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September 28, 2011

Mark D. Marini, Secretary
Department of Public Utilities
South Station
Boston, MA 02110

Re: **NSTAR/Northeast Utilities Merger, D.P.U. 10-170**

Dear Secretary Marini:

Enclosed for filing is the Attorney General's Initial Brief in the above referenced matter.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Joseph W. Rogers
Assistant Attorney General

Enclosure

cc: Laurie Ellen Weisman, Hearing Officer
Service List

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

NSTAR/Northeast Utilities Merger	)	**D.P.U. 10-170**

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 220 C.M.R. 1.05(1) (Department's Rules of Practice and Procedure). Dated at Boston this 28th day of September, 2011.

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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

NSTAR/Northeast Utilities Merger	)	**D.P.U. 10-170**

INITIAL BRIEF OF THE ATTORNEY GENERAL

Respectfully submitted,
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INITIAL BRIEF OF THE ATTORNEY GENERAL

I. INTRODUCTION

Pursuant to the briefing schedule established by the Department of Public Utilities (the "Department") in this proceeding, the Attorney General submits her Initial Brief on behalf of ratepayers responding to the Petition of NSTAR Electric Company ("NSTAR Electric") and NSTAR Gas Company ("NSTAR Gas," collectively "NSTAR"), along with their holding company parent, NSTAR, and Western Massachusetts Electric Company ("WMECo"), along with its holding company parent Northeast Utilities ("NU"), for approval to merge, pursuant to G.L. c. 164 § 96, NSTAR and NU ("Joint Petitioners") into a consolidated organization (the "Proposed Merger").

II. OVERVIEW

The Department should approve the merger of NSTAR and NU, but condition that approval upon several conditions and provisions to protect ratepayers and to ensure that the net benefits are in fact realized by ratepayers. Absent placing conditions upon the merger, the ratepayers may not see any benefits and, in fact, could be harmed as a result of the transaction. The record establishes that these potential harms are both short-term and long-term in nature.

In order to insure net benefits to customers, the Attorney General proposes that the rates of the Massachusetts distribution companies, NSTAR Electric, NSTAR Gas and WMECo (the "Massachusetts operating companies") be frozen for a period of five years with an annual earnings review provision as part of the rate freeze. In the alternative, the Department should implement a Merger Savings Credit ("MSC") which would incorporate the anticipated merger related net savings in rates in a way that represents a meaningful commitment from the Companies to pass the projected savings along to customers. In the context of the revised standard for Section 96 transactions, the Department is entitled to rely on the Joint Petitioners estimation of at least $314 million in expected savings to Massachusetts customers over the 10-year period following the closing of the merger and should insure that those savings are in fact realized by customers.

The Attorney General also proposes a set of additional conditions that insure that no harm is experienced by Massachusetts customers as a result of the merger. They are:

- The Order should clearly and concisely require that none of the goodwill resulting from the recording of the merger will be pushed down to NSTAR Electric or NSTAR Gas.
- The Order should clearly state that NSTAR Gas and NSTAR Electric may not increase the value of the assets recorded on their books to a fair value amount as a result of the recording of the transaction.
- The Order should require that, in future rate cases for both NSTAR Gas and NSTAR Electric following the consummation of the merger, the cost of debt component incorporated in the calculation of the overall rate of return will be no higher than what it would have been absent the merger.
- The Order should require that if NSTAR, NSTAR Electric and NSTAR Gas are downgraded below the current A+ Standard & Poor's rating, and new debt is issued at that lower rating, the interest rate associated with the new debt issuance will be included in calculating the rate of return in future rate cases based on interest rates that are available at the time of issuance for an A+ rated entity.

- The Order should require that the lower debt rate assuming an A+ credit rating should also be used for purposes of calculating the Allowance for Funds Used During Construction (AFUDC) applied to construction projects.

- The Order should require that the merger-related costs incurred during 2011 be recorded at the parent company level, with none of the costs being recorded at the operating company level. Any costs recorded in 2011 to date on NSTAR Electric, NSTAR Gas or WMECo' s books should be transferred to the parent company level at the time of consummation of the merger.

- The Department should reject the recovery of golden parachutes and retention bonus costs in any future rate case.

- The Department should require that, within six months of the decision being issued in this case, rate proceedings begin to address WMECo' s rate design issues, as identified in D.P.U. 10-70, on a revenue neutral basis.

- As part of the decision in this case, the Department should adopt the Attorney General's position in D.P.U. 09-115 and require WMECo to refund $14,134,000 with interest of the Nuclear Electric Insurance Limited ("NEIL") distributions to WMECo's customers.

The adoption of one of the Attorney General's rate mechanisms and all of the conditions will insure that the proposed merger will result in net benefits to customers and be in the public interest.

III. PROCEDURAL HISTORY

On November 24, 2010, NSTAR Electric and NSTAR Gas, along with their holding company parent, NSTAR, and WMECo, along with its holding company parent NU, filed a request for approval from the Department pursuant to G.L. c. 164, § 96 to merge NSTAR and NU into a consolidated organization. On December 14, 2010, the Department issued an Order of Notice. On January 5, 2011, the Department held a public hearing and procedural conference at which a procedural schedule was set. On January 21, 2011, the Department, in response to a request by the Department of Energy Resources ("DOER"), issued a Request For Comments On the Standard Of Review for mergers. Initial Comments were due on January 31, 2011 and Reply Comments due on February 7, 2011.

On March 10, 2011, the Department issued an Interlocutory Order On the Standard Of Review. The Department concluded "that it is appropriate at this time to modify the standard for evaluating § 96 transactions and require that petitioners demonstrate that a consolidation, merger, or acquisition provide 'net benefits' to satisfy the statutory requirement that such transactions be 'consistent with the public interest'." *Interlocutory Order On Standard Of Review*, D.P.U. 10-170, p. 21 (March 10, 2011). The Department permitted the Company the chance to submit a supplemental filing in light of the new standard.

On March 18, 2011, the Department conducted a procedural conference with the parties and established a procedural schedule. On April 1, the Joint Petitioners filed the supplemental testimony of James J. Judge, Senior Vice President and Chief Financial Officer for NSTAR, and David R. McHale, Executive Vice President and Chief Financial Officer for NU, and also submitted a Net Benefits Analysis.

On May 13, 2011, the intervenors filed direct testimony. The Attorney General filed the direct testimony of Donna Ramas of Larkin & Associates, PLLC, and Dr. Alvaro E. Pereira of La Capra Associates, Inc. The Cape Light Compact filed the testimony of Kevin F. Galligan, Joseph Soares and Jonathan F. Wallach. The Conservation Law Foundation filed the testimony of Jonathan Buonocore and Douglas Hurley. The Low Income Intervenors filed the testimony of Liz Berube and Peter Wingate. The Retail Energy Supply Association filed the testimony of Christopher Kallaher and Marc Hanks. The New England Power Generators Association filed the testimony of Dr. Susan F. Tierney. Local 455 of the International Brotherhood of Electrical Workers, AFL-CIO, filed the testimony of Brian Kenney.

On June 10, 2011, the Joint Petitioners filed the rebuttal testimony of Thomas J. Flaherty and John J. Reed. On June 30, 2011, the Attorney General filed the rebuttal testimony of Donna Ramas. The Department held ten days of evidentiary hearings between July 6 and July 28, 2011.

IV. DESCRIPTION OF THE PROPOSED TRANSACTION

On November 1, 2010, NSTAR and NU entered into an Agreement and Plan of Merger dated October 16, 2010, as amended (the "Merger Agreement"), which provides for the Proposed Merger. Pursuant to this Merger Agreement, the consideration for the Proposed Merger will be 100 percent equity, in the form of NU common shares, although cash will be paid in lieu of fractional shares. At closing, each holder of an NSTAR common share will be entitled to receive 1.312 shares of NU common shares (the "exchange ratio"). The exchange ratio is based on the average closing share prices of NSTAR and NU over the 20 trading days immediately preceding the announcement of the Merger Agreement and reflects no merger premium for either party's shareholders. Following closing of the Proposed Merger, existing NSTAR shareholders will own approximately 44 percent of the equity in the post-merger NU, while existing NU shareholders will own the remaining 56 percent. The Proposed Merger is expected to qualify as a tax-free exchange for both NSTAR and NU shareholders.

If approved by the Department, and upon satisfaction of all conditions for closing, NSTAR will be merged with and into a new, wholly-owned first tier subsidiary of NU called NU Holding Energy 1 LLC ("Merger Sub"), with NSTAR being the surviving entity (termed the "Surviving Trust") and Merger Sub ceasing to exist. Immediately thereafter, NSTAR (Surviving Trust) will be merged with and into a second, wholly owned first tier subsidiary of NU created to accomplish the merger called NU Holding Energy 2 LLC ("Acquisition Sub"). Acquisition Sub will be the surviving entity and be renamed NSTAR LLC. As a consequence of the two concurrent mergers, NSTAR will become a wholly-owned, first tier subsidiary of NU and the consolidated organization will retain the name "Northeast Utilities."

Upon closing of the Proposed Merger, NSTAR Electric, NSTAR Gas and WMECo will remain separate companies subject to the Department's jurisdiction under G.L. c. 164, § 1. The Proposed Merger will not cause NSTAR Electric, NSTAR Gas or WMECo to merge or consolidate with each other in any way or with another company, nor will it cause any transfer of the respective assets or franchises of these companies to occur.

