The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 21-60 July 16, 2021

Petition of National Grid USA pursuant to G.L. c. 164, § 96(c) for a waiver of jurisdiction of the Department of Public Utilities regarding the sale of The Narragansett Electric Company.

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FOR: NATIONAL GRID USA
Petitioner

AND: BOSTON GAS COMPANY
MASSACHUSETTS ELECTRIC COMPANY
NANTUCKET ELECTRIC COMPANY

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I. INTRODUCTION

On May 4, 2021, National Grid USA ("National Grid" or "Company") filed a petition ("Petition") and supporting affidavit with the Department of Public Utilities ("Department") requesting a waiver of the Department's jurisdiction under G.L. c. 164, § 96(c) ("Section 96(c)") over a transaction ("Transaction") involving National Grid's sale of its wholly owned subsidiary, The Narragansett Electric Company ("Narragansett").[1] Section 96(c), among other things, requires Department approval of transactions involving holding companies subject to G.L. c. 164 where those transactions would result in a change of the company's control over any foreign electric or gas company. Section 96(c) further provides that a holding company may request a waiver of this subsection by the Department by submission of an affidavit with explanation and documentation substantially supporting a conclusion that the proposed transaction will have no adverse impact on the petitioning company's subsidiaries subject to the Department's jurisdiction. The Department may grant a waiver if it agrees with the conclusion provided in the affidavit. Section 96(c).

Specifically, National Grid is asking the Department to waive its jurisdiction, if any, over the Company's sale of its outstanding common stock ownership in Narragansett pursuant to the terms and conditions of a March 17, 2021 share purchase agreement by and among PPL Energy Holdings, LLC, National Grid, and PPL Corporation ("PPL"), as modified on May 3, 2021 ("Agreement"). On May 3, 2021, PPL Energy Holdings, LLC, assigned its

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[1] Narragansett provides both electric and gas distribution services to customers in Rhode Island (Malee Affidavit, ¶ 6; Petition at 3; Exh. A-1, at 7).

right to acquire Narragansett to its wholly owned subsidiary, PPL Rhode Island Holdings, LLC ("PPL Rhode Island"). In support of this request, National Grid submitted the affidavit of William L. Malee ("Affidavit" or "Malee Affidavit"), vice president of Work and Resource Planning, New England, at National Grid USA Service Company, Inc. ("Service Company"), a copy of the Agreement, and additional supporting documentation.

The Department docketed this matter as D.P.U. 21-60. On May 10, 2021, the Department issued a notice and request for comments.[2] On May 11, 2021, the Attorney General of the Commonwealth of Massachusetts ("Attorney General") intervened in this proceeding pursuant to G.L. c. 12, § 11E(a). On June 1, 2021, the Attorney General submitted comments with a supporting affidavit sponsored by Timothy Newhard, financial analyst, Attorney General's Office of Ratepayer Advocacy ("Newhard Affidavit").[3] On June 4, 2021, National Grid filed reply comments with a supporting affidavit sponsored by Christopher McCusker, New England controller at the Service Company ("McCusker

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2 The Department issued a corrected notice on May 12, 2021, to correct an error on page two of the May 10, 2021 notice.

3 On June 15, 2021, the Office of the Attorney General of the State of Rhode Island ("Rhode Island Attorney General") submitted a letter in support of the Massachusetts Attorney General's comments. On June 25, 2021, National Grid submitted a motion for leave to respond to the Rhode Island Attorney General's letter ("Company Motion") and a response to the Rhode Island Attorney General's letter. Although late-filed, the Department accepts the Rhode Island Attorney General's letter as comments for inclusion in the record of this proceeding. The Company's response is not necessary to clarify and complete the record as to the Rhode Island Attorney General's letter. Accordingly, we deny the Company Motion.

Affidavit"). The evidentiary record consists of the supporting exhibits in the Company's filing and responses to 45 information requests.[4,5]

II. DESCRIPTION OF THE COMPANIES

National Grid, a Delaware corporation, is a holding company and an indirect, wholly owned subsidiary of National Grid plc, a public limited liability company incorporated in England and Wales (Malee Affidavit, ¶ 5; Petition at 2-3; Exh. A-1, at 7). According to National Grid, the Company's wholly owned Massachusetts subsidiaries that are subject to the Department's jurisdiction include Boston Gas Company ("Boston Gas"), Massachusetts Electric Company ("MECo"), and Nantucket Electric Company ("Nantucket Electric"), each of which is engaged in the distribution and sale of natural gas or electricity (together, "the Massachusetts distribution companies") (Malee Affidavit, ¶¶ 3, 5; Petition at 2-3). National

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4 On its own motion pursuant to 220 CMR 1.10(3), the Department moves into the evidentiary record of this proceeding the exhibits submitted as part of National Grid's filing, as well as the Company's responses to information requests DPU 1-1 through DPU 1-9, DPU 2-1 through DPU 2-4, DPU 3-1 through DPU 3-5, DPU 4-1 and DPU 4-2, AG 1-1 through AG 1-5, and AG 2-1 through AG 2-20. We accept that National Grid's assertion of material facts and its representation are both complete and accurate. See G.L. c. 268, § 6.

5 On May 14, 2021, the Company submitted a Motion for Protective Treatment ("Motion") for data contained in Exhibits DPU 1-1, Attachments 1 and 2. On May 21, 2021, the Attorney General submitted a response opposing the Motion ("Opposition"). The Company submitted a response to the Opposition and a supplemental response to Exhibit DPU 1-1 on May 28, 2021. On June 7, 2021, the Attorney General submitted a Motion to Strike the Company's May 28, 2021 response. On June 14, 2021, the Company responded to the Motion to Strike. These filings pertain to a request for confidential treatment and will be ruled on separately. The ruling and underlying data do not have an impact on the Department's decision in this matter.

Grid's wholly owned Massachusetts subsidiaries, which are subject to the Department's jurisdiction, also include New England Power Company ("NEP") and New England Hydro-Transmission Electric Company ("NE Hydro"), each of which is engaged in the transmission of electricity (together, "the Massachusetts transmission companies"). See Massachusetts Electric Company and New England Power Company, D.P.U. 20-61/D.P.U. 20-62, at 1 (August 31, 2020); National Grid USA, D.P.U. 17-18, at 2 (2017); Boston Gas Company/Colonial Gas Company/Essex Gas Company/Massachusetts Electric Company/New England Power Company/New England Hydro-Transmission Electric Company, D.P.U. 10-59, at 1 (2011). Additionally, National Grid owns and operates utilities that provide gas and electric distribution services in New York state, as well as other corporate entities such as the Service Company (Petition at 3; Exh. A-2 (Part 2) at 5).

Narragansett, a Rhode Island corporation, provides electric and gas distribution service to customers in Rhode Island, and is also a wholly owned subsidiary of National Grid (Malee Affidavit, ¶ 6; Petition at 3; Exh. A-1, at 7). National Grid owns 100 percent of the outstanding shares of Narragansett's common stock (Malee Affidavit, ¶ 8). Within the existing National Grid corporate structure, Narragansett shares certain costs with other National Grid subsidiaries, including the New York and Massachusetts affiliates (Malee Affidavit, ¶ 11). The Service Company, a Massachusetts corporation, incurs these shared costs and allocates them to the National Grid subsidiary companies pursuant to methodologies subject to the Department's review and a service agreement with the Service

Company (Malee Affidavit, ¶¶ 11, 17; Exhs. A-1, at 107; A-2 (Part 1); A-2 (Part 5)). These allocations are guided by the Service Company's Cost Allocation Manual and allocation factors that are developed on an annual basis for each category of shared costs (Malee Affidavit, ¶ 11). Moreover, Narragansett and the Massachusetts affiliates may use each other's employees and charge related costs arising from power restoration following storm events, and MECo relies, in part, on infrastructure owned by Narragansett to provide service to approximately 4,300 MECo customers (Exhs. A-2 (Part 5) at 13; DPU 1-6; DPU 1-8; DPU 3-5). Additionally, Narragansett relies, in part, on infrastructure owned by MECo to provide service to approximately 25 Narragansett customers (Exh. DPU 4-1).[6] National Grid represents that Narragansett does not own in part or in full any plant or equipment that provides service to Massachusetts gas customers (Exh. DPU 1-8).

