

# STATE OF CONNECTICUT

DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION  
PUBLIC UTILITIES REGULATORY AUTHORITY  
TEN FRANKLIN SQUARE  
NEW BRITAIN, CT 06051

DOCKET NO. 12-01-07    APPLICATION FOR APPROVAL OF HOLDING COMPANY  
TRANSACTION INVOLVING NORTHEAST UTILITIES AND  
NSTAR

March 26, 2012

By the following Directors:

Kevin M. DeIGobbo  
John W. Betkoski, III

## **DRAFT DECISION**

This draft Decision is being distributed to the parties in this proceeding for comment. The proposed Decision is not a final Decision of the PURA. The PURA will consider the parties' arguments and exceptions before reaching a final Decision. The final Decision may differ from the proposed Decision. Therefore, this draft Decision does not establish any precedent and does not necessarily represent the PURA's final conclusion.

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## DRAFT DECISION

### I. INTRODUCTION

#### A. SUMMARY

In this Decision, the Public Utilities Regulatory Authority approves a Settlement Agreement concerning the joint application of Northeast Utilities and NSTAR for a merger through an exchange of stock. The Public Utilities Regulatory Authority finds that the merged Northeast Utilities has the financial, technological and managerial suitability and responsibility to operate a public service company. In addition, the Public Utilities Regulatory Authority finds that the merged Northeast Utilities has the ability to provide safe, adequate and reliable service to the public. The Settlement Agreement provides for a one-time rate credit of \$25 million for Connecticut Light and Power Company customers, an electric base rate freeze period to December 1, 2014 as well as other benefits. The Public Utilities Regulatory Authority finds that the Settlement Agreement is in the public interest.

#### B. BACKGROUND OF THE PROCEEDING

In the Decision dated January 18, 2012 in Docket No. 10-12-05RE01, Petition of The Office of Consumer Counsel For a Declaratory Ruling that the Pending Merger of Northeast Utilities and NSTAR Requires Approval by the Connecticut Public Utilities Regulatory Authority – Review of New Comments, the Authority concluded that it must review the proposed merger between NU and NSTAR and that the proposed merger must receive the Authority's approval pursuant to the General Statutes of Connecticut (Conn. Gen. Stat.) §§16-11 and 16-47.<sup>1</sup> By joint application (Application) received on January 19, 2012, Northeast Utilities (NU) and NSTAR (collectively, Applicants or Companies) requested the approval of the Public Utilities Regulatory Authority (Authority or PURA), of a stock exchange (Transaction) whereby NSTAR would become a first-tier wholly-owned subsidiary of NU. On March 13, 2012, the Applicants presented the Authority a Settlement Agreement between the Office of Consumer Counsel (OCC), the Attorney General (AG), and the Companies.

Under Conn. Gen. Stat. §16-47(b) and (d), the Authority is legally obliged to review the proposed merger to ensure that after any resulting merger, The Connecticut Light and Power Company (CL&P) and Yankee Gas Services Company (Yankee) will have the qualifications and ability to provide safe, adequate, reliable and reasonably-priced services for Connecticut customers. Conn. Gen. Stat. §16-47(b) provides:

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<sup>1</sup> In response to the OCC and AG's February 7, 2012 Motion No. 12 the Authority stated, "The Joint Motion cites to a series of prior Authority dockets that were noticed pursuant to Conn. Gen. Stat. §16-47. In those proceedings, the Authority issued a final Decision that cited to Conn. Gen. Stat. §§16-11 and 16-22, as authority for the proposition that the proposed merger must be in the public interest and that the burden of proof of public interest is on the Applicant. In this proceeding, the Applicants requested approval pursuant to Conn. Gen. Stat §16-47. However, the Authority noticed the hearing pursuant to both Conn. Gen. Stat §§ 16-47 and 16-11. The Authority reaffirms and rules, consistent with past precedent, that the Applicants in the present proceeding must demonstrate that the proposed merger is in the public interest in order to gain PURA approval.

(b) No gas, electric, electric distribution, water, telephone or community antenna television company, or holding company, or any official, board or commission purporting to act under any governmental authority other than that of this state or of its divisions, municipal corporations or courts, shall interfere or attempt to interfere with or, directly or indirectly, exercise or attempt to exercise authority or control over any gas, electric, electric distribution, water, telephone or community antenna television company engaged in the business of supplying service within this state, or with or over any holding company doing the principal part of its business within this state, without first making written application to and obtaining the approval of the Public Utility Regulatory Authority, except as the United States may properly regulate actual transactions in interstate commerce.

### **C. CONDUCT OF THE PROCEEDING**

By Notice of Hearing dated January 30, 2012, and pursuant to Conn. Gen. Stat. §§16-11, 16-47 and Regulations of Connecticut State Agencies §§16-1-46 and 16-47-2, the Authority conducted public hearings to review this matter in full. Public hearings were held on Tuesday, February 14, 2012; Wednesday, February 15, 2012; Friday, February 17, 2012; Tuesday, February 21, 2012; Thursday, February 23, 2012; Friday, February 24, 2012; and Monday, February 27, 2012. In addition, an evening hearing session, for the sole purpose of admitting public comments into the record of the proceeding, was convened in Hearing Room 1D of the Legislative Office Building, 300 Capital Avenue, Hartford, Connecticut, on Wednesday, February 22, 2012. A Notice of Close of Hearing was issued on March 2, 2012. The Authority received a Settlement Agreement from The Office of Consumer Counsel, the Attorney General, NU and NSTAR on March 13, 2012. By a Notice of Reopening of Record and Additional Hearing Session dated March 14, 2012, pursuant to Conn. Gen. Stat. §§16-11, 16-19jj, 16-22, and 16-47 the Authority reopened the record to review the Settlement Agreement and conducted a public hearing on March 23, 2012. A Draft Decision was released to the public on March 26, 2012. All Parties and Interveners will be given the opportunity to submit written exceptions. Oral arguments will be held on March 30, 2012. A final Decision will be rendered on April 2, 2012.

### **D. PARTIES AND INTERVENERS**

The PURA recognized the following as parties to this proceeding: Northeast Utilities Service Company (NUSCO), 107 Selden Street Berlin, CT 05037; NSTAR Electric and Gas Corporation (NSTAR), One NSTAR Way Westwood, MA 02090-9230; and The Office of Consumer Counsel, Ten Franklin Square, New Britain, 06051. Recognized as interveners to this proceeding were the following: The Office of Attorney General, for the state of Connecticut; Environment Northeast, NRG Energy, Connecticut Fund for the Environment, and the New England Power Generators Association, Inc.

## **E. PUBLIC COMMENT**

The Authority conducted an evening public hearing for the purpose of receiving comments from the general public concerning the Application. The public hearing was conducted on February 22, 2012 at the Legislative Office Building with approximately ten persons in attendance. Two individuals offered testimony on the proposed Transaction and both speakers stated their reservations to the Authority. One speaker was apprehensive of the proposed merger between NU and NSTAR in that Connecticut customers could face an increase in electric rates due to the impact of the Cape Wind Project in Massachusetts. Tr. 2/22/12, pp. 819-821. The other speaker was concerned over the fate of open space in Connecticut that is owned by NU. The speaker also urged the Authority to include an extension on the protection of these open spaces as a condition for approval of the merger. Tr. 2/22/12, pp. 824-826.

The Authority also received over 100 letters and emails regarding the proposed Transaction. Nearly all of the correspondence received addressed the open space issue and the subsequent concern as to how the merger between NU and NSTAR would affect the status of the land. Included in these letters and emails was a letter from State Senator Toni Boucher (26<sup>th</sup> District). Senator Boucher commented on the future protection of the 375 parcels of land owned by NU and the status of this land post-Transaction and reaffirmed the concerns expressed by many other individuals. All who commented on this particular issue were in agreement that the protections already in place for the land in question should continue post-Transaction. Besides the open space issue, the Authority also received written comments regarding the proposed Montville Biomass project. State Senators Edith Prague (19<sup>th</sup> District), Andrea Stillman (20<sup>th</sup> District), State Representatives Betsy Ritter (38<sup>th</sup> District), Tom Reynolds (42<sup>nd</sup> District) and Kevin Ryan (139<sup>th</sup> District) proposed that as a condition for approval of the Transaction, there should be a requirement for the Companies to enter into a long-term contract for new biomass generation located in Connecticut. These sentiments were also shared in writing by the Mayor of the Town of Montville as well as the Connecticut AFL-CIO. Overall, the letters received in opposition to the proposed Transaction focused on the Cape Wind Project in Massachusetts and the potential negative impact on electric rates that could occur.

## **II. AUTHORITY ANALYSIS**

### **A. DESCRIPTION OF APPLICANTS**

#### **1. NU**

NU is a Massachusetts business trust and public utility holding company headquartered in Hartford, Connecticut. As a public utility holding company it has four utility operating subsidiaries which are The Connecticut Light and Power Company, Public Service Company of New Hampshire, Western Massachusetts Electric Company, and Yankee Gas Services Company. NU provides electric service to approximately 1.9 million customers in 419 cities and towns in Connecticut, New Hampshire and western Massachusetts. In addition, NU provides franchised natural gas service to approximately 200,000 residential, commercial, and industrial customers

in 71 cities and towns in Connecticut. The NU system companies are provided support services from the Northeast Utilities Service Company (NUSCO) which provides centralized accounting, administrative, information resources, engineering, financial, legal, regulatory, operational planning, purchasing, and other services to the NU system companies. Rocky River Realty Company, Properties, Inc. and Renewable Properties, Inc. provide support services by building, acquiring, or leasing some of the property and facilities used by the NU system companies. NU's common shares are listed on the New York Stock Exchange (NYSE). Application, pp. 1 and 4, Exhibit 8, p. 9.

