

**To: NEPOOL Participants Committee Members and Alternates**

**Date: July 15, 2018**

**Re: ER18-1639: Summary of Jul 13 Mystic COS Agreement Order**

On Friday evening, the FERC issued the attached [order](#) regarding the Mystic 8 & 9 Cost-of-Service Agreement (COS Agreement), accepting the agreement but suspending its effectiveness and setting it for accelerated hearings and settlement discussions (Mystic Order). The Mystic Order was approved by a 3-2 vote, with dissents by Commissioners Powelson and Glick, with a joint procedural schedule required from parties by July 20, hearings completed and a complete hearings record certified to the Commission for final action by October 12, and post-hearing briefing by the parties to be completed before Thanksgiving.

The COS Agreement, submitted in FERC Docket No. ER18-1639 on May 16, 2018, provides for the continued operation and compensation of Mystic 8 and 9 for the two years associated with the capacity commitment periods for FCA 13 and FCA 14, beginning June 1, 2022, until May 31, 2024. Relatedly, on May 1, 2018, in a separate proceeding in Docket No. ER18-1509, ISO-NE sought waiver of several provisions of its Tariff to enable it to enter into the COS Agreement with Mystic. On July 2, 2018, the Commission issued an order denying the requested waiver and instituting a proceeding in Docket No. EL18-182, which we [summarized for you previously](#).

The following summarizes the relevant findings in the Mystic Order, with the Order paragraphs identified:

#### **Capital Expenditures (PP 19-20)**

The FERC determined that that the record provided by Mystic is insufficient for determining the justness and reasonableness of the amount of reported capital expenditures, and thus directed the participants to submit evidence regarding that issue at the hearing. The FERC also directed the participants to present evidence regarding the appropriate design of the true-up mechanism (to ensure that the rates established reflect actual costs incurred) in the COS Agreement. Regarding a related clawback provision proposed by parties to address “togglng” concerns (i.e., the return of the Mystic units to the market after the term of the Agreement), the FERC noted that ISO-NE may choose to address such a provision in its filing in Docket No. EL18-182.

#### **Fuel Supply Charge (PP 34-37)**

The FERC rejected arguments that the Federal Power Act prohibits *any* recovery of the Fuel Supply Charge for the Distrigas Facility. According to the FERC, the extremely close relationship between the Distrigas Facility and Mystic 8 & 9 places costs related to operation of the Distrigas Facility within its general practice of considering, when reviewing cost-of-service rates, a generator’s purported costs of fuel. However, the Mystic Order clarified, the finding as to jurisdiction does not mean that Mystic is entitled to recover all costs that it claims in connection with the Distrigas Facility. The FERC found that the record provided by Mystic is insufficient for determining the justness and reasonableness of the Fuel Supply Charge, and directed the participants to address this issue at hearing.

#### **Third-Party Sales Revenues (P 38)**

As to the question of sharing revenues from third-party sales of LNG to the local distribution company or one of the two interstate natural gas pipelines, the FERC agrees with ISO-NE that, absent some sort of partial credit, the Distrigas Facility has little incentive to make LNG sales to third parties. However, it found that allowing Mystic to keep 50 percent of the margin on third-party sales appears to be excessive. Accordingly, the FERC directed the parties to address at hearing the appropriate amount of the margin on third-party sales to be retained by Mystic.

#### **Cost Allocation (P 41)**

The FERC ruled that participants need not present evidence at the hearing in this case regarding cost allocation. Parties may instead submit comments, as necessary or relevant, in Docket No. EL18-182.

#### **Other Hearing Issues (P 42)**

With the exception of those issues in the Mystic Order as to which the Commission makes specific findings, the FERC determined that protestors have raised issues of material fact regarding the proposed expenditures that are best resolved in a hearing. Therefore, among other issues, the FERC set for hearing the amount and rate treatment of the proposed capital expenditures, O&M expenses, and administrative and general expenses for the Mystic Generating Station and the Distrigas Facility.

#### **Hearing Schedule**

- By July 17, 2018, the Chief Judge is directed to appoint a presiding judge in this proceeding.
- By July 20, 2018, the participants to submit a joint procedural schedule for the proceeding.
- By approximately July 31, 2018 (within 14 days of the appointment of a presiding judge), the presiding judge shall convene a prehearing conference in these proceedings.
- By October 12, 2018, the presiding judge is directed to certify the record to the Commission.
  - The Mystic Order directs the presiding judge to conduct hearing procedures and certify the record to the Commission without issuing an initial decision.
- By November 2, 2018, participants will submit initial briefs directly to the Commission
- By November 16, 2018, participants will submit reply briefs directly to the Commission.

The participants may request a settlement judge to conduct formal settlement procedures. However, the hearing procedures will not be held in abeyance, allowing any settlement proceedings instead to run on a parallel track with the hearing schedule. Should the participants choose to engage in settlement discussions, the FERC encouraged the participants to make every effort to settle or narrow their dispute while in the early stages of the hearing.