PPL is a Pennsylvania corporation engaged, through its regulated utility subsidiaries, in the transmission and distribution of electricity in Pennsylvania and the generation, transmission, and/or distribution of electricity and/or gas in Kentucky and Virginia (Petition at 4; Exh. A-1, at 7). The record reflects that PPL is one of the largest investor-owned utility holding companies in the United States utility sector (Exh. AG 1-2, Att. at 5). PPL Rhode Island, a Delaware limited liability company, is an indirect subsidiary of PPL (Malee Affidavit, ¶ 7; Exhs. A-1, at 131; AG 1-2, Att. at 42).

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6 National Grid states that assets physically located in the Narragansett service territory are included in Narragansett's property records, and assets physically located in Massachusetts companies' service territories are included in the Massachusetts companies' property records (Exhs. DPU 1-8 (Supp.); DPU 4-1).

III. SECTION 96(c)

A. Introduction

Section 96(c) provides that a gas, electric, or holding company[7] subject to G.L. c. 164 shall not enter into any transaction or otherwise take any action that would result in a change of the gas, electric, or holding company's control[8] over any gas, electric, or holding company or any foreign (i.e., non-Massachusetts) gas or electric company,[9] unless the Department, after notice and a public hearing, has determined that the transaction or action is consistent with the public interest. Section 96(c) further provides that a holding company

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[7] Section 96(a) defines "holding company" as:

> any corporation, association, partnership, trust, or similar organization, or person which, regardless of the locus of the domicile, principal place of business, headquarters or place of incorporation of such entity, either alone or in conjunction and under an arrangement or understanding with 1 or more other corporations, associations, partnerships, trusts or similar organizations, or persons, directly or indirectly, controls, or seeks to acquire control over, and may cause costs to be allocated to a gas or electric company.

[8] Section 96(a) defines "control," in pertinent part, as:

> the possession of the power, through direct or indirect ownership of a majority of the outstanding voting securities of a gas or electric company or of a holding company thereof, to direct or cause the direction of the management and policies of a gas or electric company or a holding company thereof or the ability to effect a change in the composition of its board of directors or otherwise.

[9] Section 96(a) defines "foreign electric company" and "foreign gas company" as an electric or gas company:

> with a domicile, principal place of business, headquarters or place of incorporation outside of the commonwealth, but which may have shared costs with a gas or electric company subject to this chapter that maybe be allocated by a holding company after an acquisition of control.

may request a waiver of Section 96(c) by submitting to the Department an affidavit from a holding company officer describing the proposed transaction, with reasonable explanation and documentation. The affidavit must certify that the proposed transaction will have no adverse impacts on any electric or gas company subject to the Department's jurisdiction, as applicable, or the ratepayers of any such electric or gas company. Section 96(c) further states that the Department shall have the discretion to waive compliance with this subsection if the Department agrees with the conclusion supported by the affidavit, and the Department shall issue an order granting or denying such waiver request within 45 days following submission of the affidavit.

B. Request to Extend the Issuance Deadline

1. Introduction

On May 14, 2021, National Grid submitted a letter modifying its waiver request to extend the date by which the Department would issue a decision, from June 18, 2021, to July 19, 2021, to allow additional time for the Department to issue a decision. D.P.U. 21-60, Extension Letter (May 14, 2021). On May 19, 2021, the Attorney General submitted a letter objecting to the extension, asserting that the 45-day decision date is prescribed by statute and, further, that Section 96(c) does not provide the Department with any discretion to extend that timeframe. D.P.U. 21-60, Objection Letter (May 19, 2021). The Attorney General specified that she would not object to the Company withdrawing its petition without prejudice to refile it at a later date, to the extent the Company wished to extend the deadline for issuance of a decision.

2. Analysis and Findings

National Grid effectively requests to amend its filing to provide the Department with additional time to consider and issue a decision on the Company's waiver request. The Department has broad discretion over procedural aspects of matters before it. NSTAR Electric Company and Western Massachusetts Electric Company, D.P.U. 17-05, Interlocutory Order at 11 (June 9, 2017), citing Zachs v. Department of Public Utilities, 406 Mass. 217, 227 (1989); New Boston Garden Corporation v. Assessors of Boston, 24 Mass. App. Ct. 122, 125 (1987). Pursuant to 220 CMR 1.04(3), "[1]eave to file amendments to any pleading will be allowed or denied as a matter of discretion." In exercising its discretion on whether to allow an amended filing, the Department has considered whether the amended filing will (1) facilitate a decision on the merits, and (2) ensure that all issues related to the specific filing are before the Department. D.P.U. 17-05, Interlocutory Order at 12 (June 9, 2017), citing Filmtec Corp. v. Hydranautics, 67 F.3d 931, 935 (Fed. Cir. 1995).

The Department recognizes the need for finality in its orders to provide companies with certainty in the conduct of their business. Bay State Gas Company, D.P.U. 09-30, at 159 (2009), citing Boston Consolidated Gas Company v. Department of Public Utilities, 321 Mass. 259, 265 (1947); Fall River Gas Company, D.P.U. 89-199-A at 7 (1989). The waiver provisions of Section 96(c) establish a truncated timeline for Department review of a company's waiver request. In this instance, the Department recognizes that the Legislature understood that the timing of regulatory action on a waiver request required expedited review

in the event of a denial due to its effect on the underlying transaction. For example, if the Department denied a waiver request, a petitioning company would then be required to seek Department approval of the underlying transaction through a more comprehensive public interest review under Section 96(c). See, e.g., Liberty Utilities (New England Natural Gas Company)/Blackstone Gas Company, D.P.U. 20-03, at 13-16 (October 13, 2020) (discussing the Department's standard of review for analyzing Section 96 transactions).

In reviewing National Grid's extension request, we determine that an extension will facilitate a decision on the merits and ensure that all issues related to the filing are fully evaluated by the Department. Although the waiver provisions permit the Department to base its decision on the Affidavit and supporting materials alone, the Department established a limited discovery period, which permitted both the Department and the Attorney General to obtain further information about the Transaction and discern whether a grant of waiver is appropriate. The purpose of discovery is, in part, to protect the rights of the parties and ensure that a complete and accurate record is compiled. 220 CMR 1.06(5)(c)(1). The effect of the extension request serves no clear benefit to the Company other than to provide the Department additional time to consider the waiver request which, if denied, would further limit the period of review of any anticipated Section 96(c) filing by National Grid for Department approval of the Transaction.[10] While the Company could have withdrawn and

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[10] Under the terms of the Agreement, regulatory approvals of the Transaction must be obtained by March 31, 2022, and may be extended by an additional three months pending the Department's approval (Exh. A-1, at 71-72).

resubmitted its original Affidavit, as suggested by the Attorney General, in order to reset the statutory deadline, such an approach would have been inefficient. Such action would have required a new Notice of Filing and new procedural schedule, defeating any administrative efficiencies or benefits of allowing additional time for the Department and the Attorney General to review the Transaction. We determine that the Company's approach was appropriate and, thus, approve its request to amend its filing.

