The financial burden of charitable contributions should be borne by the stockholders for whom such contributions are intended to retain customer good will and employee loyalty. Charitable contributions are not operating expenses and bear no relationship to the necessary costs of providing utility service. Ratepayers have no choice as to the recipients of the contributions and there is no demonstrable connection between the charitable interests that receive the contributions and the ratepayers."). Mystic's travel and entertainment expenses have not been shown to be related to the operation of Mystic, and should therefore be eliminated from any cost recovery under the COSA.[21]

Mystic Response:

Mystic commits to remove expenses for Charitable Contributions from Mystic Agreement cost recovery.

ENECOS also challenged costs related to travel and entertainment as not being recoverable under the Mystic Agreement. The Commission has permitted recovery of travel and entertainment expenses as related to a generator's cost of service rate. *See Panda Stonewall, LLC*, 167 FERC ¶ 63,010 (2019), *aff'd*, 174 FERC ¶ 61,266 at P 89 (2021) (upholding the inclusion and allocation of certain indirect costs, including travel, meals, entertainment, and marketing for recovery in cost-of-service rate for supply of reactive service). ENECOS has not pointed to any authority to suggest that expenses for travel or entertainment are categorically excluded from recovery.

[21] *Constellation Mystic Pwr., LLC*, 165 FERC ¶ 61,267 at P 151 (2018), *reh'g denied*, 172 FERC ¶ 61,044 (2020).