V. STANDARD OF REVIEW

A. The Net Benefits Test

Under the amendments to G. L. c. 164 § 96 ("Section 96") contained in the Green Communities Act, the Department has been granted jurisdiction to review the merger of holding companies:

> Companies . . . subject to [Chapter 164] and their holding companies may, notwithstanding any other provisions of this chapter or of any general or special law, consolidate or merge with one another . . . if . . . the department, after notice and a public hearing, has determined that such purchase and sale or consolidation or merger, and the terms thereof, are consistent with the public interest; provided, however, that in making such a determination the department shall at a minimum consider: proposed rate changes, if any; the long term strategies that will assure a reliable, cost effective energy delivery system; any anticipated interruptions in service; or other factors which may negatively impact customer service . . ..

Id. The statute permits only mergers, including holding company mergers, that are in the "public interest" and requires that the Department investigate at least four elements its analysis: 1) proposed rate changes, 2) the long term strategies that will assure a reliable, cost effective energy delivery system, 3) any anticipated interruptions in service; and 4) other factors which may negatively impact customer service. *Id.* To this list, the Department has added an additional factor for the determination of whether proposed mergers are in the public interest: the effect of the merger on greenhouse gas ("GHG") emissions. *Interlocutory Order On Standard Of Review*, D.P.U. 10-170, p. 21 (March 10, 2011) ("Interlocutory Order"). The Department has also affirmed that the nine factors developed in the *Mergers and Acquisition* generic docket are still relevant to its analysis. *Id.*, p. 7. These factors are (1) effect on rates; (2) effect on the quality of service; (3) resulting net savings; (4) effect on competition; (5) financial integrity of the post-merger entity; (6) fairness of the distribution of resulting benefits between shareholders and ratepayers; (7) societal costs; (8) effect on economic development; and (9) alternatives to the merger or acquisition. *Guidelines and Standards for Acquisitions and Mergers of Utilities*, D.P.U. 93-167-A, pp. 7-9 (1994); *Eastern-Essex Acquisition*, D.T.E. 98-27, pp.7-8 (1998).

In weighing these factors to determine whether the proposed transaction satisfies the public interest, the Department has abandoned its "no net harm" standard and now employs a "net benefits" test.[1] *Interlocutory Order* p. 22 ("Starting in this case, we will explicitly require that the benefits of a § 96 transaction outweigh the costs"). This change is significant. No longer can a company claim that because customers are no worse off under the "no net harm" standard, the transaction should be approved. *NSTAR*, D.T.E. 99-19 (1999). Something more is required. A company must prove, to the extent quantifiable, the costs and benefits of the merger with record evidence and cannot rely on mere "generalities" of these factors if it hopes to receive a favorable ruling from the Department on its Section 96 petition. *Interlocutory Order*, p. 7 (citations omitted).

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[1] It is not unusual for commissions to require the demonstration and sharing of merger benefits. *See*, e.g., *Re Long Island Lighting Company*, 185 PUR 4th 122, 127-28 (New York 1998) (rate reductions and credits from 2.5% to 5.25%); *Re Pacific Enterprises*, 184 PUR 4th 417, 421 (California 1998) (savings split evenly for five years); *Re Atlantic City Electric Company* 183 PUR 4th 22, 23, 38 (New Jersey 1998) (consumers to receive seventy-five percent of savings).

B. Merger Related Rate Plans

The estimate of net merger savings used to secure a Department approval under Section 96 carries substantial regulatory significance. The Department has noted that "[w]e emphasize, particularly in the context of the revised standard for Section 96 transactions, that the Department will rely on an applicant's estimation of savings" during ratemaking under G.L. c. 164, §94 ("Section 94"). *Fitchburg Gas & Electric Light Company*, D.P.U. 11-01 / 11-02, pp. 336-337 (2011). During a subsequent general rate case investigation under Section 94, the Department is entitled to rely on the representations about the realization of net savings a utility has made earlier on the record during its Section 96 case. *See Bay State Gas Company*, D.P.U. 08-43-A, pp. 38-39 (2008) and *Bay State Gas Company,* D.P.U. 09-30, pp. 278-281 (2009). The Supreme Judicial Court has affirmed the lawfulness of the Department's reliance on such company representations. *Bay State Gas Company v. Department Public Utilities*, 459 Mass. 807, 815-818 (2011). The Supreme Judicial Court has also affirmed that merger-related rate plans under Section 94 that do not constitute a general increase in rates can be adopted by the Department without the formal requirements of a full base rate proceeding. *Attorney General v. Department of Telecommunications and Energy*, 438 Mass. 256 (2001). The merger approval that created the NSTAR holding company established this ratemaking principle. *NSTAR*, D.T.E. 99-19 (1999).

VI. ARGUMENT

A. The Massachusetts Operating Companies Should Be Required to Guarantee Net Positive Benefit to Ratepayers in the Commonwealth of Massachusetts

Under the *Mergers and Acquisition* guidelines nine factor analysis, the Department is required to examine, among other things, the effect on rates, resulting net savings, and fairness of the distribution of resulting benefits between shareholders and ratepayers. *Guidelines and Standards for Acquisitions and Mergers of Utilities*, D.P.U. 93-167-A, pp. 7-9 (1994). Given that NSTAR has strongly indicated on the record that it intends to file a rate case based on a test year before merger savings have ramped-up, and WMECo has not ruled out that possibility, it is likely that rates will not reflect merger savings and skew the resulting distribution of savings between customers and shareholders. Tr. Vol. 4, pp. 355-356. Shareholders, however, will be able to enjoy the benefits of merger-enabled transmission investments through FERC, independent of the timing of distribution rate case filings at the state level. *See* section VI(A)(2)(b), below. Distribution rate case timing is not the only problem. Unlike the NSTAR merger approved in D.T.E. 99-19, there is no acquisition premium recovery request here to provide incentive for the Companies to promptly execute a merger integration plan to reduce costs. Tr. Vol. 9, pp. 1219, 1296[2]; Exh. AG-5-12. Once certain costs are reduced, it is important to ensure that these costs are not unnecessarily reconstructed under a different label and placed into rates again. Exh. AG-AEP-1, p. 13. In other words, it is important that the savings be permanent in order to ensure that customers receive the share of merger benefits identified by the Companies, and provide

[2] Although NSTAR's testimony during hearings denied at times that the financial obligation to pay for an acquisition premium provides incentive to implement merger savings to pay for that premium, NSTAR ultimately admitted this rather self-evident point: ("[The] company got to offset its costs by partial retention of the merger synergies. Here there are no such costs associated with the premium to offset. That's a good thing.") Tr. Vo. 9, pp. 1295-1296.

the Companies with the proper incentive to achieve prompt and permanent cost savings, Tr. Vol. 8, pp. 1191, 1199, 1202-1203.

The Attorney General has therefore recommended certain merger conditions be put into place to guarantee that ratepayers do, in fact, receive tangible benefits as a result of the merger. The Attorney General's primary recommendation to ensure a net positive benefit to customers is to impose a distribution rate freeze of five years for NSTAR Electric, NSTAR Gas, and WMECo with an annual earnings review. The Attorney General's alternative recommendation is that the $314 million in estimated savings (Exh. JP-3) would be flowed through to customers through a Merger Savings Credit in the Massachusetts operating subsidiaries next rate filing.

1. A Rate Freeze Should be Imposed

The Attorney General recommends that the Department order, as a condition of any merger approval, that NSTAR Gas' and WMECo's distribution rates be frozen for a period of five years, with an annual earnings review provision as part of the rate freeze. Exh. AG-DR-1, pp. 4, 25-26, and 27-29. The Final Order should also require, that, at the expiration of the current NSTAR Electric performance-based SIP, or sooner if the Settlement Agreement termination option is acted upon, the NSTAR Electric distribution rates be frozen for a period of five years, with an annual earnings review provision as part of the rate freeze. *Id.*, pp. 4 and 26-27. Further, the Final Order should require that, under the annual earnings review to be implemented as part of the rate freeze terms, if any of the Massachusetts operating subsidiaries earned return on equity exceeds the currently authorized level by more than 100 basis points, the respective Massachusetts operating subsidiary would be required to file a rate case. *Id.*, pp. 26 – 27.

The Attorney General recommends that the respective rate freezes be imposed in order to guarantee some benefit to the ratepayers of NSTAR Electric, NSTAR Gas and WMECO as a result of the merger.[3] A benefit would result as the distribution rates paid by these customers would not be permitted to increase in the next several years and would provide for stability in distribution rates in the near-term. The recommended rate freeze period of five years would also allow for the cost savings measures that are projected to result from the combination of NSTAR and NU to be implemented and largely achieved prior to the distribution rates charged to Massachusetts ratepayers being revised. This would avoid new rates being set based on current cost levels that are likely to change as a result of the merger. Exh. AG-DR-1, p. 25. Given that the Joint Petitioners have stated their intent to file a distribution rate case for NSTAR Electric utilizing a 2011 test year and the stated possibility of also filing a rate case for NSTAR Gas using the same 2011 test year (Tr. Vol. 4, pp. 355-356), the result could be rates being increased based on higher 2011 cost levels that would almost immediately be stale and not reflective of conditions that will exist during the rate effective period.