Regarding the Attorney General's argument that the 45-day provision within Section 96(c) cannot be waived, the Department finds that the time period is directory, not mandatory, and can be waived in this case by the Company. When the statute's language is certain, we afford it its ordinary meaning. See Engie Gas & LNG LLC v. Department of Public Utilities, 475 Mass. 191, 197 (2016). However, where the statutory language in question relates only to the time of performance and not to the validity of the act done, it may be deemed directory and not mandatory. See Plumb v. Casey, 469 Mass. 593, 598 (2014) (interpreting the term "shall" in a statute "in a directive sense, rather than a mandatory sense, where doing so is necessary to effectuate the primary purpose of the statute") (citations omitted); Kiss v. Board of Appeals of Longmeadow, 371 Mass. 147, 157-158 (1976), citing Cheney v. Coughlin, 201 Mass. 204, 211 (1909) ("[a]s to a statute imperative in phrase, it has often been held that where it relates only to the time of performance of a duty by a public officer and does not go to the essence of the thing to be done, it is only a regulation for the orderly and convenient conduct of public business and not a condition precedent to the validity of the act done"); Cullen v. Building Inspector of North

Attleborough, 353 Mass. 671, 679-680 (1968) (holding that the 90-day requirement for the filing of the board's decision did not go to the essence of the thing to be done and was directory and not mandatory); Swift v. Registrars of Voters of Quincy, 281 Mass. 271, 276 (1932) (the term "shall" "is not of inflexible signification and not infrequently is construed as permissive or directory in order to effectuate a legislative purpose").

Although Section 96(c) establishes a 45-day period for a Department decision on a waiver request we find that this provision is directory and not mandatory, especially when such a request is supplemented by a petitioner's extension request. The precise timing of the Department's decision does not go to the essence of the thing to be done or the purpose of the statutory waiver provision, which is an expeditious determination of whether the Affidavit substantially supports the conclusion that the sale of Narragansett by National Grid will have no adverse impacts on Massachusetts electric and gas companies and their ratepayers. Accordingly, for the reasons outlined above, the Department grants the Company's request to modify the decision issuance date.

C. Waiver Request

1. Introduction

Pursuant to the Agreement, PPL Rhode Island agrees to purchase from National Grid 100 percent of the outstanding shares of common stock and equity interest in Narragansett for approximately $3.77 billion, plus the assumption of approximately $1.5 billion of Narragansett debt (Malee Affidavit, ¶ 8; Petition at 1-2, 4; Exhs. A-1, at 7, 95, 129-130; AG 1-3). According to the Company, closing of the Narragansett sale is conditional upon:

(1) prior completion of a separate transaction not subject to the Department's jurisdiction, whereby the National Grid plc subsidiary, National Grid Holdings One plc, has agreed to acquire PPL WPD Investments Limited from PPL WPD Limited, a subsidiary of PPL ("WPD Acquisition");[11] (2) receipt of certain federal and state regulatory approvals in the United States; and (3) other customary closing conditions (Malee Affidavit, ¶¶ 7-8; Petition at 1, 4; Exhs. DPU 1-2; DPU 3-3). The Company represents that the proposed Transaction will not result in any adverse cost or service quality impacts on its Massachusetts subsidiaries or their customers (Malee Affidavit, ¶ 17; Petition at 7, 10; Exh. DPU 4-2).

The Company maintains that completion of the Transaction will have no adverse impact on the shared costs of service and rates charged to Massachusetts customers (Malee Affidavit, ¶¶ 9, 17; Petition at 7-8). The Company states that Service Company costs allocated to Narragansett represent a small fraction of the shared costs relative to the other National Grid USA operating companies and are therefore susceptible to mitigation strategies (Malee Affidavit, ¶ 11). Additionally, the Company states that any reallocation of shared costs to the Massachusetts distribution companies would require Department review and approval through future general base distribution rate proceedings for the Massachusetts distribution companies and a Department determination that cost impacts were mitigated to

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[11] The Company represents that the WPD Acquisition does not require Department approval pursuant to Section 96, because the companies that are parties to the WPD Acquisition are not Massachusetts gas or electric companies subject to Section 96 and not holding companies as that term is defined in the statute (Exh. DPU 3-3).

the extent possible (Malee Affidavit, ¶ 3, 9, 13-14; Petition at 7-8). National Grid maintains that each of the Massachusetts distribution companies will be obligated in their first base distribution rate proceedings following the sale to present a cost mitigation study describing and quantifying National Grid's cost mitigation efforts after the Transaction (Malee Affidavit, ¶ 15; Petition at 9-10). National Grid states that it has designated a team to review and mitigate the shared costs and to create documentation to support future review by the Department, and that the Massachusetts distribution companies commit to providing a third-party examination of the cost mitigation efforts in their next, respective base distribution rate cases (Petition at 10). Additionally, the Company states that costs recovered through formula transmission rates approved by the Federal Energy Regulatory Commission ("FERC") for the Massachusetts transmission companies will not be affected by the Transaction, nor will it affect their ability to provide service with the other transmission facilities it owns and operates (Exh. DPU 4-2).

The Company also maintains that the Transaction will not have an adverse impact on service quality (Malee Affidavit, ¶¶ 16-17; Petition at 10; Exhs. DPU 2-3; DPU 3-5; DPU 4-2). National Grid states that the Massachusetts distribution companies will retain both the existing employees currently responsible for service quality and the practices and policies that ensure that service quality will not erode as a result of the Transaction (Malee Affidavit, ¶¶ 16-17; Petition at 10; Exhs. DPU 3-1; DPU 4-2). Further, National Grid expects that the Narragansett assets used to provide service to MECo customers and the MECo assets used to provide service to Narragansett customers will continue providing

service to each company's customers after the close of the Transaction (Exhs. DPU 1-8; DPU 4-1). The Company represents that the MECo customers served, in part, by Narragansett assets will continue to receive the same service quality as the remainder of the Company's Massachusetts customers due to protections in place: (1) arising from Narragansett's continuing service quality obligations as an electric and gas distribution service provider in Rhode Island; (2) pursuant to a service agreement between Narragansett and MECo subject to the terms and conditions of Narragansett's borderline sales tariff on file with FERC; and (3) pursuant to federal law (Exh. DPU 3-5). The Company states that, prior to the closing, Narragansett and MECo will update their service agreement to reflect all the retail delivery points and customers identified during discovery that receive service, in part, from Narragansett assets (Exh. DPU 3-5).

Accordingly, National Grid represents that the sale of Narragansett will have no adverse impact on the Massachusetts companies or their customers (Malee Affidavit, ¶¶ 9, 17; Petition at 10; Exh. DPU 4-2). Based on these assertions and the supporting Affidavit, the Company asks the Department to waive its Section 96(c) jurisdiction with respect to the Transaction (Malee Affidavit, ¶ 17; Petition at 10).[12]

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[12] National Grid also comments on the Department's Section 96 jurisdiction over the Transaction (Malee Affidavit, ¶ 4; Petition at 5-7). As the Department discusses below, the Department properly asserts Section 96 jurisdiction over the Transaction.

2. Positions of the Parties

a. Attorney General

The Attorney General opposes the Company's waiver request, arguing that the Company's Affidavit fails to "substantially support a conclusion that the proposed transaction will have no adverse impacts" on the Massachusetts distribution companies or their ratepayers (Attorney General Comments at 1, 8, citing Section 96(c)). The Attorney General also disputes the Company's statements that the Department may not have jurisdiction over the Transaction or the waiver request pursuant to Section 96(c) (Attorney General Comments at 1, 4-8). As a result, the Attorney General urges the Department to deny the Company's waiver request, find that it has jurisdiction over the Transaction, and conduct a full adjudicatory investigation into whether the Transaction is consistent with the public interest (Attorney General Comments at 12, citing Section 96(c)).

