

**Notice of Procedure for ISO New England Response to
Requests for Discovery of Confidential Information in
Mystic Cost-of-Service Proceeding
Docket No. ER18-1639-000**

On July 13, 2018, the Federal Energy Regulatory Commission issued an order accepting, suspending and establishing expedited hearing procedures for the Constellation Mystic Power, LLC (“Mystic”) cost-of-service filing.¹ The Hon. Steven L. Sterner has been designated as presiding judge for the expedited hearing procedures. Following a pre-hearing conference on July 26, Judge Sterner issued an order establishing a procedural schedule for the proceeding and adopting a procedure for addressing discovery disputes.² A protective order governing the use and disclosure of protected information also has been issued for the proceeding.³

ISO New England Inc. (“ISO”) anticipates that, as part of the Mystic proceeding, parties may issue discovery requests to the ISO, some of which may include requests for information classified as “Confidential Information” under the ISO New England Information Policy (Attachment D to the ISO’s Transmission, Markets and Services Tariff), including information which the furnishing party considers commercially sensitive.

By this notice, the ISO is hereby advising each affected entity of the steps the ISO will take to respond to any discovery request for information that is classified as “Confidential Information” under the Information Policy. These procedures take into account the expedited nature of the Mystic proceeding, the Protective Order and discovery dispute procedures⁴ adopted for the proceeding, the need for expediency in addressing discovery requests, as well as the importance of maintaining the confidentiality of Governance Participant information that is protected under the Information Policy.

In the event the ISO receives a discovery request seeking the production of, and/or the disclosure of, “Confidential Information” under the Information Policy, the ISO will take the following steps:

1. The ISO will provide electronic notice to the Governance Participant(s), whose “Confidential Information” is being sought, 1) by sending a public communication to the NEPOOL Participants; and 2) by sending a communication to the official service list in the Mystic proceeding (Docket No. ER18-1639). In accordance with the discovery dispute resolution procedure adopted by the

¹ 164 FERC ¶ 61,022 (2018).

² Order Establishing Procedural Schedule and Rules of Procedure for Hearings, Order on Intervenors Motion For Adoption of Procedure for Expedited Resolution of Discovery Disputes, Docket No. ER18-1639-000 (issued July 27, 2018), Appendix A.

³ Order of Chief Judge Adopting Protective Order, Docket No. ER18-1639-000 (issued May 31, 2018) (“Protective Order”).

⁴ A copy of the discovery dispute procedures is included with this notice.

presiding judge in the Mystic proceeding, the Governance Participant(s) shall have until midnight Eastern Prevailing Time on the third business day following receipt by the ISO of such a discovery request to respond to the request, using the proceeding's adopted discovery dispute procedure.

2. If the Governance Participant(s) do not object to the disclosure of the requested Confidential Information, or fail to object within the time period in No. 1 above, the ISO will produce the information, subject to the terms of the Protective Order, and subject to the terms of any discovery dispute procedures in place for the proceeding. If production is required, the ISO will label the information as "Privileged Material" and, where necessary, "Highly Confidential Privileged Material," including with appropriate headers and identifiers, to afford the information the protections contemplated under the Protective Order.
3. Notwithstanding the foregoing, the ISO will not produce any information that it is required to file confidentially under Sections III.13.8.1(a) and (c) of the ISO's Forward Capacity Market rules as part of the annual filing of information pertaining to Retirement De-List Bids and Permanent De-List Bids and the annual pre-FCA qualification information filing. The Commission has previously ruled that information submitted confidentially in these two filings may not be released even under the terms of a protective order.⁵ In the event the ISO receives a discovery request for any such information, it will object to that discovery, following the discovery dispute procedures adopted for the proceeding.

This procedure for handling requests for Confidential Information shall apply only to discovery requests in the Mystic proceeding (Docket No. ER18-1639) and only for the authorized discovery period for the proceeding as designated by Judge Sterner.

Any questions related to this notice should be directed to:

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⁵ See 161 FERC ¶ 61,061, at PP 16-17 (2017); 148 FERC ¶ 61,137, at PP 11, 21 (2014).

DISCOVERY DISPUTE PROCEDURE

(adopted for proceeding in Docket No. ER18-1639-000)

The compressed hearing schedule in this proceeding requires expedited procedures for resolving discovery disputes. The following procedures shall be used to resolve discovery disputes:

a. Objections to discovery requests shall be made in writing, with citation to any authority on which the objection is premised, by midnight Eastern Prevailing Time on the third business day following receipt of the discovery request to which objection is made. Failure to cite a particular authority in objections shall not be deemed to waive reliance on such authority.

b. The parties shall have three business days from receipt of the objection(s) within which to schedule and conduct a meet-and-confer session, which may be conducted by telephone.

c. Immediately following the meet-and-confer session, or if the parties are unable to meet and confer within the three business days allotted for that purpose, if the parties have not otherwise resolved their dispute, the party propounding the disputed discovery request(s) may file and serve its motion to compel, which shall consist of: (1) the request(s) involved in the dispute; (2) the objections interposed or other reasons (if any) provided for failure to respond; and (3) argument in support of compelling the response. On the first page of such motion, the moving party shall request the Presiding Judge to issue a notice scheduling argument to be held within three business days. The filing party may represent that the request to schedule oral argument is unopposed. The objecting party may submit any response within one business day of receipt of the propounding party's motion to compel, or may make such response at oral argument.

d. In the event that adherence to this procedure does not effectuate the timely production of material directed to be produced (*e.g.*, in the event of an unsuccessful interlocutory appeal or certified question, or a failure of timely or complete compliance with a directive to produce), or requires production of material over objection, parties believing themselves to be aggrieved may, in addition to any other remedies available to them, request other and further relief in connection with the introduction of evidence at hearing, or on briefing.

e. The parties to a discovery dispute may vary the parties' internal time frames set forth in this discovery dispute procedure by mutual agreement.