During the term of the rate freeze, the Department could allow NSTAR Gas to continue to earn Lost Base Revenues, subject to analysis during the review of its Annual Efficiency Reports, and allow NSTAR Gas to file a decoupling request at the end of the rate freeze term. Exh. AG-DR-1, pp. 25-26. During the rate freeze, NSTAR Electric could also be permitted to earn Lost Base Revenues. *Id.*, p. 27

Additionally, to ensure that freezing current rates does not result in rates being too high, resulting in potential over-earnings to the shareholders of the Massachusetts operating

[3] A distribution rate freeze is consistent with Department precedent. *See Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and Commonwealth Gas Company*, D.T.E. 99-19, pp. 24-25 (1999). The Department found that the merger would not harm the Company's customers, if there was a rate freeze of four years. If DPU 99-19's four-year base rate freeze met the "no net harm" standard, then a longer rate freeze is required to meet the "net benefit" standard.

subsidiaries, the Department should include an annual earnings review as part of the rate freeze provisions. Under the recommended annual earnings review, each of the Massachusetts operating subsidiaries would be required to file an annual earnings report providing its achieved return on equity on distribution operations. If the achieved return on equity during the term of a rate freeze exceeds the level currently authorized by the Department by more than a set level, such as 100 basis points above the authorized return, the respective Massachusetts operating subsidiary would be required to file a rate case. This provision would protect ratepayers in the event that the distribution rate freeze results in NSTAR Electric, NSTAR Gas or WMECO exceeding its authorized return on equity. Exh. AG-DR-1, p. 26.

Joint Petitioners' witness John J. Reed asserts that the Attorney General's proposed rate freeze with the annual earnings review is a "heads I win, tails you lose" proposal that would prohibit utilities from filing for a rate increase but still allow the Department order a rate reduction if earnings exceed a pre-determined threshold. Exh. JP-JRR-1(Rebuttal), pp. 14-15. The Attorney General does not agree that its recommendation is one-sided or that its proposal only benefits customers. Shareholders could potentially also benefit during the duration of the five year rate freeze. Exh. AG-DR-1R, p.4. The annual earnings review is a way to ensure that ratepayers are not harmed in the event that the recommended rate freeze provisions result in excessive earnings to the utilities and rates that are higher than needed. However, shareholders could also benefit from the proposed rate freeze, even with the proposed annual earnings review component.

If the earnings review shows that the achieved return on equity during the rate freeze period exceeds the currently authorized level by more than a set level, such as 100 basis points above, then the utility would be required to file a rate case. However, shareholders would benefit from the earnings above the authorized return on equity during the twelve month period that the earnings review covered. They would also benefit from the regulatory lag that would occur between the period covered by the earnings review and the time it takes to conduct a full rate case proceeding and issue an order. Thus, under the Attorney General's proposal, both ratepayers and shareholders could potentially benefit. Exh. AG-DR-1R, p. 4.

The proposed five year rate freeze would also encourage the Joint Petitioners to quickly implement cost saving measures that would result from the merger in order to both ensure that they do not under-earn during the rate freeze period and to potentially provide additional benefits to shareholders above the currently authorized return on equity level. This would result in substantive benefits to both shareholders and ratepayers.

When asked for their reaction to the Attorney General's testimony recommending a three to five year rate freeze be imposed as part of the merger conditions, the Joint Petitioners, specifically Mr. Judge, responded, in part, as follows:

> My reaction is that a three- to five-year rate freeze would not provide the company with a reasonable, fair return during that three- to five-year period, for the reasons that we just discussed. There are other cost escalations well beyond the net-benefits analysis presented here.

Tr. Vol. 4, p. 401.

However, the Joint Petitioners did not present any financial facts or financial data in its rebuttal testimonies demonstrating the contention or notion that the rate freeze would not provide for a fair or reasonable return during the rate freeze period. As set forth below, the Attorney General presents relevant facts on the earnings of NSTAR Electric, clearly demonstrating that NSTAR Electric is indeed currently earning a hearty return on equity on behalf of its shareholders. No factual evidence has been presented by the Joint Petitioners to demonstrate that the proposed rate freeze would result in financial harm to NSTAR or NU. The Joint Petitioners were well aware of the Attorney General's recommendation prior to the filing of rebuttal testimonies; thus, they had the opportunity to demonstrate its contention of unreasonableness, yet either could not or chose not to do so.

There is a possibility that one or several of the Massachusetts operating entities could earn under its authorized return on equity for up to a few years under a rate freeze, but that may not be the result. In fact, there is also the potential earnings in excess of the authorized return on equity could result. The imposition of a rate freeze would ensure that there is a positive benefit to customers. If the Joint Petitioners determine that the risk of under earning for up to a few years is too great a risk, then they have the choice regarding whether or not they go forward with the merger. It is not the Department that is deciding if NSTAR and NU should merge or not. However, it is the Department's responsibility to determine what provisions must be put into place to both protect customers and to make sure that the customers do receive a net positive benefit as a result of the merger. Tr. Vol. 8, pp. 1021 – 1022. As stated by Attorney General Witness Ramas:

> The purpose of this proceeding isn't for the Commission to guarantee that the company earns its authorized rate of return over the next several years. It's to decide what needs to be done to demonstrate there is a net positive benefits to customers as a result of this merger.

Id., p. 1022.

When asked if the Joint Applicants would go through with the merger if the Attorney General's recommended rate freeze was adopted, Mr. Judge responded as follows:

> I think the boards of both companies would want a management assessment as to what the likely outcome might be of those annual reviews. Would they be fair to the customers and the shareholders both? And the decision may be made based on that. It creates a

> huge risk in terms of the decisions that the boards would make to go forward with the transaction, and it's certainly not something that we would be supportive of.

Tr. Vol. 4, pp. 413-414.

Clearly the Joint Petitioners acknowledge that it is their choice whether or not to go through with the merger. If the Joint Petitioners decide that the potential costs of both protecting customers and of guaranteeing net positive benefits to customers in Massachusetts is too great or too uncertain, they have the option to not consummate the merger. The burden of that decision is on the Joint Petitioners, not on the Department.

a) NSTAR Existing Base Rates Will Be Sufficient During A Five-Year Rate Freeze

NSTAR claims that a base rate freeze for its distribution companies will not provide it with a reasonable rate of return. Tr. 9, p. 1301. The Company, however, never supported this claim with any analysis or calculations. Indeed, all of the record evidence indicates that the Company will continue to profit and provide safe and reliable service under a five-year rate freeze.

NSTAR's management and investment analysts have recognized that the Company has been and will continue to be a "cash cow." For instance, Fitch gave the Companies solid A and AA ratings based in part on their "solid liquidity positions." *See* Exh. DPU-1-25(a), p. 6. Moody's agreed, stating that "NSTAR Electric's rating outlook is stable, as we expect that credit metrics will continue to benefit from cash recovery of deferral items over the remaining years of the existing long term rate plan, thereby positioning the utility well in its rating category." Exh. DPU-1-25(c), p. 8. Standard & Poor's "A+" bond rating is based in part on its belief that its financial profile includes a "healthy cash flow." Exh. D.P.U. 1-25(b), p. 10.[4] Indeed, Tom May, the Company's Chairman, President and Chief Executive Officer stated during a conference with investment analysts:

> We care about shareholder return. That is what drives us. That is what we have delivered for many, many years and we can do it all with wonderful -- with our wonderful cash flow. ***Very, very strong cash flow.***

Exh. CLF-1, p. 6 (November 1, 2010 EEI Financial Conference) (emphasis added).

NSTAR's treasurer, James Judge, during that same conference, pronounced the Company as a source from which Northeast Utilities could milk out cash for NU's future capital investment needs:

> What you have here is a ***cash-rich utility*** coming together with a project-rich utility.

Id., p. 11 [emphasis added].

As Mr. May concluded his comments to investment analysts at the conference:

> Well, I hope we have convinced you all that we have a very attractive opportunity going forward with a continued **<u>very high return profile</u>**.

Id., p. 13 (emphasis added). The fact of the matter is that, as recognized by the financial community, the cost of equity has decreased for the Company since the rate plan was approved.

NSTAR Electric's current earnings level and historical financial performance indicates that it should be able to perform quite well under a five-year rate freeze. The Company is currently under a seven-year electric distribution base rate plan, approved by the Department in D.T.E. 05-85 (the "rate plan"), that has consistently allowed it to earn returns above its cost of capital. Indeed, the annual returns on common equity for the electric company were well over 11

[4] S&P's position is borne out by cash flow comparisons to other similar utilities. Exh. D.P.U. 1-25(b), p. 12.

percent over the last five years. *See* the "Calculation of Return on Equity" provided with the Annual Returns to the Department for the years 2006 through 2010; Tr. Vol. 9, pp. 1272-1273. While these returns fall within the deadband that allows NSTAR to retain all of these higher earnings under the rate plan (*See* D.T.E. 05-85, p. 5), they do not represent the Company's current cost of equity.

The Department has recognized that the cost of equity capital has decreased considerably since the date of the Order approving the rate plan. For instance, the Department set the cost of common equity for Western Massachusetts Electric Company at 9.60 percent in its most recent rate case. *See Western Massachusetts Electric Company*, D.P.U 10-70, p. 288 (2011). More recently, it set the cost of common equity for Fitchburg Gas & Electric Light Company at 9.20 percent in its most recent rate case. *See Fitchburg Gas & Electric Light Company*, D.P.U. 11-01/11-02, p. 427 (2011).

NSTAR itself has recognized that the cost of capital has decreased seriously since the rate plan was established. The Company recognized the decrease in the cost of capital in its most recent Pension and PBOPs actuarial studies. Tr. Vol. 9, p. 1305 and Exh. AG-2. There, NSTAR recognized that the expected return on its trust fund assets decreased by 100 basis points. *Id.* In fact, the Company assumes that the expected long-run return on common equity for firms in the S&P 500 has decreased to 8.36 percent. Exh. AG-2, p. 47. Therefore, by any measure, the cost of equity for NSTAR has decreased substantially, since the rate plan was put into effect.