According to the Attorney General, the facts underlying the Company's claim demonstrate that adverse impacts will inevitably result from the Transaction (Attorney General Comments at 8-9, citing Petition at 10; Malee Affidavit at 4-8). The Attorney General points to the Company's statement that there will be "future impacts" resulting from shared Service Company costs being reallocated to the remaining National Grid operating companies after the Transaction (Attorney General Comments at 9, citing Malee Affidavit at 4-6; Newhard Affidavit at 3-4). The Attorney General also argues that the Massachusetts distribution companies and their customers will be harmed by the loss of operational synergies associated with having Narragansett's utility assets available during regular

operations and particularly during service interruptions (Attorney General Comments at 11, citing Newhard Affidavit at 5).

The Attorney General estimates that the costs allocated to the Massachusetts distribution companies will increase approximately $25 million per year and asserts that the Company would need to immediately reduce the shared Service Company costs by at least the amount allocated to Narragansett (i.e., $76 million) to avoid adverse impacts (Attorney General Comments at 9, citing Newhard Affidavit at 3-4; Exhs. AG 2-20 & AG 2-20, Att. at 3). The Attorney General maintains that the Transaction will cause immediate impacts on the Massachusetts distribution companies' customers, because the Transaction will increase the costs incurred and rates charged through at least seven individual cost recovery mechanisms that require Department approval for recovery in between base distribution rate proceedings and generally include shared or common costs allocated by the Service Company (Attorney General Comments at 9, citing Newhard Affidavit at 3-4; Exh. DPU 1-5). Additionally, the Attorney General contends that, despite "stay-out" commitments in MECo's and Nantucket Electric's performance-based ratemaking ("PBR") plan approved in D.P.U. 18-150 and Boston Gas's pending PBR proposal in D.P.U. 20-120, there is no absolute prohibition for the Massachusetts distribution companies to immediately file base distribution rate cases to recover incremental costs associated with the Transaction during a multi-year rate plan (Attorney General Comments at 10, citing Boston Gas Company, Essex Gas Company, and Colonial Gas Company, D.P.U. 10-55, at 10, 14-16 (2010); D.P.U. 09-30, at 20-21).

The Attorney General disputes the Company's reliance on D.P.U. 09-30 to support its claim that it should be provided with an opportunity to mitigate adverse impacts (Attorney General Comments at 10-11, citing Malee Affidavit at 9; Petition at 9 n.9). In particular, the Attorney General argues that: (1) the Department based its decision on findings in Bay State Gas Company/Unitil Corporation, D.P.U. 08-43-A (2008), which was made under the Department's then "no net harm" standard of review pursuant to Section 96 and was not a petition for waiver; and (2) the D.P.U. 08-43-A decision relied heavily on the company's representation at the time that the estimated $5.14 million cost impact was an "insignificant" cost variance (Attorney General Comments at 11, citing D.P.U. 09-30, at 281; Bay State Gas Company v. Department of Public Utilities, 459 Mass. 807, 811 n.9 (2011)). According to the Attorney General, the anticipated adverse impacts of $76 million is approximately five times the magnitude of the "maximum estimated cost impact" identified in D.P.U. 08-43-A (Attorney General Comments at 11, citing Newhard Affidavit at 3; Exhs. AG 2-20 & AG 2-20, Att. at 3).

Further, the Attorney General argues that, contrary to the Company's claims involving the statutory definitions of a foreign electric and foreign gas company, the Department has jurisdiction over the Transaction pursuant to Section 96(c) (Attorney General Comments at 5-6, citing Petition at 7 n.6). The Attorney General points to the Company's statement that "Section 96(a) could be construed to mean that 'the Department's exercise of jurisdiction may apply only where the holding company is acquiring an entity that may share costs in the future with a Massachusetts gas or electric [c]ompany'" (Attorney General

Comments at 5, citing Petition at 7 n.6). The Attorney General counters that Narragansett is a foreign gas company and foreign electric company as defined by Section 96(a), and that the statute has no temporal requirement pertaining to shared costs for application of Section 96(c) (Attorney General Comments at 5-6). The Attorney General states that there is no dispute that the Massachusetts companies and Narragansett currently share Service Company costs that will no longer be allocated to Narragansett after the Transaction (Attorney General Comments at 6). The Attorney General argues that if the Legislature had intended that only those companies that shared costs after the transaction would be "foreign" companies under Section 96(c), it could have included that limitation in the statute and, thus, the omission of that language by the Legislature is deemed to be intentional (Attorney General Comments at 6, citing Commonwealth v. McLeod, 437 Mass. 286, 294 (2002)). Additionally, the Attorney General argues that the Company's interpretation of foreign electric and gas company as applying only to acquisitions would be inconsistent with Legislative intent and unduly restrictive to the Department's jurisdiction to review transactions and changes of control, more broadly, under Section 96(c), especially in this instance where the Transaction is more likely to result in adverse impacts on Massachusetts ratepayers (Attorney General Comments at 6-8, citing Flemings v. Contributory Retirement Appeal Board, 431 Mass. 374, 375-376 (2000); Bolster v. Commissioner of Corporations and Taxation, 319 Mass. 81, 84-85 (1946)). Finally, the Attorney General argues that by submitting its Petition and supporting Affidavit, the Company has availed itself of the Department's jurisdiction (Attorney General Comments at 8, citing National Grid USA, D.P.U. 12-123, at 7-8 (2013)).

b. Company

The Company requests that the Department grant the requested waiver relating to the Transaction based on a finding that the Narragansett sale will have no adverse impacts on the Massachusetts distribution companies or their respective customers (Company Reply Comments at 11-19). The Company maintains that the Affidavit and other supporting information provided in the proceeding support the conclusion of no adverse impacts (Company Reply Comments at 19). Additionally, the Company argues that the Attorney General's statutory interpretation of Section 96 is inaccurate and should be rejected (Company Reply Comments at 3-11).

The Company asserts that the Attorney General incorrectly concludes that the Massachusetts distribution companies will be allocated an additional $25.3 million in Service Company costs each year (Company Reply Comments at 11, citing Newhard Affidavit at 4). The Company states that this amount is not supported by any analysis, explanation, methodology, assumptions, or other considerations, and that the quantification of specific cost impacts is premature (Company Reply Comments at 12). The Company expects, however, that the reallocated amount will be less than $25.3 million based on many factors, including the anticipated elimination of certain Service Company costs, transition of a number of Service Company employees to PPL Rhode Island, and National Grid's mitigation of cost impacts (Company Reply Comments at 12-13, citing Malee Affidavit at 4; McCusker Affidavit).

National Grid contends that it is committed to reducing Service Company costs so that there are no adverse impacts to the Massachusetts distribution companies (Company Reply Comments at 14, citing McCusker Affidavit at 4). The Company maintains that it will be mitigating the cost impacts to the maximum extent possible, including the potential transfer of costs to PPL Rhode Island, and that it is diligently assessing the transition and post-closing considerations (Company Reply Comments at 13, citing Malee Affidavit at 4, 6; McCusker Affidavit at 2-4). National Grid states that it is focused first on historical and forecasted costs, both fixed and variable, charged or expected to be charged to Narragansett, and assessing whether these costs will remain with National Grid or follow Narragansett after the sale (Company Reply Comments at 13, citing McCusker Affidavit at 2-3). The Company will then focus mitigation efforts on the costs that remain with National Grid (Company Reply Comments at 13, citing McCusker Affidavit at 2-3). The Company maintains that once the Transaction closes, a Transition Services Agreement ("TSA") will be in place for Narragansett for up to two years, which will significantly mitigate costs to the Massachusetts distribution companies, because the Service Company will recover the costs for these services directly from PPL Rhode Island (Company Reply Comments at 13-14, citing McCusker Affidavit at 3). The Company states that it is also assessing contracts and arrangements across its business for renegotiation in order to further mitigate potential cost impacts (Company Reply Comments at 14, citing McCusker Affidavit at 3).