## **2. NSTAR**

NSTAR is a Massachusetts business trust headquartered in Boston, Massachusetts. NSTAR is primarily an energy delivery holding company conducting business through utility operating subsidiaries. Its principal subsidiaries are NSTAR Electric Company which serves approximately 1.1 million electric customers in 81 communities and NSTAR Gas Company which serves approximately 300,000 natural gas distribution customers in 51 communities. In addition, NSTAR also engages in unregulated businesses including telecommunications and liquefied natural gas service. NSTAR's unregulated subsidiary NSTAR Communications, Inc. installs, owns, operates, and maintains a wholesale transport network for other telecommunications service providers in the metropolitan Boston area to deliver voice, video, data, and internet services to customers. NSTAR's unregulated subsidiary Hopkinton LNG Corp. operates liquefied natural gas facilities in Hopkinton and Acushnet, Massachusetts to supplement pipeline supply for the NSTAR gas distribution system. NSTAR's common shares are listed on the NYSE. Application, pp. 1 and 6, Exhibit 8, p. 9.

## **B. PURCHASE AGREEMENT**

### **1. Proposed Transaction**

The Transaction will be completed pursuant to a merger agreement dated as of October 16, 2010, and amended on November 1, 2010 and December 16, 2010 (Merger Agreement). Exhibit 1. The NU board of trustees and the NSTAR board of trustees unanimously approved the Merger Agreement on October 16, 2010. Subsequently, the Merger Agreement was approved by NU shareholders and NSTAR shareholders in separate meetings on March 4, 2011. Application, p. 7.

The actual mechanics of the Transaction requires four parties to the Merger Agreement: NU, NSTAR, NU Holding Energy 1 LLC (Merger Sub) and NU Holding 2 LLC (Acquisition Sub). Merger Sub and Acquisition Sub are subsidiaries of NU. The transaction is a two-step merger process by which NU will acquire NSTAR broken down as follows:

1. In step one Merger Sub, as a subsidiary of NU, will merge with and into NSTAR. As a result of this step, Merger Sub will cease to exist and NSTAR will be the surviving entity.
2. Immediately thereafter, NSTAR will merge with and into Acquisition Sub which is a subsidiary of NU. As a result of step two, Acquisition Sub will be the surviving

entity, NSTAR will cease to exist, and Acquisition Sub will be renamed NSTAR LLC.

Application, p. 7.

At the completion of the above steps at the time of closing, NSTAR LLC will be the successor to NSTAR as a wholly-owned first tier subsidiary of NU. NSTAR Electric and NSTAR Gas will be subsidiaries of NSTAR LLC and therefore second-tier subsidiaries of NU. NU will continue to be the holding company of CL&P and Yankee. The NU and NSTAR regulated utility operating companies are not parties to the Merger Agreement. After the close of the transaction, CL&P and Yankee will remain separate companies as they are today. CL&P and Yankee will not merge or consolidate with each other or with any of the NSTAR companies. In addition, they will not transfer any of their respective assets or franchises as part of the Transaction. CL&P and Yankee will continue to operate as public service companies under the PURA's jurisdiction as before completion of the Transaction. NU will continue to be the holding company of CL&P and Yankee. Application, pp. 8 and 9.

The Authority concludes that the structure of the Transaction was well planned using a two-step Merger Sub and Acquisition Sub process. This process insulates CL&P and Yankee from any actual merger since the Transaction takes place at the Parent level between NU and NSTAR. The Authority finds that since CL&P and Yankee will continue to be separate operating subsidiaries of NU, Connecticut ratepayers will not be disadvantaged from the Transaction process.

## **2. Financial Terms of the Transaction**

By the terms of the merger, consideration for the Transaction will be 100% equity in the form of NU common shares. Cash will be paid in lieu of fractional shares. At the time of closing, each NSTAR shareholder will receive 1.312 NU common shares for each of their NSTAR common shares (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 in October 2010. The exchange ratio reflects no merger premium for either NU or NSTAR shareholders. Upon closing the Transaction, the former NSTAR shareholders will own approximately 44% of the common equity in the post-merger NU. Existing NU shareholders will own the remaining 56%. NSTAR will no longer exist as a public company and its stock will no longer be traded on the NYSE. There is no person who now owns or will own as a result of the Transaction in excess of 10% of NU's outstanding common shares. Application, pp. 8 and 9.

## **3. Applicant's Required Government Approvals**

The proposed Transaction is subject to not only Connecticut review but also review by several states and federal regulatory reviews upon which the closing is conditioned. These reviews and their current status are as follows:

1. Securities and Exchange Commission (SEC): NU filed a Registration Statement on Form S-4 with the SEC that was declared effective by the SEC on December 20, 2010, registering the NU common shares to be issued in connection with the

- Transaction. NU and NSTAR's joint proxy statement/prospectus was included as part of the Registration Statement.
2. Federal Energy Regulatory Commission (FERC): FERC approved the Companies' application in Docket No. EC11-35 on July 6, 2011.
  3. Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act): On January 11, 2011, the Companies filed premerger notifications under the HSR Act with the Department of Justice and the Federal Trade Commission. The 30-day waiting period expired on February 10, 2011 with no comment.
  4. Nuclear Regulatory Commission (NRC): The NRC approved the Companies' application on December 20, 2011.
  5. Federal Communications Commission (FCC): The FCC issued a conditional approval on January 4, 2011, valid for the 180-day period thereafter, which approval was subsequently extended per its terms.
  6. Maine Public Utilities Commission (Maine PUC): The Maine PUC issued its requisite approval related to PSNH on May 10, 2011.
  7. New Hampshire Public Utilities Commission (NH PUC): On April 5, 2011, the NH PUC issued an order stating that it does not have jurisdiction to approve the Transaction under New Hampshire law.
  8. New York Stock Exchange (NYSE): Approval by the NYSE of the listing of the Northeast Utilities common shares to be issued in connection with the Transaction is required. The listing application with the NYSE will be submitted one to two weeks prior to the anticipated closing date. It is expected that the NYSE will approve the listing application prior to the expected closing date.
  9. Massachusetts Department of Public Utilities (Mass DPU): The Transaction is subject to approval by the Mass DPU pursuant to M.G.L. Chapter 164, §96. On November 24, 2010, the Companies filed a joint petition seeking Mass DPU approval. On March 10, 2011, the Mass DPU issued an Interlocutory Order on Standard of Review. A supplementary filing was made in relation to the changed standard of review on April 8, 2011. Hearings in this case concluded on July 28, 2011, and final briefs were filed on October 31, 2011. A subsequent hearing on outstanding motions was held on January 6, 2012. Two separate Settlement Agreements were entered into with the Massachusetts Attorney General and the Massachusetts Department of Energy Resources. This Settlement Agreement will be acted on at the Mass DPU once the Authority has rendered a Decision in the instant proceeding.

Application, pp. 30 and 31.

The Authority finds the above approvals to be standard given the transaction is between holding companies with operating subsidiaries in more than one state.

#### **4. Post-Merger Organization**

After the Transaction is completed, NU will retain its current corporate headquarters in Hartford, Connecticut and will also have a corporate headquarters in Boston, MA. The dual headquarters will allow NU to have a close geographic connection with the majority of NU's post-merger customer base and the associated assets to serve that customer base. The dual headquarters will also allow NU to have continued accessibility and responsibility to state regulators, policy makers, public-safety officials, and other important constituencies. Application, p. 9.

The local distribution operations of CL&P and Yankee will continue to function as they have previously, subject to local control. Current field operations and employees will remain in place to conduct operations in accordance with the expectations and requirements of the Authority. All union contracts at CL&P and Yankee will continue to be honored. Any reductions in staff to achieve operational cost savings are anticipated to result from normal employee attrition and retirements rather than from broad based layoffs. Application, p. 9.

Upon completion of the Transaction, the NU Board of Trustees will consist of 14 members comprised of 7 trustees designated by NU and 7 trustees designated by NSTAR prior to the closing of the Transaction. The Merger Agreement provides that the President, Chief Executive Officer (CEO), and Chairman of the Board of NU will be one of the NU designees as will the President, Chief Executive Officer and Chairman of the Board of NSTAR one of the NSTAR designees. The Merger Agreement also provides that upon completion of the Transaction, the NU designee will be the non-executive Chairman of the board for up to 18 months, after which the NSTAR designee will succeed as Chairman of the Board. Application, pp. 9 and 10, Exhibit 1.

#### **5. Accounting Issues**

The Transaction will be accounted for in accordance with the Financial Accounting Standards Board (FASB) Accounting Standards Codification No. 805 (ASC 805), Business Combinations and will be accounted for as an acquisition of NSTAR by NU. Due to this treatment, the books and records of NSTAR will be recorded at fair value which includes recording estimates of \$2.9 billion in goodwill that will be recorded on the books and records of NSTAR and not allocated to NSTAR Electric or NSTAR Gas or allocated in any way to CL&P or Yankee. Application, p. 11. The Companies included detailed calculations to estimate the merger goodwill amount as of September 30, 2011. Pro forma financial statements were prepared that illustrate the effect of the merger with accounting adjustments and assumptions. Response to Interrogatory FIN-134. The Companies testified that it has no intention of pushing the goodwill down to the Massachusetts companies and it has no intention of pushing it down to the Connecticut companies. Not only will it not be pushed down, it will not be allocated. It will never be in ratemaking. It will never be in rate base. Tr. 02/15/12, pp. 295-297.

The Authority has reviewed the Companies journal entries to record goodwill at the parent company level estimated as of December 31, 2011 using NU's share price as of February 16, 2012. Late Filed Exhibit No. 7. The goodwill amount will be updated at

the date that the merger is consummated based on the purchase price and any accounting adjustment. The Authority notes that in accordance with the CT Settlement, the goodwill resulting from the proposed Transaction will not be recorded on the books of the operating companies post-merger, including CL&P and Yankee, unless required by a change in the rules or directives of the Securities Exchange Commission or a change in GAAP. CT Settlement, paragraph 5.1.

## **6. Reasons For and Benefits of the Transaction**

NU and NSTAR state that the rationale for this Transaction is a result of the overall challenges facing utilities in today's environment. By the Applicants' admission, utilities must provide a high quality of service, at a reasonable cost, and with a high level of reliability demanded by the critical importance of electricity and gas to the economy, public safety and welfare. Additional challenges faced by utilities, in the present environment, are as follows:

1. Supporting substantial increased amounts of renewable energy while attempting to minimize price increases to customers.
2. Replacing aging infrastructure while simultaneously working to implement new advances such as smart grid technology.
3. Providing the most efficient and effective metering, billing, and customer service for customers, and to maintain a committed, qualified workforce able to meet the demands of our "digital" society.
4. Recognition of a regional economy that has yet to recover from the financial upheaval of the recent past.