The difference between NSTAR Electric's recent earned return on common equity and its current cost of capital is substantial. As described above, the Company is earning more than 11.5 percent return on common equity, while its cost of common equity is between 8.4 to 9.6 percent, some 2 percent to 3 percent lower. With each one percent return on the cost of equity worth $32 million in revenue requirement for NSTAR Electric, the extra revenue that the Company is recovering becomes substantial. Tr. Vol. 9, p. 1332. Thus, with the 2 percent to 3 percent overearning rates, the Company has somewhere between a $64 million [$32 million x 2%] and $96 million [$32 million x 3%] cushion in annual revenues.

NSTAR's costs for base rate services are also expected to decrease during the five-year rate freeze, when the Company has this cushion of earnings. The Company is projecting that costs will decrease as a result of the economies of scale and best practices facilitated by its merger with Northeast Utilities. See Exh. JP-3, p. 6. Although the decrease does not happen immediately upon the merger transaction date, the Company projects that those merger savings will become substantial and sustainable during the five-year freeze:

Year	Total Net Savings[(1)]	NSTAR Electric Percent Share[(2)]	NSTAR Electric Share of Savings[(3)]
2012	$16.3 million	27.8%	$4.5 million
2013	$36.5 million	27.8	$10.1 million
2014	$57.8 million	27.8	$16.1 million
2015	$74.0 million	27.8	$20.6 million
2016	$82.5 million	27.8	$22.9 million

Notes: (1) Exh. JP-3, p. 6.

(2) Exh. DPU-6-9.

(3) Column (1) times Column (2).

Thus, the merger savings attributable to NSTAR Electric quickly increase to $22.9 million adding to the earnings cushion already provided by the Company's current rates.[5]

The cushion that NSTAR Electric has in revenues should allow the Company to profit under a five-year rate freeze. During the last four years of the rate plan, the Company has received annual rate increases known as Simplified Incentive Payments ("SIP") adjustments that compensate the Company for expected increases in the costs of providing service. With SIP adjustments averaging 1.5 percent and the Company's base revenues at $845 million, the Company has been recovering about $12.675 million [$845 million x 0.015 = $12.675] per year in SIP rate increases. Tr. Vol. 9, pp. 1321-1322. Those annual SIP increases have allowed NSTAR Electric to consistently earn returns that were greater than 11 percent. Thus, it would appear that similar $12 million annual increases in revenue needed to cover costs that the Company has historically required will easily be facilitated during a five-year rate freeze with a $64 million to $96 million in revenue cushion plus the annual merger savings that will increase to over $22 million during that time. Therefore, NSTAR's claim that it will not be able to achieve a reasonable rate of return during a five-year rate freeze, was not only unsupported by the Company, but also contradicted by all of the record evidence in this case.

b) The Department Should Put NSTAR On Notice That It Will Not Tolerate The "Ginning Up" Of Its Revenue Requirement Just To Have A Base Rate Case

The Department must also beware of the Company's efforts to "gin up" its revenue requirement just so it can file a base rate case. Despite the fact that NSTAR Electric has consistently been earning substantially in excess of its cost of capital, the Company's believes that this is not enough. During the hearings, the Company's treasurer Mr. Judge indicated that it

[5] NSTAR Electric's annual savings actually increases to $33 million by 2021 [$119.2 million x 0.278 = $33.1 million]. Exh. JP-3, p. 6.

might file for an electric distribution company base rate increase of $50 million. Tr. Vol. 9, pp. 1322-1323. The notion of another increase at this time is astonishing given the NSTAR's overearnings discussed supra and that it will be expected to save tens of millions of dollars annually as a result of the proposed merger.

There is nothing in NSTAR's financial statements, nor did the Company provide any description of the reason for cost increases that would cause a base rate increase. Normally, utilities describe the major reasons for petitioning the Department for a base rate increase, including, significantly, the amount of additional plant in service investment made since the last base rate case. NSTAR Electric, however, has consistently been adding $200 million per year in capital additions. Tr. Vol. 9, pp. 1324-1325. Despite this, the Company has been earning returns on common equity higher than 11 percent. More importantly, with that consistent annual investment level, NSTAR claims that it has been improving its quality of service, including:[6]

> Outage frequency among the lowest in the region, with performance in the top quartile of the electric industry nationally, Exh. JP-1 (Supplemental), p. 7;
>
> Outage duration among the shortest in the region, with performance in the top quartile of the electric industry nationally, *Id.*;
>
> Distribution system line loss has improved significantly in the last eight years so that it is now the lowest of the utilities in Massachusetts Tr. Vol. 10, pp. 1427, 1443, 1460 and 1472;
>
> Customer service levels among the highest in the region, with performance in the top quartile of electric industry nationally, Exh. JP-1 (Supplemental), p. 7; and
>
> J.D. Power ratings of customer satisfaction well above the average of utilities in East region, *Id.*

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[6] NSTAR's treasurer, Mr. Judge also claimed higher service quality for his company during hearings:

> Within the State of Massachusetts we are No. 1 in terms of number of outages, No. 1 in terms of frequency of outages, No. 1 in terms of fewest DPU cases, No. 1 in terms of call answer rates. In virtually every other metric we are in a top-quartile position in the industry.

Given these claimed "stellar" performance statistics, it defies logic and reason that the Company should now have to increase its annual incremental level of capital investment in its system. Indeed, if, as the Companies claim, there are many synergies to be achieved as a result of this merger, they should cause a reduction in the annual levels of normal capital investment and not an increase.[7] *See* Exh. JP-1 (Supplemental), p. 18 and Exh. JP-3, p. 8. Indeed, with high earnings and low inflation, the only way that the NSTAR Electric could create a revenue deficiency using 2011 as the test year is by going on a spending spree to create a revenue deficiency.

Large increases in capital additions, large pay increases, new leases and spending on vehicles, facilities, computers, and computer software could collectively or individually drive the creation of a revenue deficiency. However, that stretch to "manufacture" a rate case would not be fair, just, or reasonable. Therefore, the Department should put the Company on notice that such scheming to generate a rate case will not be tolerated and such a petition will be rejected.

2. In The Alternative, The Department Should Apply A Merger Savings Credit

a) The Companies Have Estimated the Economic Benefits

As an alternative to the rate freeze, described above, the Department should condition any approval of the holding company merger on the implementation of a Merger Savings Credit ("MSC"). Exh. AG-AEP-2. As explained by the Attorney General's witness, Dr. Pereria, the Companies have submitted what they believe to be good faith estimates of the customer portion of the net benefits available from the merger based on the methodology

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7 Q: Please summarize the calculation of the non-labor savings shown in Exhibit JP-3.

A: Non-labor costs were divided into three broad categories, two of which contain further subdivisions, as follows: (1) Corporate and Administrative (administrative and general overhead, benefits, insurance, facilities, advertising, information services, professional services, shareholder services, vehicles, association dues and credit facilities).

used in the merger analysis provided in D.T.E. 99-19, as applied to the "actual" costs of NSTAR and NU.[8] Exh. AG AEP-1, pp. 11-13. The Companies describe the resulting economic benefits to customers in Exh. JP-1 (Supplemental) and Exh. JP-3, and estimate approximately $948 million (in current dollars) in merger-related savings over the first ten years following the closing of the proposed merger. Exh. JP-3, p. 5. They also describe the concomitant economic multiplier benefits of reduced rates in terms of economic development and job growth. Exh. JP-1 (Supplemental), p. 4. Against the gross customer savings figures of $948 million, the Companies estimate merger related costs of approximately $164 million. Exh. JP-3, p. 5. Netting the two figures yields an approximate value of $784 million in net savings potentially available to customers across both systems of the two merger holding companies. Using the "rule of thumb" of 40% to apportion savings to Massachusetts provided by the Companies, Exh. JP-1, p. 21, means that approximately $314 million is expected to inure to Massachusetts customers over the 10-year period following the approval and closing of the merger transaction.[9] Given the nature of the projected customer savings, primarily staff reductions, the Companies should have the ability to quantify these figures with a certain degree of accuracy.[10] If investments in new systems are required by the merger, the Joint Petitioners have had ample opportunity to evaluate the likelihood of these costs as well. Customer savings and cost associated with the merger, therefore, do not rely

[8] Although the Companies do not fully define "actual costs," Dr. Pereira concluded it is probably reasonable to assume that the Companies used the utilities' cost structures as they are currently in place (as of April 8, 2010, the date of Supplemental filing). Exh. AG-AEP-1, p. 12.

[9] These figures would have to be further apportioned between the WMECo and NSTAR operations.