Further, the Company argues that the Department must review and approve the recovery of any costs through rates, and, therefore, has the full authority to ensure that there

are no adverse impacts to the Massachusetts distribution companies or their ratepayers (Company Reply Comments at 14-15). The Company states that it has committed to a third-party examination of its cost mitigation efforts and a cost mitigation study in the Massachusetts distribution companies' next respective base distribution rate cases before the Department, and the creation of documentation to support future Department review of those efforts (Company Reply Comments at 14, 16, citing Malee Affidavit at 8; Petition at 10). The Company asserts that creation of such a cost mitigation study is consistent with Department precedent, which was affirmed by the Supreme Judicial Court (Company Reply Comments at 16, citing D.P.U. 09-30, at 281). Regarding the Attorney General's argument that companies are not prohibited from seeking base distribution rate increases notwithstanding stay-out commitments prior to the expiration of a PBR term, the Company counters that the Attorney General ignores the consequences that accompany any decision to break those commitments, including potential negative impacts on such company's return on equity, which creates a strong disincentive for companies with such mechanisms in place to violate their stay-out commitment (Company Reply Comments at 16-17, citing Attorney General Comments at 10; D.P.U. 17-05, Order Establishing Eversource's Revenue Requirement at 404 (2017)).

Furthermore, contrary to the Attorney General's assertions, the Company maintains that the sale will not immediately impact the costs related to the seven cost recovery mechanisms identified by the Attorney General (Company Reply Comments at 18, citing Newhard Affidavit at 4). The Company explains that the Attorney General's analysis of each

of the seven cost recovery mechanisms is incorrect. According to the Company: (1) there is no cost sharing related to the storm restoration cost recovery fund, and any assistance provided by Narragansett during a storm will remain available under National Grid's mutual assistance agreements; (2) there is no cost sharing related to the vegetation management program cost recovery mechanism, because it is comprised of only third-party contractor expenses; (3) the loss of Narragansett results in no impact on the earnings sharing mechanism under the MECo and Nantucket Electric PBR plan; (4) electric transmission rates are regulated by FERC and have no relevance to the case; (5) National Grid has made a commitment not to reallocate Narragansett's portion of the gas business enablement ("GBE") mechanism costs to the Company's other operating companies, including the Massachusetts distribution companies; and (6) National Grid does not expect impacts to the gas system enhancement plan charge and the pension and post-retirement benefits other than pension reconciling mechanism due to the mitigation efforts outlined by the Company (Company Reply Comments at 18-19, citing McCusker Affidavit at 4).

Finally, the Company disputes the Attorney General's statutory interpretation of Section 96 (Company Reply Comments at 3-11). According to the Company, the Attorney General's argument that the omission of the timing of shared costs in Section 96(c) demonstrates that there is no temporal requirement on cost sharing is in direct conflict with the plain language of Section 96, which states that shared costs "may be allocated by a holding company after an acquisition of control" (Company Reply Comments at 3-4 (emphasis omitted), citing Attorney General Comments at 6). The Company contends that

the plain language evidences clear legislative intent that an entity may be deemed a foreign gas or foreign electric company for application of Section 96 only when the company shares costs with Massachusetts gas and electric companies under the Department's jurisdiction *after* an acquisition is completed, thus limiting the Department's jurisdiction under Section 96 to a foreign gas or electric company being acquired rather than sold (Company Reply Comments at 4-6 (citations omitted)). The Company maintains that such an outcome is not illogical, since an acquisition of an out-of-state entity could increase costs to Massachusetts customers more so than the sale of an out-of-state entity (Company Reply Comments at 6).

Moreover, the Company contends that the Attorney General incorrectly insinuates that language pertaining to other types of changes of control should be read into Section 96, where the Legislature has not expressly included such language (Company Reply Comments at 8 (citations omitted)). Specifically, the Company argues that the Attorney General interprets Section 96(c) as applying "broadly to [all] changes of control" and a "merger or consolidation" without pointing to express language in the statute to support her arguments, violating a basic tenet of statutory interpretation (Company Reply Comments at 8, citing Attorney General Comments at 7 (additional citations omitted)). National Grid also states that the Attorney General misquotes the Company's statements involving the intent behind Section 96 in its Petition and takes Department precedent in D.P.U. 08-43-A at 18-19, out of context (Company Reply Comments at 8-9, citing Petition at 7 n.6; Attorney General Comments at 7-8). Furthermore, the Company contests that in D.P.U. 12-123 the Department did not address the question of jurisdiction but rather made a finding that the

criteria for granting the Section 96(c) waiver had been met (Company Comments at 9-10, citing D.P.U. 12-123, at 7).

3. Analysis and Findings

a. Application of Section 96 to the Transaction

The parties disagree about whether Section 96(c) and its waiver provisions specifically apply to the Transaction based on the definitions of a foreign gas company and a foreign electric company included in Section 96(a). We agree with the Attorney General that Section 96(c) and its waiver provisions specifically apply to the Transaction.

In its Petition, the Company stated that a plain reading of the statutory definitions would indicate that the Department's exercise of jurisdiction may only apply where the holding company is acquiring an entity that may share costs in the future with a Massachusetts gas or electric company, but that the legislative intent may have been to grant the Department jurisdiction over transactions involving the sale of a foreign gas or electric company, where the non-resident company shares costs with Massachusetts jurisdictional companies prior to the sale (Petition at 7 n.6).[13] The Attorney General contests the Company's statement that Narragansett may not qualify as a foreign gas and electric company under Section 96, arguing that Section 96(c) does not place any temporal requirements as to when Massachusetts and foreign companies must share costs (Attorney General Comments at 4-8). In its response to the Attorney General's comments, the Company contends that the

[13] The Company elected to reserve its rights on jurisdictional claims, instead requesting a waiver and focusing on the merits of the request (Petition at 7 n.6).

plain language of the statute limits the definitions of foreign electric and gas companies to those entities sharing costs after an acquisition, and that the definitions in Section 96(a) apply to the terms used in Section 96(c) (Company Reply Comments at 3-7). The Company asserts that it is neither illogical nor counter to the Legislative intent of Section 96 to limit the Department's jurisdiction to acquisitions of foreign gas and electric companies, because those types of acquisitions could have more substantial impacts arising from the newly acquired company's operating expenses through a shared services holding company than would arise from the sale of a company, which has the potential to eliminate shared operating expenses and enterprise costs (Company Reply Comments at 6).

As noted above, Section 96(a) defines both a foreign gas company and a foreign electric company as a company "with a domicile, principal place of business, headquarters or place of incorporation outside of the commonwealth, but which may have shared costs with a gas or electric company subject to this chapter that may be allocated by a holding company *after an acquisition of control*" (emphasis added). The disagreement between the parties is whether the statement "after an acquisition of control" within the definitions of a foreign gas and foreign electric company limits the Department's authority over Section 96(c) transactions to only those involving a holding company's acquisition of a foreign electric or gas company. We determine that it does not.

By statute, words and phrases shall be construed according to the common and approved language, unless such words and phrases are technical in nature. G.L. c. 4, § 6, cl. 3.

> The general and familiar rule is that a statute must be interpreted according to the intent of the Legislature ascertained from all the words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated.

