

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued May 5, 2022

Decided August 23, 2022

No. 20-1343

CONSTELLATION MYSTIC POWER, LLC,
PETITIONER

v.

FEDERAL ENERGY REGULATORY COMMISSION,
RESPONDENT

BRAINTREE ELECTRIC LIGHT DEPARTMENT, ET AL.,
INTERVENORS

Consolidated with 20-1361, 20-1362, 20-1365, 20-1368,
21-1067, 21-1070

On Petitions for Review of Orders
of the Federal Energy Regulatory Commission

Matthew A. Fitzgerald argued the cause for petitioner Constellation Mystic Power, LLC. With him on the briefs were *Noel H. Symons* and *Katlyn A. Farrell*.

Jeffrey A. Schwarz argued that cause for State petitioners. With him on the briefs were *Seth A. Hollander*, Assistant

Attorney General - Special Litigation, Office of the Attorney General for the State of Connecticut, *Scott H. Strauss, Amber L. Martin Stone, Kirsten S. P. Rigney, Robert Snook*, Assistant Attorney General - Environment, Office of the Attorney General for the State of Connecticut, *Andrew Minikowski and Julie Datres*, Staff Attorneys, *Ashley M. Bond, Maura Healy*, Attorney General, Office of the Attorney General for the Commonwealth of Massachusetts, *Christina Belew*, Assistant Attorney General, *Jason Marshall*, and *Phyllis G. Kimmel*.

Scott H. Strauss, Jeffrey A. Schwarz, Amber L. Martin Stone, and *John P. Coyle* were on the briefs for intervenors Braintree Electric Light Department, et al. in support of State petitioners.

Robert M. Kennedy and *Carol J. Banta*, Senior Attorneys, Federal Energy Regulatory Commission, argued the causes for respondent. With them on the brief were *Matthew R. Christiansen*, General Counsel, and *Robert H. Solomon*, Solicitor.

John P. Coyle argued the cause for intervenors Braintree Electric Light Department, et al. in support of respondent. With him on the brief were *Scott H. Strauss, Jeffrey A. Schwarz*, and *Amber L. Martin Stone*.

Michael J. Thompson, Ryan J. Collins, and *Maria Gulluni* were on the brief for intervenor ISO New England, Inc. in support of respondent.

Before: SRINIVASAN, *Chief Judge*, HENDERSON and RAO, *Circuit Judges*.

Opinion for the Court filed PER CURIAM.

PER CURIAM: In March 2018, Constellation Mystic Power, LLC (Mystic)—a subsidiary of Exelon Generation Company, LLC (ExGen), which itself is a subsidiary of Exelon Corporation (Exelon)¹—announced its intention to retire the Mystic Generating Station (Mystic Station), a natural gas-fired generator serving the greater Boston metropolitan area, after the facility’s existing capacity obligations expired in May 2022. The region’s independent system operator, ISO New England, concluded that Mystic Station’s loss would exacerbate anticipated stresses on the region’s electricity network during winter months and increase the risk of rolling blackouts. ISO New England also found that Mystic Station’s retirement risked the closure of its sole fuel source, the Everett Marine Terminal (Everett)—a liquified natural gas (LNG) import and regasification facility currently owned and operated by an ExGen subsidiary—adding to the risk of blackouts in the region.

In light of these findings, ISO New England entered into a cost-of-service agreement with Mystic and ExGen to keep two of Mystic Station’s generating units, referred to as Mystic 8 and 9, in service between June 2022 and May 2024. The parties filed the proposed agreement (Mystic Agreement) with the Federal Energy Regulatory Commission (Commission or FERC). The Commission ultimately approved the terms of the Mystic Agreement, albeit with significant modifications.

¹ In February 2022, after the petitions for review here had been filed, Exelon consummated a spinoff transaction that placed ExGen—which was renamed Constellation Energy Generation, LLC—and Mystic under the corporate parentage of Constellation Energy Corporation. Despite this transaction, we will refer to Mystic’s parents as ExGen and Exelon, as the parties have done, unless context dictates otherwise.

At issue are six Commission orders related to its approval of the Mystic Agreement. *See Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022 (July 13, 2018) (July 2018 Order); *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 (Dec. 20, 2018) (December 2018 Order); *Constellation Mystic Power, LLC*, 172 FERC ¶ 61,043 (July 17, 2020) (First July 2020 Rehearing Order); *Constellation Mystic Power, LLC*, 172 FERC ¶ 61,044 (July 17, 2020) (Second July 2020 Rehearing Order); *Constellation Mystic Power, LLC*, 172 FERC ¶ 61,045 (July 17, 2020) (Compliance Order); *Constellation Mystic Power, LLC*, 173 FERC ¶ 61,261 (Dec. 21, 2020) (December 2020 Rehearing Order). Two groups of petitioners now seek review of those orders: Mystic and a group of New England state regulators (State Petitioners).² As detailed *infra*, we dismiss Mystic’s petition for review in part and deny it in part; we grant the State Petitioners’ petitions.

I. BACKGROUND

A. Statutory Background

Section 201(b) of the Federal Power Act (FPA) grants the Commission jurisdiction of the transmission and wholesale sale of electric energy in interstate commerce. 16 U.S.C. § 824(b); *see New York v. FERC*, 535 U.S. 1, 6–7 (2002). The FPA provides that “[a]ll rates for or in connection with jurisdictional sales and transmission service are subject to review by FERC to ensure that the rates are just and reasonable

² The State Petitioners include the Connecticut Public Utilities Regulatory Authority, the Connecticut Department of Energy and Environmental Protection, the Connecticut Office of Consumer Counsel (collectively, Connecticut Parties), the Attorney General of the Commonwealth of Massachusetts (Massachusetts AG) and the New England States Committee on Electricity, Inc. (States Committee).

and not unduly discriminatory or preferential.” *New England Power Generators Ass’n v. FERC (NEPGA)*, 881 F.3d 202, 205 (D.C. Cir. 2018)); *see* 16 U.S.C. §§ 824d(a), (e), 824e(a). Section 205 requires that all public utilities “file with the Commission . . . all rates and charges for any transmission or sale subject to the jurisdiction of the Commission,” 16 U.S.C. § 824d(c), with the utility bearing the burden to show that its proposed rate is lawful, *id.* § 824d(e). *See NEPGA*, 881 F.3d at 205. If the Commission determines that a rate is “unjust, unreasonable, unduly discriminatory or preferential,” it must set aside the rate and replace it with one that is just and reasonable. 16 U.S.C. § 824e(a)–(b). A negatively affected party may challenge a Commission-approved rate by filing a complaint with the Agency, and it carries the burden of demonstrating that the rate is unjust or unreasonable. *See id.* § 824e(a)–(b). The reasonableness of a rate is assessed in light of the FPA’s goals of promoting reliable service at reasonable rates and developing plentiful energy supplies. *See Consol. Edison Co. v. FERC*, 510 F.3d 333, 342 (D.C. Cir. 2007); *see also NAACP v. FPC*, 425 U.S. 662, 669–70 (1976).

B. The New England Electricity Market

ISO New England is the independent system operator³ that operates the transmission facilities and administers the wholesale electricity markets across six states—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. The wholesale markets facilitate the sale of

³ Independent system operators result from the unbundling of transmission and generation services—which were historically handled by a single, vertically integrated utility—and serve to coordinate, control and monitor the electricity transmission facilities owned by its member utilities in order to ensure nondiscriminatory access to all electricity generators. *See Midwest Indep. Transmission Sys. Operator, Inc. v. FERC*, 388 F.3d 903, 906 (D.C. Cir. 2004).

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