[10] In Connecticut, "the Company testified that the actual savings are more like than not to exceed the amount projected in the net benefit analysis. *Application of Yankee Gas Services Company For Amended Rate Schedules*, D.P.U.C. Docket No. 10-12-02, p. 139 (June 29, 2011).

on nebulous synergies, uncontrollable market forces or volatile prices, and the Companies should be held accountable for these representations.

b) Distribution of Customer and Shareholder Benefits

Shareholder benefits are more generally described by the Companies, but Dr. Pereira concludes that the opportunities for these benefits exist. Exh. AG-AEP-1, pp. 5. Shareholders can benefit in at least three ways under the Companies' proposal. First, through rate case timing, the Companies could file for distribution rate increases early in the merger integration process when merger costs are abundant and then potentially enjoy higher earnings in the later years as merger enabled savings ramp up, assuming the cost/savings timeline in Exhibit JP-3. *Id.* Second, with regard to the Companies' planned transmission expansion, to the extent that the new merged entity has financing advantages over the legacy companies, shareholders will benefit since the Federal Energy Regulatory Commission ("FERC") generally sets a generic rate of return with the possibility of adders for transmission projects. *Id.* Third, if the Companies have not finished realizing savings and passing them along to customers in rates, a third party entity would have the incentive to propose a follow-on merger and offer shareholders an acquisition premium that represents, at least in part, the unrealized savings from the current merger. *Id.*

The Companies themselves have indicated that there are a number of investments that the Companies will be able to pursue at the wholesale level. Exh. JP-1, p. 7 ("Regionally, the financial strength of the combined organization will enable investment in capital-intensive . . . transmission projects . . . ."). The transmission investments and other wholesale market activities are unrelated to distribution company operations and would not be subject to Department jurisdiction. Exh. AG-AEP-1, p. 21. Though these wholesale market benefits to shareholders are generally not under Department jurisdiction, the Companies claim they cannot be obtained without Department approval of the current merger, Exh. AG-AEP-1, p. 20, and the Department is entitled to rely on benefits that can be obtained through non-jurisdictional activities when it evaluates a Section 96 petition. *Attorney General v. Department of Telecommunications and Energy*, 438 Mass. 256, 268-269 (2002). In addition, since the Companies themselves are planning to make these transmission investments, quantifying shareholder benefits certainly is within the control of the management. Simply because the Companies, for some reason, on this record have been vague about shareholder benefits from large, new transmission projects enabled by the merger that does not mean these benefits do not exist. Given that FERC offers incentive rates of return, *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007), transmission investments could offer superior returns to distribution investments all else being equal.

c) There is a Mismatch Between Merger Costs and Savings

Although there may be some shortcomings in the exact method employed by the Companies to determine net savings, it is clear that ample customer and shareholder benefits exist from the transaction for purposes of a Section 96 examination, and the Companies have indicated that the estimates of customer benefits are essentially conservative. Exh. JP-3, p. 3; Exh. JP-1 (Supplemental), p. 16. Given that the Companies have shown that estimated savings will take 4 or 5 years to phase-in at meaningful levels, Exh. JP-3, filing rate cases promptly after any Department approval of the merger will lock-in a level of costs which may soon be stale. During hearings in this case, NSTAR stated that it intends to file a rate case soon (Tr. Vol. 9, pp. 1322-1323), and WMECo is still evaluating the issue. Tr., Vol. 9, pp. 1254-1255. Based on these statements, the concern that shareholders will attempt to capture customer savings is hardly speculative. The risk is very real, especially for NSTAR, a company that has earned generous returns in recent years. Tr. Vol. 9, pp. 1272-1273. The realization of merger savings from staff reductions, consolidations and cost from new investments, like customer information systems, associated with the merger are actions well within the control of management. So, approval of the merger by itself is no guarantee that savings will be achieved or later reflected in rates. The regulatory challenge here is one of matching the recovery of costs of the merger with the realization of savings to customers. Exh. AG-AEP-1, p. 12.

i. No Double Counting of Merger Savings

The MSC proposed by Attorney General witness Dr. Pereira employed a levelized credit over the 10 year time horizon of net customer savings estimated by the Companies in order to smooth the mismatch between costs and merger savings. Exh. AG AEP-2. Since the Companies' filing made no firm commitment to pass along the estimated net savings for Section 96 purposes in any meaningful way beyond what may, or may not, be reflected in a future cost of service many years from now in a Section 94 proceeding, this approach is appropriate and superior to the Companies *ad hoc* approach. During hearings, the Companies stated repeatedly that the MSC would result in the "double counting" of merger savings, presumably once as savings were reflected in rates after a rate case and again through the credit. See, e.g., Tr. Vol. 3, p. 270. As explained by Dr. Pereira, however, the MSC would not result in a "double counting" of the merger credit, Tr. Vol. 8, pp. 1170-1183, since the merger credit as outlined in his testimony, Exh. AG-AEP, pp. 15-20, could be adjusted by the Department, as appropriate. Tr. Vol. 8, 1175-1176. Dr. Pereira's did not "change" his proposal during hearings. As stated in his prefiled testimony, Dr. Pereira did not submit a draft tariff, but instead left the exact details of the implementation of the MSC to further development:

> As a condition of the merger approval, however, the Companies, should file the appropriate proceeding within 12 months of the approval of the merger to create the tariff, or with the next rate case if sooner than 12 months, proposing the MSC in accordance with the guidelines outlined in this testimony. The MSC application should be adequately supported with ***prefiled testimony describing the actual costs and savings and progress with the merger integration process***, as well a proposed tariff, all for review and approval by the Department and other interested parties.

Exh. AG-AEP, pp. 15-20 (emphasis added). Clearly, this proposed expressly contemplated further development before the Department in a subsequent proceeding. *See also*, Exh. DPU-AG-1-10 ("There would be other associated issues, like when the credit would take effect and for how long, but these would not represent substantial obstacles to implementation. There could, of course, be other methods available to credit the merger savings to customers so my proposal should not be considered exhaustive.").

ii. Credit Applies Regardless of Subsequent Acquisition Activity

One of the concerns raised by Dr. Pereira is the disposition of net savings if there is a follow-on merger and the NU-NSTAR combination has not fully realized projected savings. Exh. AG AEP-1, pp. 6-7. A new acquiring entity would have incentive to offer shareholders an acquisition premium that represents, at least in part, the unrealized savings from the current merger. This problem will be compounded if the Department believes it lacks jurisdiction over the transactions under Section 96, and thus would have fewer or no tools to preserve benefits for Massachusetts customers. The MSC would apply to rates for a fixed period of years, and would ensure that customers appropriately experience net savings regardless subsequent transactional activity.

d) Incentives Needed to Achieve Permanent Savings

The MSC provides the Companies with the appropriate incentives to promptly achieve the projected merger savings. Depending on when the Companies time rate case filings after the implementation of the MSC, shareholders may be entitled to retain savings greater than the estimates, which would both benefit shareholders and reduce administrative filings associated with rate cases. Incentives to achieve and make permanent savings are important.

As noted by Dr. Pereira, "once certain costs are reduced, it is important to ensure that these costs are not unnecessarily reconstructed under a different label and placed into rates again." Exh. AG AEP-1, p. 14. NSTAR pointed toward its own O&M levels over a 10 year period as evidence that it achieved long-term cost reductions, Tr. Vol. 9, p. 1275, but it also noted that rate base has almost doubled over the same period. Tr. Vol. 9, p.1274-1275. ("We have doubled, as my direct testimony says, our rate base since the last merger. Capital investment that was $2.3 billion, net plant on the books, is now 4.5 billion."). There are three problems with NSTAR's argument. First, NSTAR operates under a special capital replacement program approved by the Department in D.T.E. 05-85, the Capital Projects Scheduling List ("CPSL") program, and so has the ability to place new capital investment into rates on an annual basis by increasing distribution rates in-between rate cases, so customer pay for increased capital investment. Second, investments in new systems under the CPSL program should be designed to increase reliability, so it would be expected that increases in capital investment of this type would put downward pressure on O&M costs since new systems would, of course, require less maintenance. There is no explicit reduction to distribution rates for O&M savings in the CPSL adjustment. Third, increased levels of capital investment, all else being equal, will result in a higher level of total labor expense being capitalized, which would reduce the remaining labor expense represented in O&M. Although it would appear that O&M is being reduced through the lingering effects of the NSTAR merger savings, it is at least as likely that O&M appears lower in part because a higher portion of labor is simply being capitalized, which has the added benefit of allowing NSTAR to earn a return on the labor. The relative levels of O&M could be nothing more than evidence of the Averch-Johnson Effect.[11] In short, examining just one element of rates in isolation will not provide an adequate picture of whether NSTAR has been able to achieve permanent savings.

e) Department Should Condition Merger Approval On Implementation of the MSC If It Chooses Not To Implement the Rate Freeze.

As noted above, the Companies should stand behind what it has represented to be good faith estimates of merger savings and pass along those savings to customers in the form of the MSC. The nature of the merger savings, primarily staff reductions, are well within management's ability to estimate now and control later, so it is reasonable to conclude that these savings, at least, can be achieved. Any new investments associated with the merger are also well within the ability of management to determine, so the Companies should be held accountable for those estimates as well and not be permitted to later embark on expensive

[11] *See* Averch, H.A. and Johnson, "Behavior of the firm under regulatory constraints", *American Economic Review* (1962) (regulated entities have incentive to prefer a sub-optimal capital solution since it can earn a return on capital investments).

programs "because of the merger" that adversely affect savings for customers. For all these reasons, the Department should condition the approval of the merger with the implementation of the MSC if it chooses not to implement the rate freeze.

B. Other Consumer Protections That Conditions Should be Placed on Merger Approval to Avoid Potential Harms to Ratepayers

In addition to insuring that net positive benefits to the Massachusetts ratepayers result from the merger of NSTAR and NU, the Department also must ensure that no harm comes to the Massachusetts ratepayers as a result of the proposed merger. The Attorney General has identified several potential harms that either could result or will result from the merger absent certain provisions being put into place to protect customers. The Attorney General has also put forth several conditions that should be put into place as part of any Department authorization of the proposed merger in order to avoid the harms that otherwise will or may result. The following conditions, each of which will be discussed in further detail in subsequent sections of this Brief, should be Ordered as conditions of any merger approval in order to prevent harm to customers:

- The Order should clearly and concisely require that none of the goodwill resulting from the recording of the merger will be recorded on the books of NSTAR Electric or NSTAR Gas. Exh. AG-DR-1, p. 3.