Hanlon v. Rollins, 286 Mass. 444, 447 (1934), citing Commonwealth v. S. S. Kresge Co., 267 Mass. 145, 148 (1929); see also D.P.U. 16-39, at 25-26.

> The legislative intent is to be ascertained from the statute as a whole, giving to every section, clause and word such force and effect as are reasonably practical to the end that, as far as possible, the statute will constitute a consistent and harmonious whole, capable of producing a rational result consonant with common sense and sound judgment.

State Tax Commission v. LaTouraine Coffee Company, 361 Mass. 773, 778 (1972), quoting Haines v. Town Manager of Mansfield, 320 Mass. 140, 142 (1946); see also D.P.U. 16-39, at 26. In examining a statute's text, all words should be given effect and the statutory language should be given its "plain and ordinary meaning" in light of the aim of the Legislature, unless to do so would achieve an illogical result. Olmstead v. Department of Telecommunications and Cable, 466 Mass. 582, 588 (2013), citing Massachusetts Broken Stone Company v. Weston, 430 Mass. 637, 640 (2000); Sullivan v. Brookline, 435 Mass. 353, 360 (2001).

Since the statute was last revised in 2012,[14] the Department has reviewed three waiver requests submitted pursuant to Section 96(c); however, each of those requests involved a

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[14] In 2012, Section 96 was amended by "An Act Relative to Competitively Priced Electricity in the Commonwealth." 2012 Mass. Acts 209, § 21.

holding company's acquisition of a foreign electric or gas company (Petition at 7 n.6). D.P.U. 17-18, at 1; D.P.U. 16-159, at 1; D.P.U. 12-123, at 1. By contrast, in this instance, National Grid, a holding company, reserving its rights on jurisdictional claims, has requested a waiver of the Department's jurisdiction over its sale of an entity operating outside of Massachusetts but which shares certain allocated costs with Massachusetts gas and electric companies.

Section 96 sets forth the Department's authority to review and approve mergers, consolidations, sales and acquisitions, and changes of control of electric, gas, water companies, and holding companies of electric or gas companies. As a condition for approval of such transactions, the Department must find that the proposed transaction is "consistent with the public interest." Section 96(b), (c). This core finding related to mergers and acquisitions has remained unchanged for over a century. See St. 1908, c. 539, § 2. The public interest standard constitutes an overriding consideration in the Department's regulatory and ratemaking scheme. Attorney General v. Department of Telecommunications and Energy, 438 Mass. 256, 268 (2002), citing Boston Real Estate Board v. Department of Public Utilities, 334 Mass. 477, 495 (1956) ("Boston Real Estate Board"); Wolf v. Department of Public Utilities, 407 Mass. 363, 369 (1990); see also NSTAR/Northeast Utilities Merger, D.P.U. 10-170, Interlocutory Order on Standard of Review at 21 (March 10, 2011) (modifying the standard for evaluating Section 96 transactions to 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).

The Department is obligated to give practical meaning to the provisions incorporated into Section 96 in 2012. A plain reading of the statute as a whole, the longstanding historic requirement of a public interest review of transactions, and the "no adverse impact" waiver provision incorporated in 2012 evidences a clear legislative intent to ensure ongoing protections for Massachusetts ratepayers when companies enter into transactions outlined in the statute, while also providing a procedural mechanism by which certain transactions involving a holding company may be exempted from the Department's traditional, more thorough Section 96 review. Although the definitions for foreign electric and gas companies include the limiting language "after an acquisition of control," the Legislature also instructed that the definitions apply "unless the context clearly requires otherwise." Section 96(a). Under a plain reading of the definitions in the statute, Section 96(c) applies to a foreign company that may have shared costs with Massachusetts electric or gas companies allocated by a holding company after an acquisition of control. The context of this statute also clearly requires that Section 96(c) applies to the holding company's sale of a foreign affiliated gas electric or gas company that has existing shared allocated costs with Massachusetts companies. Otherwise, Massachusetts companies and their ratepayers are afforded no protections through the statute under this scenario, which we find is illogical.

As a result, we find that Narragansett is a foreign electric and gas company within the meaning of Section 96, because it is a Rhode Island corporation and an existing wholly

owned subsidiary of National Grid that is currently charged allocations of shared costs incurred by the Service Company with the Company's operating affiliates, including the Company's Massachusetts subsidiaries (Malee Affidavit, ¶¶ 6, 9-12; Petition at 7-8). Accordingly, based on the considerations outlined above, the Department finds that Section 96 and the underlying waiver provisions apply to the Transaction.

b. Department Waiver of Compliance with Section 96(c)

i. Introduction

The Department has the discretion to waive compliance with Section 96(c) if the Department agrees that the Affidavit, accompanied with reasonable explanation and documentation, substantially supports a conclusion that the proposed Transaction will have no adverse impacts on the Company's Massachusetts subsidiaries or their ratepayers. As a preliminary matter, we determine that the Company's filing meets the statutory elements of a waiver request. First, as a corporation that controls and may cause costs to be allocated to gas and electric companies that are themselves subject to G.L. c. 164,[15] the Company is a holding company subject to G.L. c. 164 within the meaning of Section 96(a) (Malee Affidavit, ¶ 5; Petition at 2). Second, the closing of the Transaction will result in a change of control of Narragansett from National Grid to PPL Rhode Island (Malee Affidavit, ¶¶ 7-8; Petition at 1-2, 4; Exh. A-1). Third, the Company has requested a waiver on behalf

[15] MECo, Nantucket Electric, NEP, and NE Hydro are electric companies subject to the Department's jurisdiction under G.L. c. 164. Boston Gas is a gas company subject to the Department's jurisdiction under G.L. c. 164. D.P.U. 17-18, at 6 n.11; D.P.U. 16-159, at 7 n.10; D.P.U. 12-123, at 7 n.8.

of itself and has included the affidavit of a National Grid officer to support its request. Fourth, the required Affidavit and supporting documentation describes the proposed Transaction and certifies that the proposed Transaction will have no adverse impacts on National Grid's Massachusetts subsidiaries or their ratepayers (Malee Affidavit, ¶¶ 7-9, 13-17; Exhs. A-1; DPU 4-2). The parties do not dispute that the filing meets these four elements required under the statute. The parties dispute, however, whether the Affidavit and supporting documentation substantially supports a conclusion that the proposed Transaction will have no adverse impacts on the Company's ratepayers.

Specifically, the Attorney General contends that the Company's Affidavit fails to substantially support this conclusion due to the anticipated reallocation of shared Service Company costs to Massachusetts ratepayers and the loss of operational synergies associated with Narragansett's utility assets especially during service interruptions caused by storm events (Attorney General Comments at 8-11; Newhard Affidavit, ¶¶ 19, 21). The Company argues that any cost impacts will be mitigated by the Company to the extent possible, commits to providing a third-party examination of such cost mitigation efforts, and notes that the Department has the full authority to ensure that there are no adverse impacts to the Massachusetts distribution companies or their ratepayers (Company Reply Comments at 13-14, citing Malee Affidavit at 4, 6, 8). The Department has reviewed the Petition, Affidavit, and supporting documentation, as well as the additional information provided during discovery and through the comments submitted. Based on the statements and

representations made therein, the Department grants the Company's waiver request for the reasons outlined below.

ii. No Adverse Impact on Cost of Service or Rates

While the allocations for shared costs incurred by the Service Company will need to be revised after the sale of Narragansett (Malee Affidavit, ¶¶ 12, 14; McCusker Affidavit, ¶ 5; Petition at 8-9; Exh. A-2 (Part 1) at 3-4), we find that the Affidavit and supporting documentation support the conclusion that the sale will result in no immediate adverse rate impacts to the Massachusetts companies or their ratepayers and may not result in future adverse rate impacts due to the mitigation activities identified by the Company and the Department's regulatory review process (Malee Affidavit, ¶¶9-15; McCusker Affidavit, ¶¶ 4-11; Petition at 8-10).[16] Similarly, we are not persuaded by the Attorney General's arguments that $25.3 million of shared costs will be reallocated to National Grid's operating affiliates for these same reasons (Newhard Affidavit, ¶ 15; Attorney General Comments at 10). Further, there is no identifiable support in the record for this amount.