Application, pp. 11 and 12.

The Applicants state that NU and NSTAR are each capable of addressing these issues on their own; however, as a merged company they will be able to do so more effectively and efficiently by merging. The merged company will be significantly larger and as such able to not only support needed future investment but also to withstand further volatility in the national economy. This Transaction merges two "mid cap" companies and establishes the surviving company of NU as a larger, stronger and more diversified company with a total enterprise value of approximately \$18 billion. As a result of the merger, NU will become the largest utility company in New England and one of the largest in the United States based on the size of its customer base and market capitalization. This broad-based operating platform will create economies of scale and scope with resulting public interest benefits and cost savings which, absent the Transaction, could not be attained. Application, p. 12.

As a result of the Transaction, NU will enjoy an expanded service territory which will bring significant geographic diversity and complementary distribution and transmission assets. This will enhance support among NU operating companies during storms or other service disruptions that are localized in nature. The post-merger NU system will encompass the complementary strengths of NU and NSTAR. This merger will provide the inherent benefits of bringing together two corporations each with creative, capable, and highly experienced workforces trained to fulfill the public service obligations of electric and gas companies which will create opportunities to identify and

implement best practices. Therefore, the Transaction will benefit customers, communities and shareholders alike. Application, pp. 11-13.

This merger also provides for the benefit of ensuring continued local ownership and management. The Applicants state that the merger is different from most mergers in recent years which have been acquisitions by remote owners. However, this merger provides for benefits of increased scale and scope without any change in the provision of locally owned and locally managed utility service. Further there is no change in the relationship between NU or NSTAR and the communities that they have historically served.

Both NU and NSTAR's affected constituencies will see benefits from the merger which includes employees, the regional economy, and customers. Greater opportunities will exist for employees to utilize their skills and capabilities, and to enjoy increased opportunities for career growth. All existing collective bargaining agreements will be honored by the post-merger NU. Application, p. 13.

Additionally, the financial strength of the post-merger NU will facilitate investment in capital intensive distribution and transmission projects which will provide customer benefits and benefits to the local economy. NU finds that post-merger, its larger scale and scope will produce a stronger regional voice in national energy policy discussions which will accrue benefits to customers and communities in which NU provides electric and gas delivery service. Application, p. 13.

NU asserts that the increased scale of its organization will allow for investments in infrastructure improvements, information technology, and other items which will be spread over a larger customer base thereby lowering per customer costs which is a benefit to customers. In addition, the merger might also make feasible investment in technologies and processes that would not have been feasible on an economic basis for the stand alone companies of NU and NSTAR pre-merger. Post-merger, NU's larger scale and scope should create the financial strength to meet enhanced service reliability standards on an efficient sustainable basis. This is also a benefit to customers. Application, p. 14.

### **C. LEGAL STANDARD**

The Applicants filed and the Authority acknowledged and conducted this proceeding pursuant to Conn. Gen. Stat. §16-47. In relevant part, Conn. Gen. Stat. §16-47(d) requires the Authority to investigate and hold a public hearing and thereafter may approve or disapprove the Application in whole or in part upon such terms and conditions as the PURA deems necessary or appropriate. The Authority must ensure that the Applicants have satisfied the requirements of §16-47-1 et seq. of the Regulations of Connecticut State Agencies (Conn. Agencies Regs.) and the PURA must meet various procedural due process requirements. If the Authority fails to meet the statute's procedural due process requirements, the Application would be deemed approved as filed. Substantively, the Authority must consider: (1) NU and NSTAR's merged company financial, technological and managerial suitability and responsibility; and (2) if the Application is approved, whether NU and NSTAR will be able to provide

safe, adequate and reliable service to the public through the CL&P and Yankee plant, equipment and manner of operation.<sup>2</sup>

The Authority has satisfied the procedural due process requirements of Conn. Gen. Stat. §16-47. See, Decision Section I.C, Conduct of the Proceeding. The Authority reviewed the Application and requirements of Conn. Agencies Regs. §16-47-1 et seq. and identified no requirement unsatisfied. No participant suggested that the requirements were not met. The Applicants satisfied the filing requirements of Conn. Agencies Regs. §16-41-1. Application pp. 23-33 (referring to various parts of the Application wherein the regulatory requirements were addressed).

The Authority recognizes its clear statutory responsibility to protect the public interest that is inherent in Conn. Gen. Stat. Title 16. The Authority takes that responsibility seriously in all matters before the PURA including this one. The Authority has consistently required that applicants in a contested proceeding bear the burden of proof pursuant to Conn. Gen. Stat. §16-22. The Authority fully relies on Conn. Gen. Stat. §16-11 to keep fully informed of all public service companies and ensure the Authority's and state's full powers to regulate those public service companies.

#### **D. SETTLEMENT AGREEMENT**

The Authority received a settlement agreement (CT Settlement) on March 13, 2012, between the OCC, AG, NU, and NSTAR. The CT Settlement is included herein. The CT Settlement was divided into six areas addressing (1) merger-related financial benefits; (2) advancing state energy goals; (3) corporate headquarters, civic involvement and employment; (4) improving system performance; (5) equity and transparency; and (6) Department approvals and other conditions. Authority analysis of the main points of the CT Settlement is as follows:

1. A merger rate credit is a part of the CT Settlement which is a one-time, non-recoverable \$25 million rate credit to customers of CL&P. This rate credit will be applied on the first billing cycle in the next billing month following the closing of the Transaction. The rate credit will be allocated to CL&P retail customers classes of residential, commercial, and industrial based on their proportional share of the monthly customer charges. CT Settlement, paragraph 1.1. The Authority finds this rate credit a benefit to customers. The Authority also finds the allocation, of the credit, which is based on customer's proportional share of the monthly customer charges to be an appropriate methodology and fair since all customers within a rate class will receive the same rate credit dollar amount.
2. The CT Settlement also offers a distribution rate freeze until December 31, 2014. CT Settlement, paragraph 1.2. The Authority finds that this rate freeze is beneficial to customers since it provides for steady rates into the future.
3. A plan for energy efficiency and related initiatives will be worked on by NU in consultation with the Department of Energy and Environmental Protection

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<sup>2</sup> An inapplicable third requirement concerns only telephone companies.

- (DEEP). NU will provide \$15 million for implementation of the plan. CT Settlement, paragraph 2.1. The Authority finds this to be in the public interest.
4. CL&P will collaborate with the DEEP to develop microgrid infrastructure in the CL&P service territory, including the trips and transfers necessary to isolate portions of the grid and a pilot set of distributed generation sites. CT Settlement, paragraph 2.2. The Authority finds this development of micro grid infrastructure is in support of state resiliency efforts and in the public interest.
  5. NU commits to keeping its corporate headquarters in Connecticut for a period of no less than seven years; maintain levels of charitable cash donations and civic commitments; fairness in employee reductions; promote stability of employment among CL&P line workers; and open space land commitments. CT Settlement, paragraph 3.1. The Authority finds NU's commitment to Connecticut and its workers to be in the public interest.
  6. CL&P shall submit to the Authority, a multi-year plan and cost recovery mechanism for additional system resiliency. CT Settlement, paragraph 4.1. The Authority finds system resiliency is in the public interest.
  7. NU commits, for storm response, to maintain parity of service to each state within its service territory, limit storm cost recovery from ratepayers, and commit to improve non-storm and storm-related service quality performance. CT Settlement, paragraphs 4.2, 4.3 and 4.5. The Authority finds this is in the public interest.
  8. Goodwill, as a result of this Transaction, will not be recorded on the books of CL&P and Yankee. CT Settlement, paragraph 5.1. The Authority finds this is in the public interest since ratepayers should not have to fund goodwill.
  9. In completing the Transaction CL&P and Yankee shall not make any accounting adjustment that has the result of increasing the net book value of utility assets for ratemaking. CT Settlement, paragraph 5.2. The Authority finds this is in the public interest.
  10. No transaction costs incurred to negotiate, draft, or execute the merger agreement, or to obtain the regulatory approvals required to consummate this Transaction shall be recorded on the books of CL&P and Yankee. CT Settlement, paragraph 5.3. The Authority finds this is in the public interest since ratepayers should not have to fund transaction costs.

By the terms of the CT Settlement, Yankee's customers will not receive any part of the \$25 million rate credit. This is because the Authority in its Decision dated June 29, 2011 in Docket No. 10-12-02, Application of Yankee Gas Services Company for Amended Rate Schedules (Decision Docket No. 10-12-02), imputed savings to Yankee based on the probable merger of NU and NSTAR. The Authority used the same net benefit analysis (Exhibit 13) in the instant proceeding and reduced Yankee's rate case expenses by \$1.561 million in rate year 1 which is 2012 and by \$3.0 million in rate year 2 which is 2013. Decision Docket No. 10-12-02, pp. 137-140. Therefore, Yankee customers have already received a credit through the reduction of expenses in their last

rate case. The Authority finds that since Yankee has already benefitted from the merger savings, providing another credit in the instant proceeding would not be proper.

The Authority finds the CT Settlement to benefit ratepayers economically as well as in the areas of safety, reliability, and energy efficiency. The Authority finds it is in the public interest and approves the CT Settlement in its entirety.

#### **E. CONN. GEN. STAT. §16-47**

Pursuant to Conn. Gen. Stat. §16-47(d), the Authority must determine the suitability of the proposed buyer which in the instant proceeding of a stock exchange is both NU and NSTAR. NU and NSTAR must have the level of financial, managerial, and technical suitability to enable it to assume the ownership and management over the merged company. The merged company must be able to provide adequate service to its customers. As discussed below, the Authority completed an extensive review of the Transaction to ensure that NU and NSTAR meet the requirements set forth in Conn. Gen. Stat. §16-47(d).