- The Order should clearly state that NSTAR Gas and NSTAR Electric may not increase the value of the assets recorded on their books to a fair value amount as a result of the recording of the transaction. Exh. AG-DR-1, p. 3.

- The Order should require that, in future rate cases for both NSTAR Gas and NSTAR Electric following the consummation of the merger, the cost of debt component incorporated in the calculation of the overall rate of return will be no higher than what it would have been absent the merger. In order to implement this recommendation, the Order should require that if NSTAR, NSTAR Electric and NSTAR Gas are downgraded below the current A+ Standard & Poor's rating, and new debt is issued at that lower rating, the interest rate associated with the new debt issuance will be included in calculating the rate of return in future rate cases based on interest rates that are available at the time of issuance for an A+ rated entity. Exh. AG-DR-1, p. 3.

This requirement should remain in place for a period of five years. Tr. Vol. 8, p. 970.

- The Order should require that, if the cost of debt component increases as a result of NSTAR Electric and/or NSTAR Gas being downgraded, the lower debt rate assuming an A+ credit rating should also be used for purposes of calculating the Allowance for Funds Used During Construction (AFUDC) applied to construction projects. Exh. AG-DR-1, p.3. This requirement should remain in place for a period of five years.

- The Department Order should require that the merger-related costs incurred during 2011 be recorded at the parent company level, with none of the costs being recorded at the operating company level. Any costs recorded in 2011 to date on NSTAR Electric, NSTAR Gas or WMECo' s books should be transferred to the parent company level at the time of consummation of the merger. Exh. AG-DR-1, pp. 3-4.

1. No Goodwill Should Be Recorded on the Books of NSTAR Electric or NSTAR Gas and the Assets of NSTAR Electric and NSTAR Gas May Not Be Increased for Fair Value Accounting

The merger transaction will result in a substantial amount of goodwill that will be allocated to the NSTAR portion of the combined company. While the final amount of goodwill that must be recognized for accounting purposes will not be known until the transaction is complete, the Joint Petitioners have estimated the goodwill at approximately $2.6 billion. Exh. AG-DR-1, p. 10; Tr. Vol. 1, p. 71; Exh. DPU-1-34.

The Joint Petitioners' have stated that it is currently anticipated that none of the goodwill will be recorded or pushed down to the books and records of either NSTAR Electric or NSTAR Gas. Exh. DPU-1-32; Exh. DPU-1-34; Tr. Vol. 1, pp. 71-72. During the hearings, NSTAR witness James Judge stated: "The company has no plans to push down accounting, and it looks like that will be okay with the SEC in this transaction." Tr. Vol. 1, p. 72. Mr. Judge also stated that "The company has no intention of pursing recovery of goodwill in future rate proceedings." *Id.*, p. 73. While indicating that there are no plans to push down the goodwill to the books of NSTAR Electric or NSTAR Gas, and that there are no plans to increase the assets on the books of these entities to fair value as a result of the goodwill, these statements fall far short of a firm commitment.

According to the Joint Petitioners, the Securities and Exchange Commission ("SEC") has granted a request filed by the Joint Petitioners that they not be required to apply push-down accounting for the goodwill to the books and records of NSTAR Electric or NSTAR Gas. Thus, the SEC is not requiring that the goodwill be pushed-down to the Massachusetts operating subsidiaries. *Id.*, p. 72.

The Attorney General recommends that any order approving the merger of NSTAR and NU include a condition requiring that: (1) none of the goodwill ever be recorded on the books and records of NSTAR Electric or NSTAR Gas; and (2) none of the assets recorded on the books of NSTAR Electric or NSTAR Gas be increased beyond the original cost to fair value as a result of the merger. While the Joint Petitioners have indicated that the above requirements are their current "intention" or what is currently "anticipated," a firm requirement should be put into place to insure that the current intentions are followed and not modified.

While the Joint Petitioners have indicated that that they have no intention of pursing recovery of goodwill in future rate proceedings, requiring that the goodwill be kept of the books and records of the Massachusetts operating entities will provide further protection to ratepayers.

2. Protection from Higher Future Debt Costs that Could Result from the Merger

The credit ratings of NSTAR, NSTAR Electric and NSTAR Gas are substantially better than the credit ratings of NU and its operating companies.

- The Standard & Poors ("S&P") Credit rating for NSTAR, NSTAR Electric and NSTAR Gas, as of September 28, 2010, was A+. As of July 27, 2010, the S&P rating for NU was BBB. Exh. AG-DR-1, p. 12; Exh. DPU-1-25.

- The Fitch senior unsecure debt rates, as of October 15, 2010, were A for NSTAR, AA- for NSTAR Electric and A for NSTAR Gas. On December 17, 2009, Northeast Utilities senior unsecured debt rating by Fitch was BBB. *Id.*
- Moody's gave NSTAR Electric a credit rating of A1 and NSTAR a rating of A2 as of September 20, 2010. On November 22, 2010, NU's credit rating from Moody's was Baa2. Exh. AG-DR-1, p. 13; Exh. DPU-1-25.

In fact, based on an S&P document titled "U.S. Regulated Electric Utilities, Strongest to Weakest," dated April 7, 2011, NSTAR, NSTAR Electric and NSTAR Gas were each near the very top of the listing, reflecting an A+ rating. The same document shows NU much lower at BBB rating. Exh. AG-DR-1, p. 13.

Unfortunately, the very fact that NSTAR plans to merge with NU has put downward pressure on the excellent credit ratings of NSTAR, NSTAR Electric and NSTAR Gas. A research update from S&P indicates that NSTAR, NSTAR Electric and NSTAR Gas were all placed on CreditWatch by S&P with negative implication. Exh. AG-DR-1, p.13; Exh. DPU-1-25. The document stated that "The negative CreditWatch listing on NSTAR reflects that its ratings will be lowered once the transaction is completed, owing to the combination with an entity that has a weaker financial risk profile." *Id.*

As recently as April 19, 2011, S&P issued a publication indicating that "The ratings on Massachusetts-based energy company NSTAR and its operating subsidiaries NSTAR Electric Co. and NSTAR Gas Co. remain on CreditWatch with negative implications as a result of the company's plan to merge with Northeast Utilities (NU)." Exh. AG-DR-1, p.13; Exh. DPU-1-25. *Id.* The document also states that "The negative CreditWatch listing on NSTAR reflects that its ratings will be lowered if the transaction is consummated, owing to the combination with a lower-rated entity." *Id.* While indicating that the corporate credit rating is likely to "...remain in the 'A' category," there is no indication on the publication that the NSTAR entities will remain at the A+ level; particularly when the publication indicates that the ratings "will be lowered" if the merger is completed. Exh. DPU-1-25-SP-02, Attachment DPU-1-25 SP02, p.1.

Once the merger is consummated and the credit ratings of NSTAR Electric and NSTAR Gas are downgraded, which S&P has indicated will occur upon consummation, ratepayers could be harmed as a result of higher future debt rates being incorporated into the revenue requirement calculations absent an explicit merger condition being implemented as part of the Order in this case. NSTAR Electric and NSTAR Gas' debt costs associated with future debt issuances will be higher as a result of the merger as compared to the debt costs that would occur absent the merger. If these higher debt costs are allowed to be incorporated in the rate setting process, and in the calculation of AFUDC on constructed assets, there will be a negative impact on the Massachusetts customers served by NSTAR Gas and NSTAR Electric. Exh. AG-DR-1, p. 14.

In supplemental testimony, the Joint Petitioners indicated that, even if NSTAR Electric were to be downgraded one notch to an A rating, it is their opinion that the change would not be significant in terms of borrowing capabilities and costs. Ex. JP-1 (Supplemental), pp. 25-26. They estimated an impact of between 0 and 5 basis points on the cost of new long-term debt as a result of a one notch downgrading, which they indicated would result in approximately $125,000 of additional annual debt costs on an after tax basis. *Id.*, p. 26. However, no further support for this contention, beyond indicating that it was based on input from investment bankers, was provided. Exh. AG-6-6.

Given the fact that the Joint Petitioners are of the opinion that a downgrade will not have a material impact, they should not be opposed to the Department implementing a specific provision in its Order to protect Massachusetts ratepayers from the possible additional costs and resulting potential harm that would occur in the event debt costs rise as a result of the merger.

The Attorney General recommends that the Department clearly indicate in its order that in future rate cases for both NSTAR Electric and NSTAR Gas following the consummation of the merger, the cost of debt component incorporated in the calculation of the overall rate of return will be no higher than what it would have been absent the merger. The merger provision should require that if NSTAR, NSTAR Electric or NSTAR Gas are downgraded below the current A+ Standard & Poor's rating and new debt is issued at that lower rating, the interest rate associated with the new debt issuance will be included in calculating both the rate of return and the AFUDC rate based on interest rates that are available at the time of issuance for an A+ rated entity. Exh. AG-DR-1, p. 17. A term of five years for this condition would be reasonable. Tr. Vol. 8, p. 970. While other factors beyond the merger could potentially impact the credit ratings, it is already known that S&P has placed NSTAR, NSTAR Electric and NSTAR Gas on negative credit watch, indicating that they will be downgraded as a result of the merger. Thus, in order to protect ratepayers from higher debt costs that are likely to occur absent the merger, this provision should be put into place for a duration of at least five years.