The Company and Massachusetts distribution companies have committed to providing a cost mitigation study, including a third-party examination of their cost mitigation efforts, in the Massachusetts distribution companies' next respective base distribution rate proceedings

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16 The Department emphasizes that any costs submitted for recovery in future proceedings as a result of the Transaction, including shared costs allocated to the Massachusetts distribution companies, will be reviewed by the Department to determine whether such costs are reasonable and, where applicable, prudent and appropriate for recovery.

(Malee Affidavit, ¶ 15; Petition at 10). The Company has designated a team to review and mitigate the shared costs and to create documentation to support a future review by the Department, and which is assessing (1) each function of the Service Company to determine the costs that may be transferred to PPL Rhode Island; (2) fixed costs, including contracts and arrangements across its U.S. business for those costs to identify opportunities resulting from the Narragansett sale and renegotiating those contracts accordingly; and (3) possible savings in variable costs, including items such as materials, supplies, and certain contract labor (Malee Affidavit, ¶ 15; McCusker Affidavit, ¶¶ 5-7; Petition at 10). Additionally, the Service Company will provide certain services to PPL Rhode Island via a negotiated TSA under which the Service Company will directly recover these costs from PPL Rhode Island, thus further mitigating cost impacts after the sale (McCusker Affidavit, ¶ 8; Exh. A-1, at 107-125). The Company represents that it does not anticipate that any transaction or transition costs arising from the sale will be allocated to the Massachusetts distribution companies (Exh. DPU 3-2). The Company also represents the Transaction will have no adverse impact on the financing of the operations of Massachusetts subsidiaries (Exh. DPU 2-2). Further, the Company represents that no adverse rate impacts will occur for the Massachusetts transmission companies, since the formula transmission rates approved by FERC will not be affected by the Transaction (Exh. DPU 4-2).

Moreover, it is well-established that the Massachusetts distribution companies may not adjust rates charged to their ratepayers, including through base distribution rates and cost recovery mechanism filings, without prior Department review and approval. Pursuant to

G.L. c. 164, § 94 ("Section 94"), the Legislature has granted the Department extensive ratemaking authority over Massachusetts electric and gas companies. The Supreme Judicial Court has consistently found that the Department's authority to design and set rates is broad and substantial. See, e.g., Boston Real Estate Board, 334 Mass. at 485. In establishing rates pursuant to Section 94, the Department commonly examines a calendar test year that typically represents the most recent twelve-month period for which complete financial information exists, on the basis that the expenses adjusted for known and measurable changes provide the most reasonable representation of a utility company's present financial situation, and they fairly represent its cost to provide service. Fitchburg Gas and Electric Light Company, D.T.E. 99-118, Interlocutory Order Regarding Scope of Proceeding and Motion to Compel Discovery at 8 (March 13, 2001); Assabet Water Company, D.P.U. 95-92, at 28 (1996); Western Massachusetts Electric Company, D.P.U. 84-25, at 68-69 (1984); Eastern Edison Company, D.P.U. 1580, at 13-17 (1984); Ashfield Water Company, D.P.U. 1438/1595, at 3-4 (1984).

MECo and Nantucket Electric are subject to a five-year PBR plan under which new base distribution rates may not take effect prior to October 1, 2024 (Malee Affidavit, ¶ 13; Petition at 8). Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 18-150, at 54-56 (2019).[17] Additionally, after the close of the Transaction, any

[17] While extraordinary economic circumstances have always been a recognized basis for any gas or electric company to petition the Department for changes in tariffed rates, the Department has also cautioned companies committing to a stay-out provision that any such request should be a request of last resort and that should a company seek rate relief before the end of a PBR term, such request would warrant serious

adjustments to the Massachusetts distributions companies' base distribution rates, including any adjustments to MECo's and Nantucket Electric's rates following the expiration of their PBR plan, will be subject to regulatory scrutiny.[18] This scrutiny will include review of the cost mitigation study demonstrating how the shared costs were mitigated to the extent possible following the Transaction (Malee Affidavit, ¶ 15). At that time, the Department will determine whether there are any unmitigated cost impacts associated with the Transaction and, if so, the appropriate ratemaking treatment to be accorded to such costs. Further, based on a review of the data available in this proceeding, the Department determines that the Massachusetts distribution companies should be capable of absorbing any unmitigated shared costs reallocated from Narragansett after the sale without impact to the overall revenue requirement during the term of the existing PBR plan for MECo and Nantucket Electric and until Boston Gas's next base distribution rate proceeding (see, e.g., Exhs. DPU 1-9; AG 2-20 & Att.).

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consideration by the Department under Section 94, and would be likely to have a negative impact on such company's return on equity. D.P.U. 17-05, at 403-404 (citations omitted).

[18] Although Boston Gas has a petition currently pending before the Department for an increase to its existing base distribution rates and to implement its own PBR mechanism (Malee Affidavit, ¶ 14), the Order issuance deadline in that proceeding precedes any final closing date for the Transaction and corresponding transition services between National Grid, Narragansett, and the Service Company (see McCusker Affidavit, ¶ 8; Exhs. A-1, at 8, 61, 107-125; AG 1-2, Att. at 20). Boston Gas Company, D.P.U. 20-120, Suspension Order (November 20, 2020).

Similarly, proceedings conducted to review cost recovery mechanism filings between base distribution rate proceedings also allow for the scrutiny of any costs in question, as well as preserve the Attorney General and other intervenors' due process rights. See, e.g., Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 20-12-A (May 27, 2021); Boston Gas Company and Colonial Gas Company, D.P.U. 19-87-A (February 25, 2021); Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 19-144-A (December 4, 2020)). For this reason, we are not persuaded by the Attorney General's arguments that the Transaction will cause an immediate impact on Massachusetts ratepayers through the seven cost recovery mechanisms identified (Attorney General Comments at 9, citing Exh. DPU 1-5; Newhard Affidavit at 3-4). Moreover, the Company represents that no adverse rate impacts will occur in relation to these seven mechanisms, since: (1) no cost sharing occurs for two of the mechanisms; (2) overhead costs reflected in other mechanisms are the subject of National Grid's mitigation efforts; and (3) the Company will not reallocate Narragansett's portion of the GBE program costs (McCusker Affidavit, ¶ 11).

Because shared costs are incorporated into several of the Massachusetts distribution companies' cost recovery mechanisms, however, and National Grid concedes that some of these costs will be subject to its mitigation efforts, these shared costs will require additional scrutiny in each cost recovery filing after the close of the sale and until each company's next respective base distribution rate proceeding. Accordingly, within 30 days of the closing of the Transaction, National Grid shall submit an informational filing in this proceeding that

lists for each of its Massachusetts distribution companies each cost recovery mechanism that includes shared costs allocated from the Service Company, the docket numbers attributed to those mechanisms from that calendar year as well as the three calendar years preceding the closing, and the amount of shared costs submitted and allowed for recovery in each of these proceedings identified, broken down by cost category and the allocation method(s) relied upon. Further, following the close of the Transaction, the Massachusetts distribution companies shall subsequently include in each corresponding cost recovery mechanism filing a breakdown by cost category of the shared costs charged by the Service Company, the allocation methods relied upon, and a description with supporting documentation of the mitigation efforts taken by the Company involving the shared costs included in the filing. Access to this data in these proceedings will permit the Department to review any potential impact arising from the Transaction on Massachusetts ratepayers and take any appropriate action.