#### **F. REQUIREMENTS UNDER CONN. GEN. STAT. 16-47**

##### **1. Financial Suitability and Responsibility**

The Companies asserted that under Conn. Gen. Stat. §16-47, their financial suitability and responsibility for this proposed Transaction is strong. As an indication of financial strength, NU states that as of year-end December 31, 2010, it had total assets of \$14.5 billion and \$4.9 billion in operating revenues. Application, p. 4. This Transaction combines two midcap utility holding companies and as such, creates a merged company with a larger, stronger, and more diversified holding company exhibiting greater scale and scope with respect to assets and service territory. In addition, greater financial strength and diversity in its business profile will result in stability and protection from economic shifts. Application, p. 17. The Authority agrees with the Companies' assessment that greater financial strength and diversity in its business profile will result in stability and protection from economic shifts.

The credit rating agencies recognize NU's financial strength in that as of May 16, 2011, Standard and Poor's (S&P) announced that the credit ratings of NU and each of its operating subsidiaries including CL&P and Yankee were being upgraded due to an improvement in NU's risk profile. NU's credit ratings currently are at BBB+ for S&P with a credit watch positive, Baa2 from Moody's as stable, and BBB from Fitch with a watch positive. The outlooks credit watch positive from S&P and Fitch's watch positive are based on the consummation of the Transaction. Application p. 17. The Authority concludes that completing this Transaction is advantageous for NU's credit rating.

The following is historical audited financial information (in millions except common share data) on NU:

	12/31/11	12/31/10	12/31/09	12/31/08	12/31/07
<b>Income Statement Data:</b>					
Operating Revenues (\$)	4,465.7	4,898.2	5,439.4	5,800.1	5,822.2
Net Income from Continuing Operations (\$)	400.5	394.1	335.6	266.4	251.5
Net Income from Discontinued Operations (\$)	0	0	0	0	0.6
Net Income Attributable to Controlling Interests (\$)	394.7	387.9	330.0	260.8	246.5
<b>Balance Sheet Data:</b>					
Net Property, Plant and Equipment (\$)	10,403.1	9,567.7	8,840.0	8,207.9	7,229.9
Total Assets (\$)	15,647.1	14,472.6	14,057.7	13,998.5	11,581.8
Total Capitalization (\$)	9,078.3	8,628.0	8,253.3	7,294.0	6,667.9
Obligations Under Capital Lease (\$)	12.4	12.2	12.9	13.4	14.7
<b>Common Share Data:</b>					
Earnings per Common Share (\$)	2.22	2.20	1.91	1.68	1.59
Dividends Declared Per Share (\$)	1.10	1.03	.95	.83	.78

Application, Exhibit 8, p. 20; Late Filed Exhibit No. 2.

The Authority finds that the historical audited financial information from NU shows it to have a strong trend in increasing net income for the entire 5-year period of 2007 through 2011. Earnings per common share and dividends per share have also had an upward trend for the entire 5-year period of 2007 through 2011. The Authority concludes that the historical 12 months ended December 31, 2011 income statement shows NU to be a profitable enterprise able to meet expenses and show a profit for shareholders, which is a prerequisite to NU's financial suitability under Conn. Gen. Stat. §16-47. Balance sheet information which shows total assets of \$15,674.1 million and total capitalization of \$9,078.3 million for year end 2011 shows a well capitalized company with ample assets to produce a continuing revenue stream. This illustrates NU's financial suitability under Conn. Gen. Stat. §16-47.

NSTAR, as an indication of its financial strength, stated that as of the year ended December 31, 2010, it had total assets of \$7.9 billion with operating revenues of \$2.9 billion. Application, p. 6. NSTAR asserted that it "is a financially sound company with overall business fundamentals that rank it among the best in the industry." Application p. 17.

Utility operations account for approximately 99% of NSTAR's consolidated operating revenues. Although NSTAR serves in the role of provider of last resort for electric and gas sales to customers, NSTAR's recovery of energy and certain energy-related costs are fully reconciled with the level of energy revenues currently recorded and, therefore do not have a positive or negative impact on earnings. NSTAR's

earnings are generated only through the delivery of electricity and natural gas to customers.” Application, pp. 17 and 18.

NSTAR’s A+ credit rating in 2010 was the highest of any investor owned utility holding company in the United States as reported by Edison Electric Institute (EII) and was in excess of the average credit rating of BBB for the industry. NSTAR’s financial strength provides it with access to the capital and commercial paper markets at a reasonable cost. NSTAR reports that its average commercial paper borrowing rate of 23 basis points was the lowest compared to its peers for the second consecutive quarter. Application, p. 18. The most recent credit rating information taking into consideration the Massachusetts Settlement Agreements from Moody’s states, “We consider the settlement agreements to have certain elements that are less credit supportive to NSTAR.” As of February 16, 2012, Moody’s placed all ratings of NSTAR Electric Company and its parent NSTAR under review for possible downgrade. Moody’s also stated, “Moody’s observes an improvement in the credit metrics reported by NSTAR and NSTAR Electric at year end 2011 due to increased cash flows primarily driven by the use of bonus depreciation and a modest reduction in consolidated debt.” Late Filed Exhibit No. 33. S & P in a press release dated February 15, 2012 stated, “NSTAR’s proposed settlement in Massachusetts has no immediate effect on ratings.” Id.

The following is historical audited financial information (in millions except common share data) on NSTAR:

	12/31/11	12/31/10	12/31/09	12/31/08	12/31/07
<b>Income Statement Data:</b>					
Operating Revenues (\$)	2,930.4	2,916.9	3,050.0	3,208.3	3,136.1
Net Income from Continuing Operations (\$)	269.4	236.0	244.0	226.0	213.1
Net Income from Discontinued Operations (\$)	---	116.9	9.2	11.5	8.4
Net Income Attributable to Common Shareholders (\$)	269.4	352.9	253.2	237.5	221.5
<b>Balance Sheet Data:</b>					
Assets from Continuing Operations (\$)	8,065.4	7,933.9	7,976.9	8,094.0	7,588.6
Assets Held for Sale(\$)	---	---	167.9	175.5	171.0
Total Capitalization (\$)	4,239.3	4151.7	4,295.5	3,760.6	3,671.7
<b>Common Share Data:</b>					
Earnings per Common Share (\$)	2.60	2.25	2.37	2.22	2.07
Dividends Declared Per Share (\$)	1.56	1.62	1.52	1.42	1.32

Application, Exhibit 8, p. 21; Late Filed Exhibit No. 3.

The Authority finds that the historical audited financial information from NSTAR shows it to have a strong earnings record and most recently an increase in net income

from continuing operations of \$33.4 million from 2010 to 2011. Earnings per common share have had an upward trend for the entire 5-year period of 2007 through 2011. The Authority concludes that the historical 12 months ended December 31, 2011 income statement shows NSTAR to be a profitable enterprise able to meet expenses and show a profit for shareholders, which is a prerequisite to NSTAR's financial suitability under Conn. Gen. Stat. §16-47. Balance sheet information which shows assets from continuing operations of \$8,065.4 million and total capitalization of \$4,239.3 million for year end 2011 shows a well capitalized company with ample assets to produce a continuing revenue stream. This illustrates NSTAR's financial suitability under Conn. Gen. Stat. §16-47.

The following income statement shows financial information, on a consolidated basis, for NU and NSTAR with the effect of the Transaction on a pro forma basis for the 12-months ended December 31, 2011:

(in millions)	NU	NSTAR	Pro Forma Adjustment	Pro Forma Combined
Operating Revenues \$	4,465.7	2,916.7	50.2	7,477.6
Total Operating Expenses \$	3,671.5	2,424.7	40.1	6,136.3
Operating Income \$	794.2	537.0	10.1	1,341.3
Net Income from Continuing Operations \$	400.5	271.4	8.8	680.7
Net Income from Continuing Operations Attributable to Controlling Interests \$	394.7	269.4	8.8	672.9

Late Filed Exhibit No. 1, p. 3.

Authority analysis of the above income statement data shows that combining NU and NSTAR produces a more profitable entity with operating revenues of \$7,477.6 million and operating income of \$1,341.3 million. The Authority concludes that the combination of NU and NSTAR produces a much more profitable entity that easily passes the financial suitability criteria.

The following balance sheet financial information, on a consolidated basis, for NU and NSTAR shows the effect of the Transaction on a pro forma basis for the 12-months ended December 31, 2011:

(in millions)	NU	NSTAR	Pro Forma Adjustment	Pro Forma Combined
Total Current Assets \$	1,357.5	793.1	11.6	2,162.2
Property, Plant and Equipment Net \$	10,403.1	5,055.1	46.3	15,504.5
Total Assets \$	15,647.1	8,097.2	3,517.2	27,261.5
Total Current Liabilities \$	1,947.7	1,310.9	78.2	3,336.8
Total Capitalization \$	8,746.7	3,838.6	3,335.8	15,921.1
Total Liabilities and Capitalization \$	15,647.1	8,097.2	3,517.2	27,261.5

Late Filed Exhibit No. 1, p. 4.

The Authority finds combining the individual balance sheets of NU and NSTAR produces a stronger balance sheet for the post merger NU. As a combined entity the consolidated balance sheet is even stronger with total capitalization of \$15,921.1 million and total assets of \$27,261.5 million. The Authority concludes that the combination of NU and NSTAR produces increased financial strength and capitalization post merger that provides further evidence of meeting the financial suitability criteria.

The following are cash flow statements, for the 12-months ended December 31, 2011, for NU and NSTAR together with the consolidated pro forma effect of the Transaction:

(\$000)	NU	NSTAR	Pro Forma Adjustments	Pro forma Combined Total
Net Cash Flows Provided by Operating Activities \$	970.4	792.0	24.2	1,786.6
Net Cash Flows Used in Investing Activities \$	(1,018.6)	(440.6)	19.0	(1,478.2)
Net Cash Flows Provided by/(Used in) Financing Activities \$	31.4	(352.8)	0	(324.1)
Net (Decrease)/Increase in Cash and Cash Equivalents \$	(16.8)	(1.4)	5.2	(13.0)
Cash and Cash Equivalents – Beginning of Year \$	23.4	13.1	4.1	40.6
Cash and Cash Equivalents – End of Year \$	6.6	11.7	9.3	27.6

Late Filed Exhibit No. 1, p. 5.

The Authority finds that the above pro forma cash flow consolidation shows NU and NSTAR to have a cash position at year-end of \$27.6 million after cash used in investing activities. The Authority finds that the combination of NU and NSTAR produces a stronger cash flow that easily passes the financial suitability criteria.