The yields for an A+ rated entity could be obtained from S&P, as well as other entities that offer subscription services through which the yields can be obtained. If the Department does not subscribe to services which provide the yields, the Department could request that the information be provided through discovery conducted on the cost of capital witnesses in rate case proceedings. Exh. DPU-AG-1-4.

3. Merger-Related Costs Incurred During 2011 Should be Recorded at the Parent Company Level

If the merger-related costs incurred during 2011 are recorded on and remain on the books of NSTAR Electric, NSTAR Electric's ratepayers could be harmed in the near future. As part of the Settlement Agreement entered into in DTE 08-85, NSTAR Electric is currently operating under a performance based Simplified Incentive Plan ("SIP"). The term of the performance based SIP extends through January 1, 2012. Under the provisions of paragraph 2.6.4 of the Settlement Agreement, if NSTAR Electric's earned rate of return on equity ("ROE") for distribution service falls outside of a range of 8.5% to 12.5% in any given year, customers and shareholders share equally in the level of earnings or deficiency falling outside that band. In other words, if NSTAR earns above 12.5%, customer benefit based on 50% of the earnings above this level. If NSTAR earns an ROE below 8.5%, shareholders are reimbursed for 50% of the deficiency below that level. Exh. AG-DR-1, pp. 18-19. The final earnings calculation under the provisions of the DTE 05-85 Settlement Agreement will occur in early 2012 based on a review of the actual 2011 performance. Tr. Vol. 1, pp. 74-75.

A significant portion of the merger-related costs are projected to be incurred during 2011. The total amount of merger-related costs projected for 2011 by the Joint Petitioners is $79.2 million. Exh. JP-3, p. 49; Tr. Vol. 1, pp. 73-74. The major components of the projected $79.2 million of anticipated 2011 costs consist of banker and lawyers' fees of $36 million, registration fees of $3.2 million, executive separation costs of $20 million, employee retention costs of $6.7 million, internal and external communication costs of $2 million, transition costs of $5.2 million and regulatory processing costs of $3.1 million Exh. AG-DR-1, p. 20. During that same period, the Joint Petitioners' Net Benefit Analysis shows that the projected cost savings, on a total combined entity basis, are only $5.9 million. Exh. JP-3, p. 6. This assumes that the merger is consummated by October 1, 2011, resulting in three-months of potential savings during 2012. Thus, on a total combined basis, the projected savings for 2011 ($5.9 million) are significantly less than the projected costs to be incurred in that same year ($79.2 million).

If any of these costs are recorded on the books of NSTAR Electric, there may be a near-term harm to the Massachusetts ratepayers through the operation of the performance based Simplified Incentive Plan ("SIP"). *See* D.P.U. 05-85 Settlement Agreement. The only way there would not be harm through the SIP, absent a merger condition to protect customers, is if the return on equity calculation for 2011 would fall within the range of 8.5% to 12.5% both with and without the merger-related costs included. Based on information provided to date, it is unknown whether or not the ROE range will fall between 8.5% and 12.5% during 2011 both with and without the merger related costs included. However, it is known that, absent conditions being put into place as part of the Order in this case, any merger costs recorded on NSTAR Electric's books will impact the 2011 ROE sharing calculation. Exh. AG-DR-1, p. 19.

The Joint Petitioners indicated during hearings that the majority of the merger-related costs incurred during 2011 have been recorded at the parent company level with same possibly being recorded in the service companies. Tr. Vol. 1, pp. 76-77. However, in response to RR-AG-1, the Joint Petitioners stated that the 2011 transaction costs incurred to date were recorded at the books at the parent company level, and that costs incurred to integrate the NU and NSTAR organizations were booked to either the NU parent or the NSTAR service company. The response to RR-AG-2 indicated that all merger-integration costs booked to NSTAR Electric and NSTAR Gas to date have been booked to accounts 921 – Office Supplies, 923- Outside Services, or 928 – Regulatory Commission Expenses. The response did not identify how much has been recorded on NSTAR Electric's books so far during 2011.

To insure that NSTAR Electric's ratepayers are not harmed as a result of the inclusion of the merger-related costs in the calculation of the performance based SIP, the Department should require that all the merger-related costs incurred during 2011 be recorded at the parent company level, with none of the costs being recorded at the operating company level. The condition should also require that any costs recorded on NSTAR Electric's books to date should be transferred to the parent company level. This is necessary to avoid harm to Massachusetts ratepayers that would result from the merger costs impacting the earnings sharing mechanism. Exh. AG-DR-1, pp. 23-24.

Additionally, the Joint Petitioners have already stated their intent to file a rate case proceeding for NSTAR Electric in 2012 which would utilize a 2011 test year. They also anticipate filing a rate proceeding for NSTAR Gas, which may also use a 2011 test year. Tr. Vol. 4, pp. 355-356. Thus, given the stated intention of using a 2011 test year in a forthcoming rate proceeding, ratepayers could potentially be harmed if the substantial amount of projected merger related costs to be incurred in the current period are incorporated within that test year.

If the Department conditions the merger on all merger-related costs incurred during 2011 being recorded at the parent company level with none of the costs remaining on the books of NSTAR Electric or NSTAR Gas, this would further protect NSTAR Gas and NSTAR Electric from potential harms that could result from inclusion of such one-time, non-recurring costs in a test year used in a rate case proceeding. Thus, this requirement should be incorporated in the Department's decision regardless of whether or not the Attorney General's proposed rate freeze or Merger Savings Credit for each of the Massachusetts operating entities is adopted.

4. The Department Should Reject The Recovery of Golden Parachutes and Retention Bonus Costs In Any Future Rate Case

As discussed above, the Department should order the Company to record all merger-related costs from the NU/NSTAR transaction at the parent company level. However, if the Department does not require the merger-related costs to be recorded at the parent company level, it should, as a condition of the merger, find and order that all executive separation (i.e. "golden parachutes") and retention bonus costs allocated to the Massachusetts operating companies will not be recoverable from Massachusetts customers, since the Company did not show that these costs are just and reasonable costs of providing distribution service to customers.

Some of the largest costs that the Company claims will be incurred as a result of the merger are those associated with executive separation payments and retention costs. Exh. AG-DR-1, p. 20. The Companies itemize potential separation costs for NU as follows:

Name	Cash Severance ($)	Separation Payment for Non-Compete/ Non-Solicit ($)	Pro-Rated Annual Incentive Benefit ($)	Health & Welfare and Fringe Benefits ($)*	Supplemental Retirement Benefits (*) ($)	Total ($)
Charles W. Shivery .	—	—	—	—	—	—
David R. McHale . .	$866,250	$866,250	$301,875	$69,273	$4,216,138	$6,319,786
Leon J. Olivier	907,500	907,500	—	20,940	532,128	2,368,068
Gregory B. Butler . .	671,530	671,530	234,018	151,675	2,983,712	4,712,465
James B. Robb	300,000	300,000	—	—	—	600,000
Jay S. Buth	151,875	151,875	—	—	—	303,750
Jean M. LaVecchia .	430,234	430,234	—	11,090	—	871,558

Source: NSTAR 2011 Proxy Statement, p. 88, Exh. AG-1-5(e).

The Companies itemize potential separation costs for NSTAR as follows:

Name	Severance Payment (\$)	Pro-Rata Bonus Payment (\$)	Value of Continued Welfare Benefits (\$)	Present Value Of Additional Non-Qualified Retirement Benefits (\$)*	280G Gross-Up Payment (*) (\$)	Total (\$)
Thomas J. May .	\$8,610,000	\$891,178	\$243,303	\$420,039	—	\$10,164,520
James J. Judge . . .	3,078,000	237,870	98,823	1,499,023	2,225,600	7,139,315
Douglas S. Horan	2,865,000	222,378	72,090	167,765	—	3,327,233
Werner J. Schweiger	2,865,000	222,378	97,755	1,179,054	2,419,130	6,783,317
Joseph R. Nolan, Jr..	1,872,000	125,181	93,918	769,831	1,204,587	4,065,517
Christine M. Carmody	1,518,920	106,067	39,294	—	853,671	2,517,951
Robert J. Weafer, Jr. .	. 930,000	91,616	44,142	149,329	—	1,215,087

Source: NSTAR 2011 Proxy Statement, p. 89, Exh. AG-1-5(e).

The Companies expect to incur \$20 million in Executive Separation payments under these personal service contracts for their officers. Exh. JP-3, p. 49, line 3. Furthermore, after announcing the merger, NU and NSTAR separately set up retention pools aimed at keeping top executives at each company for at least three years after the merger is completed. For the combined company, the total retention pool is estimated to be another \$20 million. Tr. 1, p. 47. Since neither of these costs is necessary to complete the merger, nor are they required to provide distribution service to customers, they should not be included in determining the cost of service for any of the Companies.

The Department establishes gas and electric distribution service rates based on the reasonable and prudently incurred costs of providing service to customers. The Companies bear the burden of proving each and every element of their case by a preponderance of "such evidence as a reasonable mind might accept as adequate to support a conclusion." G. L. c. 30A, § 11(6); *Fitchburg Gas and Electric Light Company*, D.T.E. 99-118, p. 7, n.5 (2001). If a Company fails to carry this burden, the Department must deny the Company's proposed rate request. *Fitchburg*

Gas & Electric Light Company v. Department of Public Utilities, 375 Mass. 571, 582-583 (1978). The Companies have not met their burden for either of the Executive Separation or the Executive Retention costs in this case.