Accordingly, for the reasons outlined above, the Department agrees that the Affidavit and supporting documentation substantially support the conclusion that the Transaction will have no adverse rate impacts on the Massachusetts companies or their ratepayers.

iii. No Adverse Impact on Service Quality

The Company's statements and representations also support the conclusion that the Transaction will have no adverse impacts on service quality. Although the Attorney General raises concerns involving the potential loss of operational synergies associated with Narragansett's utility assets during service interruptions caused by storm events (Newhard

Affidavit, ¶¶ 19, 21), National Grid represents that any assistance provided by Narragansett crews during a storm event is no different than other mutual assistance received by the Massachusetts distribution companies and will remain available after the sale under National Grid's mutual assistance agreements as a participating member company of the Edison Electric Institute, the Northeast Gas Association, and the Southern Gas Association (McCusker Affidavit, ¶ 11(a); Exhs. DPU 2-3; AG 2-2). National Grid also represents that the Massachusetts distribution companies will retain the existing employees currently responsible for service quality and the practices and policies that ensure that service quality continues (Malee Affidavit, ¶¶ 16-17; Petition at 10; Exhs. DPU 3-1; DPU 4-2). Additionally, National Grid represents that the Transaction will not have any adverse impacts on any program implemented pursuant to Massachusetts law or Department regulation (Exh. DPU 3-1).

Further, the record reflects that the Narragansett assets used to provide service to approximately 4,300 MECo customers will continue to provide the same service after the Transaction, and that Narragansett and MECo will update their service agreement to reflect all of the retail delivery points involving these customers in conformance with terms and conditions in Narragansetts's borderline sales tariff on file with FERC (Exhs. DPU 1-8 (Supp.); DPU 3-5). These customers will also continue to receive the same service quality as the remainder of the Company's Massachusetts customers (Exh. DPU 3-5), and the Company's Massachusetts distribution companies remain subject to the existing service

quality standards as established in Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies, D.P.U. 12-120-D (2015).

National Grid also represents that the Transaction will have no adverse impacts on the service quality of the Massachusetts transmission companies or their ability to provide service with the transmission facilities they own and operate (Exh. DPU 4-2). Narragansett is not an Interconnection Rights Holder under NE Hydro's FERC-jurisdictional tariff and as such the Transaction will not affect NE Hydro's ability provide service with the transmission facilities it owns and operates (Exh. DPU 4-2). NEP, however, currently provides transmission service over certain electric transmission facilities owned by Narragansett, which National Grid expects the company to transition to arrangements where it no longer provides transmission service over electric facilities owned by Narragansett (Exh. DPU 4-2). The Company represents that this transition will have no adverse impact on NEP's ability to provide service with the other transmission facilities it owns and operates (Exh. DPU 4-2).

After review of the Affidavit and supporting materials, including the Company's responses to information requests and the Attorney General's comments, the Department accepts National Grid's assertion of material facts and its representations regarding the impacts on service quality as both complete and accurate.

iv. Conclusion

Based on the considerations and representation identified above, the Department agrees that the Affidavit and supporting documentation substantially support the conclusion that the Transaction will have no adverse impacts on the Massachusetts companies or their

ratepayers. Accordingly, the Department grants the Company's request for a waiver from the requirements of Section 96(c). The Department's grant of this waiver pursuant to Section 96(c) is based on the statements and representations presented by the Company. In the event that the Transaction or the transactions specifically contemplated by the Agreement have an adverse impact on any of the National Grid companies subject to the Department's jurisdiction, or on any of the ratepayers of those companies, including, but not limited to, through cost allocation measures or through a reduction in National Grid's credit rating, the Department may take into account such consequences in a base distribution rate case or other appropriate proceeding involving a National Grid jurisdictional gas or electric company.[19] Furthermore, this Order expresses the Department's position on the waiver request only, and does not express any other legal conclusions on the Transaction or the transactions specifically contemplated by the Agreement.

4. Filing Requirements

As discussed above, the Company and its Massachusetts distribution companies have committed to providing a cost mitigation study, including a third-party examination of their cost mitigation efforts, in the Massachusetts distribution companies' next respective base distribution rate proceedings (Malee Affidavit, ¶ 15; Petition at 10). The Department has also directed the Company and the Massachusetts distribution companies to provide, after the

[19] Remedial action in such a proceeding may include disallowance of costs, an adjustment to the return on equity, or other measure necessary to protect the public interest.

close of the Transaction, additional data in cost recovery mechanism filings that include shared costs allocated from the Service Company. Moreover, the Service Company will provide certain services to PPL Rhode Island via a TSA, under which the Service Company will directly recover these costs from PPL Rhode Island (McCusker Affidavit, ¶ 8; Exh. A-1, at 107-125). Accordingly, we direct the Massachusetts distribution companies to conduct a cost mitigation study and submit a copy of that study and appropriate supporting documentation in their next respective base distribution rate proceedings. The companies shall also submit a copy of the final TSA in those proceedings, including any amendments to the TSA.

Notwithstanding our findings above, the Department also deems it appropriate to require the Company to submit several additional informational compliance filings in this docket in order for the Department to monitor the status of the sale and any potential impacts to the Massachusetts companies or their ratepayers. First, because the WPD Acquisition is a condition precedent to the Narragansett sale (Malee Affidavit, ¶ 8), National Grid shall notify the Department within 30 days of the closing date or dissolution of that transaction. Second, the Company shall notify the Department of the closing of the Transaction within 30 days of the closing date, as well as provide a copy of the final TSA between the Service Company and PPL Rhode Island, including any amendments. Third, because MECo and Narragansett will continue to rely on each other's assets to provide service to certain customers (Exhs. DPU 1-8 (Supp.); DPU 3-5(b); DPU 4-2), the Company shall provide a copy of the

amended service agreement identified in Exhibit DPU 3-5(b) within 30 days of the agreement's amendment.

Finally, because Narragansett will no longer be a participant in the National Grid money pool[20] effective on the closing date of the sale (Exh. DPU 2-4), this constitutes a change to the terms of the money pool's operation. Any amendment or changes to the money pool resulting from Narragansett's departure requires Department approval prior to the amendments and changes becoming effective. D.P.U. 10-59, at 9, 10. Thus, the Company shall file a separate petition for Department approval for changes to the money pool resulting from the Transaction.

IV. ORDER

Accordingly, after notice, opportunity for comment, and due consideration, it is hereby

ORDERED: That National Grid USA's request for a waiver of G.L. c. 164, § 96(c) as applied to its sale of its wholly owned subsidiary, The Narragansett Electric Company, is hereby GRANTED; and it is

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[20] Pursuant to G.L. c. 164, § 17A and with Department approval, a gas or electric company may "loan its funds to, guarantee or endorse the indebtedness of, or invest its funds in the stock, bonds, certificates of participation or other securities of, any corporation, association or trust." The objective of the money pool for the participating National Grid entities was to meet the short-term borrowing requirements of the companies in a manner that pooled all the participants' resources to achieve financing flexibility and a lower cost of borrowing. D.P.U. 10-59, at 2.

FURTHER ORDERED: That Boston Gas Company, Massachusetts Electric Company, and Nantucket Electric Company, each d/b/a National Grid, and National Grid USA, shall comply with all directives contained in this Order.

By Order of the Department,

Matthew H. Nelson, Chair

Robert E. Hayden, Commissioner

Cecile M. Fraser, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.