The following are the capital structures, for the 12-months ended December 31, 2011, for NU and NSTAR together with the consolidated pro forma effect of the Transaction:

(in millions)	NU	Ratio	NSTAR	Ratio	Pro Forma Adjustment	Pro Forma Combined	Ratio
Long-Term Debt \$	4,614.9	52.8%	1,757.4	45.8%	486.5	6858.8	43.1%
Preferred Stock \$	116.2	1.3%	43.0	1.1%	0	159.2	1.0%
Equity \$	4,015.6	45.9%	2,038.2	53.1%	2,849.3	8,903.1	55.9%
Total Capitalization \$	8,746.7	100%	3,838.6	100%	3,335.8	15,921.1	100%

Late Filed Exhibit No. 1, p. 4.

The Authority finds that the pro forma combined company of NU and NSTAR produces a greater equity ratio of 55.9% compared to the Companies on a standalone basis. This greater equity ratio shows a better capitalized combined entity and therefore financially stronger. The Authority finds that the financial suitability test is met by this stronger capitalization.

The following are the present and pro forma interest and fixed charge coverage ratios, for the 12-months ended December 31, 2011, for NU and NSTAR together with the consolidated pro forma effect of the Transaction:

(\$000)	NU	NSTAR	Pro Forma Adjustments	Pro forma Combined Total
Total Earnings \$	826.7	546.1	10.1	1,382.9
Total Interest and Fixed Charges \$	275.9	109.9	(5.2)	380.6
Ratio of Earnings to Fixed Charges	3.00	4.97		3.63

Late Filed Exhibit No. 1, p. 13.

The Authority finds the above pro forma consolidation of NU and NSTAR with a 3.63 ratio of earnings to fixed charges provides a financial cushion large enough to meet fixed charges in the future. The Authority finds that the financial suitability test is met by this strong fixed charge coverage of 3.63.

During cross-examination the Applicants stated that the above year end 2011 financial information and the pro forma combined financial information “demonstrate that both companies are positive earnings . . . collectively on a pro forma basis, these companies will earn \$627.9 million. You can see their balance sheet on a pro forma basis as well, demonstrating that between the two of these companies, \$27 billion of combined assets. You can also see that these companies are well capitalized and conservatively capitalized if you look at the amount of debt that they’re carrying and the amount of equity behind their books. And you can look, lastly, at the coverages and cash flow positions which, again, are supportive of their current credit ratings and demonstrate companies that are in a fine credit worthy standpoint.” Tr. 2/27/12, pp. 5 and 6. The Authority agrees with the Companies’ assessment that the combined NU and NSTAR produces a financially strong entity that is credit worthy.

On a prospective basis this Transaction takes advantage of the NU and NSTAR opposite cash positions in the medium term. Over the next few years NU has significant cash flow needs since it is investing in distribution and transmission infrastructure including transmission lines, an example of which, is the Northern Pass Transmission (NPT) project and other projects which will benefit customer’s by increasing reliability over the long term. To finance these investments, NU will require additional debt, equity capital or a combination of the two which NU had been planning on to meet its capital requirements. Conversely, NSTAR is in the opposite cash position of NU. NSTAR’s sale of its Medical Area Total Energy Plant, Inc. (MATEP) facility generated cash and as such, it was in the process of repurchasing common equity shares. Due to the merger agreement, NSTAR’s stock repurchase program was halted so that the remaining \$75 million could be used to offset a portion of the \$300 million equity financing that NU had been planning related to previously mentioned distribution projects. Further, NSTAR has a deferred transition charge that will decline over the next three years and a significant IRS refund which will provide additional cash flow available for investments. Responses to Interrogatories FIN-9 and FIN-25. The Authority finds this merger produces a good fit for NU and NSTAR given the respective cash positions of both companies.

In addition, the merger improves the long-term financial strength and risk profile of the combined NU as compared with NU and NSTAR on a stand-alone basis since it diversifies NU’s geographic and business lines. This diversity serves to mitigate the potential effect of economic shocks to one area of the business that may not impact other areas such as a major customer moving in or out of the system, a group of businesses experiencing an increase or decrease in revenues, or a storm impacting a particular service area. Further, the merger results in a combined NU with increased regulated operations then pre-merger which produces smoother, more predictable cash flows and the greater financial flexibility and liquidity of the combined NU, serves as insurance against poor economic conditions. A larger post-merger NU also helps to minimize the constraints associated with large new investments and therefore allows a larger financially stronger firm to invest in projects that would be more difficult for smaller firms to finance. Response to Interrogatory FIN-25. The Authority finds a larger post-merger NU will be financially stronger and therefore better able to meet the needs of its customers. The Applicant’s indicate that the various provisions of the CT Settlement will not affect the financial suitability criteria under Conn. Gen. Stat. §16-47. Tr. 3/23/12, pp. 1237 and 1238. The Authority finds the financial suitability criteria has

been demonstrated by the Applicants and as such, from a financial view point, the merger should take place.

## **2. Managerial Suitability and Responsibility**

Pursuant to Conn. Gen. Stat. §16-47(d), the Authority is required to assess the managerial suitability of NU and NSTAR to enter into their proposed merger. The Authority recognizes and takes seriously, the managerial acumen that is required to run successful utility operations for both electric utilities in CL&P and NSTAR Electric as well as local gas distribution utilities in Yankee and NSTAR Gas.

From a managerial perspective, NU plans to combine and shift some of the senior level executives to draw upon the highly experienced leadership teams and complementary strengths of both companies. The Merger Agreement provides that Mr. Shivery, currently the President and CEO of NU, will be one of the seven trustees designated by NU, while Mr. May, currently President and CEO of NSTAR, will be one of the NSTAR designees. Furthermore, pursuant to the merger agreement Mr. May will be appointed as the CEO of NU upon completion of the Transaction. Application, p. 10. Combined, the senior management of NU, Messrs. Shivery, Butler, McHale and Olivier have over 135 years of experience in the energy business. Similarly, the NSTAR officers named in the merger agreement, Messrs. May, Judge, Nolan and Ms. Carmody, have a combined 111 years of experience in the energy business. The local distribution operations of CL&P and Yankee Gas will continue to function as autonomous operating companies, with decisions involving management and operations made locally. Application, p. 9. As such, the NU operating companies will continue to be under the leadership of Mr. Olivier, NU's current chief operating officer, and Mr. McHale will be responsible for NU's customer service organization. Also, Mr. Powell, currently the President and Chief Operating officer for Yankee Gas, will become the President and Chief Operating Officer of both Yankee Gas and NSTAR Gas upon completion of the merger. Application, p. 20.

While the Authority is familiar with NU, it is less familiar with NSTAR's managerial suitability. The record evidence shows that the NSTAR key officers and executives also possess significant management expertise and acumen to run an electric and gas distribution utility successfully. The Mass DPU administers a comprehensive and formalized service quality measurement program in which NSTAR Electric and NSTAR Gas are top performers in Massachusetts in relation to service quality, safety and reliability and emergency response. In fact, Mr. Judge testified that in Massachusetts in the last five years, NSTAR has had zero service quality penalties. Tr. 2/14/12, pp. 133 and 134. Furthermore, Mr. Judge stated that NSTAR has historically been in the top quartile, and in some instances, top decile of the utility industry in terms of key customer service statistics like number of outages, length of outages, call to answer rate, gas emergency response and billing accuracy. Tr. 2/14/12, p. 125. Both operating companies are active and productive participants in the Massachusetts energy efficiency programs, which help to reduce the amount of energy consumed by customers, thereby lowering end-use costs. Neither NSTAR Electric or NSTAR Gas has sought an increase in base rates in several years, with the avoidance of base-rate

increases achieved primarily through effective management of operations and maintenance costs. Responses to Interrogatories FIN-35 and FIN-36.

The fundamental premise of the Transaction is that both NU and NSTAR are successful and similarly situated utility holding companies, with operations located entirely within New England. The unique circumstances of this particular merger will allow the organizations to pool their resources and operational expertise to achieve an operating platform that encompasses the best practices of both companies within a common operating environment, while maintaining a high level of local connection. Response to Interrogatory FIN-36. While significant changes are expected with the senior level management positions, NU expects no adverse change in management or operations of the Connecticut regulated operating subsidiaries as a result of the Transaction. The regulated operating subsidiaries will continue to function under control of local management personnel, with employees and field operations remaining in place to conduct operations in accordance with the expectations and requirements of state regulators.

The Authority also analyzed the managerial suitability by reviewing the backgrounds and resumes of all the key officers and managerial personnel. The Authority finds the knowledge and expertise of the key officers and management personnel to be extensive. The officers have significant and extensive business and regulatory experience that makes them qualified to fulfill the statutory requirements of being managerially suitable for the Transaction to be approved.

In addition to the management suitability evidence cited above, the Authority finds that the Companies' general financial condition represents a reliable, overall measure of management effectiveness. The Authority finds that it is appropriate to consider financial condition in conjunction with the fact that there will be continuity in local decision making and responsibilities after the merger. The highly experienced leadership teams and complementary strengths of both companies should continue to ensure strong management of NU going forward. The Applicants indicate that the various provisions of the CT Settlement will not affect the managerial suitability criteria under Conn. Gen. Stat. §16-47. Tr. 3/23/12, p. 1238. Accordingly, the Authority finds that NU and NSTAR have satisfactorily addressed Conn. Gen. Stat. §16-47(d) as it pertains to managerial suitability.

The new organizational structure of the post merger NU will provide for support to the utility operating companies of CL&P and Yankee. The organizational chart for NU at the time of closing shows functional areas of the general counsel, human resources, chief financial officer, chief administrative officer, corporate relations, and chief operating officer all reporting to the president and chief executive officer. Application, Exhibit 11. This organizational structure will enable communication, under clear lines of delineation, to flow up and down from and to the utility operating companies. The dual headquarters arrangement in Hartford and Boston allows for proximity to customers consistent with the geographic diversity of its service territory, and reflects the strong local presence and significant role that the company will continue to have in serving these major economic centers. The headquarters will serve as corporate offices for senior management and other corporate functions. Since the leadership of CL&P and Yankee will continue to be based in Berlin, Connecticut, the dual headquarters of NU

will have no negative effect on operations. Response to Interrogatory FIN-28. The service companies of NUSCO and NSTAR will continue to provide services such as human resources, treasury functions, accounting and information and technology to support the utility operating companies. The Authority concludes that the new organizational structure of the post-merger NU will be advantageous to the utility operating subsidiaries.