The claimed Executive Separation costs will be incurred as a result of the Companies signing contracts with individual employees. These employees will no longer be working for the Company. These are not benefits like pensions that were earned during their terms of employment. These costs are simply a payoff because they were successful in selling the Company and benefitting its shareholders. These Executive Separations costs provide no support to current distribution service and no benefit to customers. Therefore, the Department should find that these golden parachutes are unreasonable and imprudent and find that they will not be allowed recovery now or in future rate cases.

The Companies are also expecting to include retention bonuses in the merger-related costs that the will seek recovery for. Exh. JP-3, p. 49. Under the terms of the retention agreements, these executives receive shares of stock. *See* Exh. AG-1-5(e), p. 103 (NU); Exh. AG-5(e), p. 107 (NSTAR). NSTAR indicated that it may seek recovery of these costs from Massachusetts customers in a future rate case. Tr. 1, p. 47. NU, on the other hand, has publicly announced that it will not seek recovery of these costs from customers. "NU's bonus pool is paid for strictly by shareholders," NU spokesman Al Lara said.[12] In addition, the Connecticut Department of Public Utility Control[13] agrees with this proposition and has denied recovery of these types of expenses. *Joint Application Of Energy East Corporation And Connecticut Energy Corporation For Approval Of A Change Of Control*, Docket No. 99-07-20, p. 18 (December 16, 1999). In regards to the proposed merger that is the subject of this docket, the Connecticut

[12] http://www.hartfordbusiness.com/news17191.html?Type=search; http://www.hartfordbusiness.com/news17309.html?Type=search

[13] Now known as the Department of Energy and Environmental Protection Public Utilities Regulatory Authority.

Commission has indicated that it will apply its precedent and reject recovery of retention bonuses. *Application of Yankee Gas Services Company For Amended Rate Schedules*, Docket No. 10-12-01, pp. 137-140 (June 29, 2011). Massachusetts customers are entitled to the same regulatory treatment of these retention costs that the new Merged NU intends to receive in Connecticut. Therefore, the Department should reject any attempt to recover retention bonuses in any rate proceeding for the Massachusetts operating companies.

5. The Department Should Require WMECo to File a Rate Design Proceeding to Address Outstanding Rate Design Issues

The stagnant economic climate in Western Massachusetts has made it increasingly difficult for businesses to remain competitive. The record in D.P.U. 10-70, WMECo's recent litigated rate case, is rife with references to the declining economy and the challenges businesses are facing. "Many large businesses have closed, or reduced consumption and almost all are facing increased competition and lower margins as a result of the downturn in the economy, the increasing costs of electricity and other influences. The history of business closure and job loss in this region of the state is too familiar to require detailed recitation here." D.P.U. 10-70, Western Massachusetts Industrial Group Initial Brief, p. 2; *see also* August 19 Greenfield Public Hearing, Tr. Vol. 1, pp. 9-10 (12% unemployment rate in Western Massachusetts); August 24, 2010 Pittsfield Public Hearing, Tr. Vol. 1, pp. 7-8 (high utility costs to run two paper mills resulted in their closure, displacing hundreds of employees); and August 26, 2010 Springfield Public Hearing, Tr. Vol. 1, pp. 47-48 (distribution rate increase would have a negative impact on the growth and the ability to attract new businesses to the state, while at the same time seriously threatening the continuation of existing business operations). Considering the effects that the poor economy in Western Massachusetts has on businesses and residential customers alike, the

Department needs to ensure that WMECo's distribution rates send the right price signals and that they are designed in an equitable manner.

The Attorney General therefore recommends that the Department require WMECo to file a revenue neutral rate design proceeding within six months of the decision being issued in this case. This would result in an additional net benefit to many of WMECo's customers in the form of rates based on the actual cost to serve them. The purpose of the rate design proceedings will be to address the many rate design concerns for WMECo, on a revenue neutral basis. Exh. AG-DR-1, p. 28.

Several pertinent rate design issues raised by the Attorney General in D.P.U. 10-70 were not fully resolved in the decision in that case. It is the Attorney General's opinion that several customer groups are being harmed as a result of the failure to fully resolve the rate design issues. WMECo had not addressed the design of its rates in 20 years. In its Initial Brief in D.P.U. 10-70, at page 141, the Attorney General recommended that the Department open a docket to address the rate design issues that were not resolved or fully addressed in D.P.U. 10-70 and recommended that WMECo be required to file a revenue neutral rate design proceeding. The Attorney General also indicated that the existing General Service class rates have not been updated or modified in many years. The Attorney General is supportive of the redesign of General Service rates charged to WMECo customers. Additionally, as pointed out by the Attorney General in its Initial Brief in D.P.U. 10-70, the Company has not developed a streetlight rate proposal that is based on current and accurate costs of service for various components of S-2 and S-2 tariffs. The S-1 and S-2 tariffs are out of date and not understandable for customers. As part of the recommended rate design proceeding, WMECo should be required to undertake a study to rebuild the streetlight rates from the bottom up. Exh. DPU-AG-1-7.

Given the concerns regarding WMECo's rate design, the Department should require, as part of its order in this case that a proceeding be opened to thoroughly address the various rate design concerns raised by the parties in DPU 10-70 in a manner that has a neutral impact on revenues.

6. The NEIL Distributions Should be Refunded to WMECo's Customers

In DPU 09-115, the Attorney General recommended that the Department require WMECo to refund $14.134 million in Nuclear Electric Insurance Limited ("NEIL") distributions to customers through the transition charge. *See* Attorney General Initial Brief, D.P.U. 09-115, p. 11. A decision has not yet been issued in D.P.U. 09-115. As part of this case, the Department should adopt the Attorney General's recommendation and begin to flow the NEIL distributions back to WMECo's customers, thereby reducing the overall rates paid by WMECo's ratepayers. This would guarantee a further net benefit for WMECo's customers.

7. Any Operating Company Facility Consolidation or Merger Must Be Reported to the Department and Intervenors Prior to any Action

The Companies have reiterated, on numerous occasions throughout this proceeding, that the Proposed Merger does not result in the consolidation of the Massachusetts operating companies. Exh. JP-1, p. 16; Tr. Vol. 4, p. 376. The Companies have also repeatedly referenced the fact that the merger integration process has recently begun and will continue well into the future. Tr. Vol. 1, pp. 29-31; Tr. Vol. 2, pp. 130-131; Tr. Vol. 5, pp. 579-580. The Companies acknowledge that the integration process may identify elements or functions of the distribution Companies that could be merged over time and that no final decisions as to this manner of consolidation at the distribution Company level have been made. Tr. Vol. I, pp. 39-41; Tr. Vol. 4, p. 376; Tr. Vol. V, p. 580.

Given that the merger integration process is in its infant stages and, by the Companies' own admission, that the process may recommend the consolidation of elements or functions at the distribution Company-level, the Department should require the Companies to provide a report and justification for any proposed action, prior to any consolidation of any distribution Company facilities, functions or elements, including but not limited to call centers, data centers, engineering departments, vehicle garages and equipment depots or warehouses, to the Department and the Intervenors in this proceeding. Such prior notice allows for the full review of any such consolidation plans in an appropriate proceeding and enables the Department and Intervenors to ensure that Massachusetts ratepayers will not be harmed by the proposed consolidation. Functional consolidation between separate utilities should be the subjection of a review under Section 96 ("Companies . . . subject to [Chapter 164] . . . may . . . consolidate . . . with one another . . ..) The separate proceeding would ensure that the holding companies, having sought only permission to merge themselves, do not inadvertently construe any Department approval as permission also to consolidate or merge any part of the separate distribution companies.

Such a condition to a merger has been instituted by the Department in the past in order to protect Massachusetts ratepayers. In its investigation into the National Grid-KeySpan Merger, the Attorney General advocated for similar notice prior to any facility consolidation, namely that of its call centers. *See National Grid/KeySpan*, D.P.U. 07-30, Attorney General Reply Brief, p. 9. In its Order, the Department agreed and ordered National Grid to provide 90 days notice prior to any proposed consolidation and to provide the justification for the proposed consolidation. D.P.U. 07-30, p. 23. The same treatment is warranted for the proposed merger.

8. The Department Should Require The Companies To Provide Regular Updates On The Merger Integration Process

As noted above, the Companies have repeatedly referenced the fact that the merger integration process is in its preliminary stages. The Companies have also noted that, given that the integration process is ongoing, they are unable to provide more detail as to what the fully merged entity will look like. Exhs. AG-4-10 and AG-4-11; Tr. Vol. 1, pp. 29-30. Additionally, the lack of a detailed integration plan at this juncture made it difficult to predict future savings to be achieved due to the merger. Exh. AG-DR-1, p. 8.

Given that the merger integration process is in its early stages and is expected to continue for some time, the Department should require the Companies to provide regular updates as to the progress of the process. At a minimum, the Companies should provide, for each integration team, a description of what the team is examining, any recommendations the teams made to management, whether or not those recommendations were implemented, the costs incurred by the integration teams, the costs incurred to implement any of the integration teams' recommendations and any actual and expected savings that are expected to flow from the teams' work. Additionally, the Companies should provide the integrations teams workplan(s). The Companies should also be required to report the number and positions of those employees who left the merged entity due to attrition and indicate whether those positions were subsequently filled. The Department should convene a stakeholder meeting to determine the scope and the frequency of these reports. This information will enable the Department and Intervenors to track the progress of the merged entity and to identify whether the Companies are achieving the savings and incurring the costs as anticipated.

VII. CONCLUSION

For the reasons set forth above, the Department should approve the proposed merger between NSTAR and NU but require either a rate freeze or Merger Savings Credit and further adopt the Attorney General's proposed merger conditions.

Respectfully submitted,
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