### **3. Technological Suitability**

The Applicants state that, as regulated utilities, CL&P and Yankee Gas have an obligation to provide safe, reliable and cost-effective electric and natural gas service to their customers, and NU has supported that obligation through the adoption of technological advances. The Applicants emphasize that technology is one of the most important resources that a utility can use to meet the needs of customers, as it touches every aspect of utility operations, including service connections and disconnections, billing and payment alternatives, metering, customer service inquiries, energy alternatives and numerous other permutations of the customer service relationship. The Applicants state that the Transaction will enable NU to identify best practices with respect to information technology and infrastructure. The Applicants further state that the Transaction will position NU to leverage identified best practices and systems for the benefit of the customers of the post-merger company. Application, pp. 19 and 20.

Additionally, the Applicants state that NSTAR will be a positive addition to the NU system. They assert that NSTAR is a top performing distribution company in Massachusetts with a strong record of service quality, and that NSTAR and NU share a common commitment to providing safe and reliable service to their customers. In affirmation of NSTAR electric's service record, the Applicants provide that it has outperformed in each category of the Mass DPU-established service quality metrics. Finally, the Applicants state that NSTAR Gas has also outperformed its Mass DPU-established service quality metrics. Application, pp. 21 and 22.

Electric reliability is predominantly measured in terms of three statistics: the System Average Interruption Index (SAIDI), the System Average Interruption Frequency Index (SAIFI), and the Customer Average Interruption Duration Index (CAIDI). SAIDI is defined as the sum of customer interruptions in the preceding 12-month period, in minutes, divided by the average number of customers served during that period. SAIFI is defined as the total number of customers interrupted in the prior 12-month period divided by the average number of customers served during this period. CAIDI, also known as average outage restoration time, is defined as the sum of all outage duration times divided by the total number of interruptions. Mathematically, SAIDI is the product of SAIFI and CAIDI. Lower SAIDI, CAIDI and SAIFI numbers reflect better reliability performance in terms of outage duration and frequency.

Reliability is difficult to compare between electric distribution systems. The reliability of overhead electric distribution systems is heavily dependent on the design of the system and the terrain through which it traverses, particularly the extent of vegetation in close proximity to electric facilities. Furthermore, reliability data is dependent on weather patterns, particularly the occurrence of major storms. For this reason, reliability data is formulated both including and excluding the effects of major

storms, although the extent and frequency of storms still has a great effect on reliability data.<sup>3</sup> Annual comparison of electric reliability data is difficult, and many jurisdictions use a multi-year average to smooth the effects of annual variations in weather patterns. CL&P's service territory includes large portions of rural/suburban territory, consisting of heavily-treed areas and hilly terrain. NSTAR's service territory is largely urban with some suburban treed areas and Cape Cod, which is frequently exposed to strong wind and rain storms. NSTAR's electric distribution infrastructure is comprised of 47% underground construction, whereas CL&P's electric distribution infrastructure is comprised of 27% underground construction. Therefore, NSTAR's system tends to have a greater degree of resilience under storm conditions. Response to Interrogatory FIN-123.

The Applicants provided electric reliability data for CL&P and NSTAR electric for the years 2001-2010. Below is a summary of this data.

**CL&P and NSTAR Electric Reliability Statistics  
2001-2010**

	<u>SAIDI</u>		<u>SAIFI</u>		<u>CAIDI</u>	
	<i>CL&amp;P</i>	<i>NSTAR</i>	<i>CL&amp;P</i>	<i>NSTAR</i>	<i>CL&amp;P</i>	<i>NSTAR</i>
Excluding Major Storms	121	99	0.93	1.1	128	91
Including Major Storms	335	114	2.6	1.2	133	98

Response to Interrogatory FIN-124.

In comparing the above data, it should be taken into account that NSTAR's major storm exclusion criteria are substantially different from CL&P's major storm exclusion criteria. Therefore, comparisons using data including major storms are more relevant than data excluding major storms. In each storm-including measure of reliability, NSTAR Electric's reliability statistics are superior to CL&P's reliability statistics.

The Authority required the applicants to submit histories of investigations by the Mass DPU of NSTAR Electric and NSTAR Gas over the last 10 years. Responses to Interrogatories FIN-125 and FIN-133. Authority review of this information determines that NSTAR has been operating NSTAR Electric and NSTAR Gas at acceptable levels of safety and reliability.

Generally, it is reasonable for one to presume that an electric and gas company the size of NSTAR would have the managerial and technological expertise and expertise to contribute to a larger organization operating similar assets. The Authority's review of NSTAR's electric and gas operating record confirms that it has been operating these assets in a safe and reliable manner. Therefore, NSTAR management

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<sup>3</sup> CL&P and NSTAR Electric employ different major storm exclusion criteria, which affects which storms are excluded from non-major storm reliability data. CL&P employs a statistically-based criterion that is based on the number of "trouble spots" in the system during the storm period, whereas NSTAR Electric declares a major storm when a state of emergency is declared by the Governor of Massachusetts, an unplanned interruption occurs to 15% or more of electric customers, or a failure occurs of another company's transmission or power supply system. Response to Interrogatory FIN-124.

participation should be capable of effectively contributing to a new organization that will operate CL&P and Yankee Gas in a safe and reliable manner. The Applicant's indicate that the various provisions of the CT Settlement will not affect the technological suitability criteria under Conn. Gen. Stat. §16-47. Tr. 3/23/12, pp. 1239 and 1240. Based on the foregoing, the Department concludes that the new organization has technological suitability to exercise control over CL&P and Yankee Gas.

#### **4. Net Benefits Analysis**

The Companies stated that customers, as a result of the proposed merger, will see cost savings associated with increased operating efficiencies, the implementation of best practices and process improvements, increased purchasing leverage and staffing reductions achieved primarily through employee attrition and retirement. To highlight these claims, the Companies developed a forecast of the potential cost savings in the form of a ten-year net benefits analysis (Net Benefits Analysis) that was dated April 8, 2011. Application, p. 14, Exhibit 13.

According to the Companies, the Net Benefit Analysis estimates potential labor and non-labor cost savings from corporate and administrative functional areas, and quantifies merger-related costs that will be incurred to enable the Transaction to achieve the resulting cost savings. The Net Benefit Analysis was developed by first analyzing the current cost structures of NU and NSTAR, with total actual labor costs disaggregated into nine principal functional areas for analysis. For non-labor cost savings, the Companies examined actual costs in 17 potential areas of savings, including 13 categories of Corporate and Administration costs (e.g., insurance, facilities, benefits and fleet costs) and three categories of Purchasing costs (procurement, inventory and contract services) and energy costs.

Once classified, the Companies developed an estimate of anticipated reduction in actual costs by analyzing the post-merger changes expected for each specific category of costs. The post-merger changes were quantified using cost-reduction metrics that were either developed specifically for the Transaction based on transaction-specific circumstances, or that were used successfully to quantify cost savings in a prior merger between BEC Energy (BEC) and Commonwealth Energy Systems (CES) and determined to apply equally to this Transaction. Application, pp. 14-15. The BEC and CES Merger created what is now known as NSTAR Gas and NSTAR Electric.

The Companies state that the Net Benefits Analysis shows that operational savings made possible by the Transaction are projected to be approximately \$948 million on an enterprise-wide basis over the first ten years after the merger, offset by approximately \$164 million in merger-related costs, resulting in net savings of approximately \$784 million. The Companies also state that approximately \$350<sup>4</sup> million of the net savings would be attributable to Connecticut over the ten-year period.

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<sup>4</sup> The percentage of the total net merger synergies attributable to CL&P were 37.8% and to Yankee Gas were 7.0% totaling 44.8% in Connecticut. The Transaction produced "net benefits" for all NU customers, including Connecticut customers. Application, p. 15. (\$783.8 million x 44.8% = \$351.14 million). Responses to Interrogatories FIN-120, OCC-032 and AG-020.

The Net Benefits Analysis included in summary form, forecasts net benefits over the first ten years<sup>5</sup> as follows:

(\$ millions)	Total
Labor Savings	\$ 449.1
Corporate and Administrative Savings	276.0
Purchasing Savings	223.0
Energy Savings	—
Total Savings	\$ 948.2
Merger-Related Costs Amortization	(164.3)
Net Savings	\$ 783.8

The Authority has reviewed and analyzed the Companies' Net Benefits Analysis that included a detailed ten-year net benefits summary that estimates total savings and merger-related costs that will be incurred to achieve the resulting net savings.<sup>6</sup> An overarching concern for the Authority is that the level of total net merger synergies attributable to the Connecticut regulated companies must be fair and reasonable. The Authority acknowledges that distribution of merger-related benefits between the operating companies must be based on estimates at this point while taking into consideration items that are specific to this merger. Many assumptions factor into the effectiveness of the estimated savings computed in the Net Benefits Analysis. Therefore, as part of its analysis the Authority questioned the Companies on a number of issues including methodology assumptions, adjustments and estimates of savings, Yankee merger savings, regulatory treatment of merger-related costs, base year cost data and benefit percentages, merger savings report and settlements of merger-related plans.

#### **a. Methodology of Net Benefit Analysis**

As stated, the Companies in producing the Net Benefits Analysis, followed the methodology used in the D.T.E. 99-19 Study, which related to the merger of BEC and CES. According to the Companies, this methodology provides a sound basis for estimating net merger savings in this proceeding. The Companies believe that the BEC-CES Merger was structurally very similar to the Transaction in both the mechanics of integration and the areas of cost savings. The D.T.E. 99-19 Study was also thoroughly reviewed by the Mass DPU and has established a proven track record to support the quantification of savings in that case. Application, Exhibit 13, p. 3. The NSTAR witness testified that this particular methodology has been most commonly used in the utility industry over the last decade and a half. Tr. 2/15/12, p. 24. The Companies contend that the Net Benefit Analysis filed in this proceeding reflects management's best estimate of savings or cost-avoidance opportunities in the Transaction, and the basic methodology provides the framework which is still being used in the industry today by other mergers and acquisitions. Tr. 2/15/12, pp. 26 and 27. Essentially, the Net Benefits Analysis addresses various categories, but is updated in terms of dollars and cost structures unique to the Transaction to provide a reasonable

<sup>5</sup> The detailed ten-year Net Benefits Summary was for the years 2011 to 2021.

<sup>6</sup> The total savings less merger-related costs equal the net savings. ( $\$948.2 - 164.3 = \$783.8$ ).

estimate of expected savings. The Authority closely examined the cost-reduction metrics and savings estimates developed for each specific category of costs and finds the methodology and the assumptions used therein to be reasonable and acceptable for the Transaction.

### **b. Adjustments and Estimates of Benefit Savings**

While the savings and cost applications from the D.T.E. 99-19 Study were reproduced and applied in the Net Benefits Analysis in this proceeding, certain categories of costs to develop the forecasted savings were calculated based on existing cost structures specific to the Companies and adjusted for the explicit circumstances of the Transaction. Application, Exhibit 13, p. 4. For example, the Companies did not calculate or include any savings relating to facilities consolidation, inventory costs or field and call-center operations. These areas were a factor in the BEC-CES Merger; however, the geographic proximity in the Transaction will not generate savings in these areas overall. The unique circumstances or differences between the Transaction and the prior BES-CES Merger include: 1) the decision to maintain dual headquarters in both Connecticut and Massachusetts; 2) the lack of any overlap in the service territories; and 3) the decision to forego a severance program to that used in the prior merger. Response to Interrogatory FIN-143.

According to the Companies, the adjustments made to develop the Net Benefit Analysis had the effect of reducing the estimate of savings, which therefore creates a conservative savings forecast. Application, Exhibit 13, p. 4. The Companies claimed to have consulted with various experts and the current benefits administrators and/or underwriters to test the assumptions and reasonableness of the savings and cost forecasts. The Companies' witnesses attested to the fact that they continue to believe that there is little likelihood the actual merged related savings will be materially less than calculated in the Net Benefit Analysis. Tr. 2/15/12, pp. 28–31. Since the Net Benefits Analysis produced a conservative savings forecast, the Authority expects that actual merger related savings will be more than what was estimated.

### **c. Yankee Merger Savings**

NU acknowledged that customers of Yankee Gas are already paying lower rates because of approximately \$1.5 million in projected merger savings that the Authority applied in calculation of Yankee's current rates, and will continue to benefit when \$3 million is applied beginning in July 2012. Application, p. 15; Docket No. 10-12-02, Decision. The inclusion of the estimated merger savings in Yankee's current rates will not change the actual amount of savings that will be achieved nor will it change the manner in which the savings are realized by the operating companies of NU in this proceeding. Response to Interrogatory FIN-121. However, NU did not propose a similar method to distribute savings to CL&P customers because it is the Company's position that it was inappropriate to allocate from the forecasted gross savings before the Transaction was consummated. Tr. 2/15/12, pp. 60 and 61. Throughout the proceeding, it was NU's contention that the appropriate level of net savings ultimately allocated to CL&P and Yankee would be subject to the Authority's review and approval in a future rate case, which would ensure that customer interests would be fully protected. Response to Interrogatory FIN-54.

The CT Settlement was silent on the treatment of the distribution or allocation of merger savings to Yankee. The Authority interprets this to mean that Yankee has already realized its portion of projected merger savings at this time according to the referenced decision above. Tr. 3/23/12, pp. 1247 and 1248. The extent and timing of any future recovery and distribution of the savings to customers will be reviewed in Yankee's next rate case proceeding.

#### **d. Regulatory Treatment of Merger-Related Costs**

The Companies stated that they do not seek any rate changes associated with the Transaction for recovery of merger-related costs or allocation of savings that will occur over time and that such issues should be addressed in future rate cases for CL&P and Yankee. Application, p. 15. With respect to the regulatory treatment of the estimated \$164.3 million<sup>7</sup> the Companies stated that merger-related costs were calculated by developing individual estimates for the major categories of costs that will be incurred to complete the merger and achieve operational savings. Application, Exhibit 13, p. 5. The Companies believe that merger-related costs are costs that were incurred to achieve the savings and that the savings would go automatically to customers in the form of cost avoidance at future rate proceedings. Tr. 2/15/12, pp. 347-350.

The Authority acknowledges that to achieve merger related savings it is necessary for the Companies to incur out-of-pocket categories of transaction and integration costs that represent investments in the merger. Many of these costs cannot be quantified because they are based on forecasted estimates. The Authority will review the merger-related costs along with the associated resulting net savings in a future proceeding. That proceeding would involve a determination of the appropriateness of the merger-related costs expended in order to achieve the merger related savings. The Authority notes that in accordance with the CT Settlement, "No transaction costs incurred to negotiate, draft, or execute the merger agreement, or to obtain the regulatory and shareholder approvals required to consummate the Proposed Transaction, shall be recorded on the books of CL&P or Yankee. Any future recovery of transaction and integration costs is subject to Authority review and approval in a future rate proceeding." CT Settlement, pp. 6 and 7, paragraph 5.3. In addition, the Authority notes that any change of control payment made to officers not staying with the merged company or retention payments made to officers remaining with the post-merger organization will be recorded at the parent level and not eligible for recovery from customers. CT Settlement, p. 7, paragraph 5.3.

#### **e. Base Year Cost Data and Benefit Percentages**

One of the financial assumptions used in the Net Benefits Analysis by the Companies was to compile actual cost data for the Base Year 2010. Savings were

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<sup>7</sup> The basis for calculation of merger-related costs includes costs for Separation \$21.8 + Retention \$20.0 + Systems Integration Costs \$43.5 + Directors and Officers Tail Coverage Liability \$1.6 + Internal & External Communications \$2.0 + Transition \$7.2 +Transaction \$64.5 + Telecommunications \$0.7+ Regulatory Process \$3.1 = \$164.4 million estimate. Net Benefits Analysis, p. 49.

computed using the Base Year costs, assuming a merger closing date of October 1, 2011, escalated through 2021. Net Benefits Analysis, p. 8. According to the Companies, approximately \$783.8 million of net savings will be produced, on an enterprise-wide basis over the first ten years, of with an estimated \$351 attributable to Connecticut to be allocated among NU's CL&P and Yankee subsidiaries. The record in this proceeding produced a 44.8% or 42.7% of total net merger benefits that were attributable to the Connecticut subsidiaries based on a 2009 and/or 2010 actual cost base year. Application, p. 15; Responses to Interrogatories FIN-120, OCC-32 and AG-20.

The Authority determined net benefit percentages attributable to NU's Connecticut-regulated companies should be calculated using a 2011 actual cost base year. Tr. 02/15/12, pp. 355-361. The Companies actual 2011 cost data produced \$356.6 million (as opposed to the 2009/2010 amount of \$350 million) of net benefits attributable to the Connecticut regulated subsidiaries.<sup>8</sup> Tr. 2/27/12, pp. 1187-1190. As stated, the Companies view the net benefit analysis as conservative. The Authority is aware that a conservative approach for the net benefit analysis should result in actual merger-related savings being greater than the net savings produced in the Net Benefit Analysis. The Authority expects that the actual net benefits attributable to Connecticut will not be less than what is produced on the record, which is the \$356.6 million based on 2011 cost data.

#### **f. Merger Savings Report**

The Companies provided a copy of an NSTAR Merger Savings Report that was prepared for the period 2000 to 2002 with respect to the BEC-CES Merger in the D.T.E. 99-19 Study. Response to Interrogatory FIN-138. This report was prepared on March 18, 2003, in accordance with a directive from the Mass Department of Telecommunications and Energy. The NSTAR Merger Savings Report describes the anticipated source of the savings and the basis of the savings forecast calculation. The Merger Savings Report presents the actual results indicating whether the company achieved the forecast savings and provided an explanation of any major deviation from the forecast level. The report documents whether the forecasted levels of merger-related savings were met or exceeded for a three-year period. The Companies testified that the intent of that study was to document the actual savings achieved from the merger several years after the merger had been consummated, and whether it would be able to achieve the forecasted savings with the Transaction. The Companies further stated that such a report could be produced three and a half years after the close of the Transaction, if so requested by the Authority. Tr. 2/15/12, pp. 365-368. The Authority has reviewed the Merger Savings Report used in in the D.T.E. 99-19 Study. The Authority will direct the Companies to file a Merger Savings Report, similar in form to the DTE 99-19 merger savings report, prepared for the period 2012 through year end 2014 by April 30, 2015 and annually thereafter until April 30, 2017. Such report shall determine whether the estimated total net merger benefits attributable to the

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<sup>8</sup> The percentage of the total net merger synergies attributable to CL&P were 38.5% and to Yankee were 7.0% totaling 45.5% in CT. The Transaction produced "net benefits" for all NU customers, including Connecticut customers. Application, p. 15; Late Filed Exhibit No. 8. ( $\$783.8 \text{ million} \times 45.5\% = \$356.6 \text{ million}$ ).

Connecticut regulated companies was achieved and whether the estimates used in the Net Benefits Analysis were appropriate.

#### **g. Settlements of Merger-Related Plans**

The record in this proceeding cited examples of regulatory proceedings in other jurisdictions where settlements were involved. These examples were used as areas of consideration for effectively allocating merger-related benefits in this proceeding. An attempt was made to summarize the pros and cons of the disposition of merger-related savings that were settled in other jurisdictions. The Companies attempted to respond to whether any of these dispositions were useful in this proceeding. Response to Interrogatory AG-23; Late Filed Exhibit No. 9. The Companies witness testified that, "I believe some of the models here could be useful. It would depend upon the circumstances. Each one of these transactions and different savings estimates were different; the speed with which the savings were going to be achieved were different; and, most importantly, the financial condition of the situation of each of the utilities is different than the two companies that you have before you today. So while the structures could be utilized, the numbers in terms of the agreement are likely to be different as each of these transactions is different from one another." Tr. 2/27/12, pp. 1191 and 1192. The Authority has reviewed the potential effective merger-related plans devised by settlement in other jurisdictions. The Authority finds the settlement presented in this docket strikes a balance between short and long-term benefits to customers and as such the Authority has approved the CT Settlement as outlined in Section D in this Decision.

#### **5. Effect on NU's Utility Operating Subsidiaries of CL&P and Yankee**

The Transaction will have no impact on the balance sheet and income statement of CL&P and Yankee since the proposed merger will be accounted for as an acquisition of NSTAR by NU. Thus, the accounting entries to be recorded as a result of the merger will be made at the NSTAR holding company level and will not impact the CL&P and Yankee balance sheet and income statements. Response to Interrogatory FIN-24. The Authority concurs with this accounting analysis and finds that because of this the Transaction should be transparent to Connecticut ratepayers.

In addition, the Companies report that the merger will not result in any utility assets or intellectual property being transferred between NU subsidiaries and NSTAR subsidiaries. Response to Interrogatory FIN-65. The Authority finds this protects Connecticut ratepayers.

Since the Transaction is a stock-for-stock transaction, there is no debt being issued by NU and as such, CL&P, Yankee and their customers will not be responsible for additional debt or associated interest expense due to the Transaction. Response to Interrogatory FIN-66. The Authority concurs with this treatment.

CL&P and Yankee will have no change in their respective business risk profiles as a result of the Transaction. Upon completion of the Transaction, the equity owner of the regulated entities will be NU, which will be a change of ownership for the NSTAR regulated companies. CL&P and Yankee will continue to be locally operated and will

provide the same services to their customers as they currently do presently. Response to Interrogatory EL-1. The Authority agrees with this occurrence.

NU reported that approval of the transaction will not change the process by which capitalization ratios are established and that CL&P and Yankee will continue to manage to their respective Authority-allowed capital structures as they have done in the past. The Authority, in regulatory proceedings, establishes the CL&P and Yankee capital structure through capitalization ratios in rate cases that amend their rate schedules. Once these capitalization ratios are established, CL&P and Yankee manage to their respective Authority-allowed capital structure using a five quarter average over the period that rates are set known as the rate year. Under the direction of NU's chief financial officer, CL&P and Yankee achieve their Authority-allowed capital structure targets by combining actual and projected earnings, common dividends, and long-term debt issuances. Equity contributions from the NU Parent are then timed and planned to achieve CL&P's and Yankee's Authority allowed capital structures. Response to Interrogatory EL-16. In addition, NU reports that the Transaction will not have a material impact on the cash flow of CL&P and Yankee due to the way their capital structures are managed and their regulation as public utilities whereby the rates charged to customers are based on their respective costs of service. However since the merger will produce savings, CL&P and Yankee will benefit by delaying or reducing a rate request to adjust rates due to the positive cash impacts from those merger savings replacing the cash that would have been obtained through rate relief. Response to Interrogatory FIN-9. The Authority finds this protects the regulatory process in Connecticut and as such is beneficial to rate payers.

NU reported that approval of the transaction will not change the process by which CL&P and Yankee set their dividend payout ratio. CL&P and Yankee have historically targeted a dividend payout ratio of approximately 60% of their earnings. This dividend setting process will not change due to the Transaction and as such the 60% dividend payout ratio target is not expected to change in the near term. Response to Interrogatory EL-3. The Authority finds this methodology to be proper.

## **6. Provision of Safe, Adequate and Reliable Service**

Upon completion of the Transaction, CL&P and Yankee will continue to be managed locally and their headquarters will be in Berlin, Connecticut. There is evidence to suggest both CL&P and Yankee will continue to provide safe, adequate, and reliable service with an emphasis on enhancing reliability and levels of service. CL&P and Yankee have a long history of providing safe and reliable service to their ratepayers. The Applicants believe that the Transaction will have no negative impact on service for CL&P and Yankee and, has the potential to allow for future efficiencies and improvements. In the future, because of the merger, CL&P and Yankee will benefit from the sharing of best practices with NSTAR Electric and NSTAR Gas which will enable CL&P and Yankee to remain a strong and vital presence in Connecticut. Application, pp. 20 and 21.

The addition of NSTAR Electric and NSTAR Gas will also have a positive effect on the NU system. NSTAR has a strong record of customer service in Massachusetts as a top performing distribution company. NSTAR shares with NU the commitment to

provide safe and reliable service to customers. Since 2001, NSTAR has had a performance-oriented operational plan to meet Mass DPU requirements. Under this performance oriented operational plan, NSTAR Electric has demonstrated measureable results in service reliability and customer service objectives and has exceeded, in each category, the Mass DPU service quality metrics. In addition, in July 2011 NSTAR Electric was ranked by J.D. Power and Associates in the top quartile of performers for the eastern United States region in customer satisfaction. Further, NSTAR Gas has exceeded its Mass DPU service quality metrics and therefore has demonstrated a strong safety and reliability record. Moreover, in September 2011 NSTAR Gas was ranked by J.D. Power and Associates as the highest performing gas utility for the eastern U.S. region. Application, p. 22.

The Applicants claim that their response to major and minor storm events will be more efficient given that the combined service territory with NSTAR allows for use of affiliated crews. The geographic diversity of the operating companies can provide greater opportunities to allocate crews to CL&P in Connecticut for localized storm issues since storms in Connecticut frequently do not effect the NSTAR franchise territory. Application, p. 22.

The Authority concludes that CL&P and Yankee will benefit from the sharing of best practices with NSTAR Electric and NSTAR Gas management which will become affiliates as a result of the merger. In particular the practices of NSTAR Electric and NSTAR Gas management prove both companies have the ability to provide safe and reliable service and share their knowledge in a best practices manner. The Authority also concludes that CL&P and Yankee will benefit from having extra labor and equipment located in Maccachusetts nearby their service territories in the event of outages due to localized storms.

The CT Settlement provides, in part, for safe, adequate and reliable service by improving system performance through the additional spending of \$300 million for system resiliency. Storm response is augmented through NU filing with the Authority upgraded practices and policies relating to mutual aid. CT Settlement, paragraph 4.2.

## **7. Public Interest**

As part of the Authority's overall statutory mandate, the public interest must be considered in the instant proceeding. The CT Settlement provides for a rate credit of \$25 million, a distribution rate freeze until December 31, 2014, an energy efficiency initiative, open space land commitment, and a program for improving system performance which all benefit the public. The Authority finds the CT Settlement is in the public interest.

The Authority also analyzed the public interest under the three mandates of Conn. Gen. Stat. §16-47 of financial suitability, managerial suitability, and technological suitability. Financially, the combining of NU and NSTAR will produce increased operating revenues, net profits and cash flows. A substantial benefit of the Transaction is that the combined NU will have an improved capability to internally fund the substantial planned capital investments in electric transmission projects. Without this merger NU would be required to raise equity capital to maintain its current capital ratios

during the planned transmission build up. Post-merger NSTAR's strong positive cash flow will enable NU to fund those investments without an equity issuance. In all likelihood the merger will have a positive benefit to NU's credit quality due to the acquisition of the higher rated NSTAR which could lead to lower debt financing costs. Response to Interrogatory FIN-135.

The combining of NU and NSTAR produces managerial best practices. These managerial best practices are manifested in the Applicants' net benefit analysis that shows this Transaction will produce approximately \$784 million in cumulative net operating savings on an enterprise-wide basis over the first ten years after the merger is completed. Application, Exhibit 13; Response to Interrogatory FIN-53. NU and NSTAR both report that individually they possess significant management expertise and acumen based on their operating records. Response to Interrogatory FIN-36. NU and NSTAR stated that this merger will allow the organizations to pool their resources and operational expertise to produce an operating platform that encompasses the best practices of both Companies' experienced management within a common operating environment while maintaining a high level of local connection. Response to Interrogatory FIN-36. The Authority concurs.

The Applicants believe that their combined technological suitability is evidenced in the safety and reliability of utility service. In Massachusetts, NSTAR Electric and NSTAR Gas are top performers in relation to service quality, safety and reliability and emergency response. Response to Interrogatory FIN-62. Technological suitability is increased through implementing best practices. The Authority finds that technological suitability should increase due to combining NU and NSTAR.

In summary, the Authority finds the Transaction to be in the public interest. This is evident from the CT Settlement provisions for a \$25 million rate credit and a distribution rate freeze until December 1, 2014, among other provisions. The Transaction produces an increase in financial strength from combining two regional utility holding companies both having electric and gas operations. Potential synergy savings from the net benefit analysis will accrue over ten years. Management of the two utility holding companies will remain local and NU management has a long-standing commitment to Connecticut. This management has proven expertise in conservation and load management. Finally there is a potential for technological benefits that will accrue to ratepayers in the future through implementing best practices between the two utility holding companies.

## **8. Consumer Issues**

In Article 4 of the CT Settlement, Improving System Performance, the Companies have committed to improve non-storm and storm-related service quality performance. According to the Companies, failure to maintain service quality performance consistent with historical averages over the last ten years shall subject the Companies to penalties as may be within the Authority's jurisdiction to be imposed. CT Settlement, paragraph 4.4. This commitment to improved system performance, along with the expected benefits to customer service via the sharing of best practices and technological resources will help to insure that Connecticut customers receive the best possible customer service as a result of the proposed Transaction.

## 9. Gas Pipeline Safety Issues

The Companies state that Yankee will continue to be managed locally and that Yankee will continue to provide safe, adequate and reliable service within Connecticut. The Companies further state that there are no plans to merge the gas operating companies, and that each company will continue to keep its individual responsibilities and identities. Application, pp. 22 and 23. The Companies have indicated that there are many areas, such as construction standards, training programs, purchasing, operations and maintenance budgets, and Supervisory Control and Data Acquisition (SCADA) systems that could see changes based on reviews of best practices within each company. Responses to Interrogatories GPSU-6, GPSU-8, GPSU-11, GPSU-12 and GPSU-13. In order for the Authority to remain fully informed of these possible changes, the Authority will require that Yankee submit certain proposed changes or revisions to its procedures and standards, ten days prior to their implementation. The Authority is cognizant of the fact that emergencies do arise and therefore will afford flexibility in the order.

## 10. Effect on Competition and the Generation Market

Testimony was provided by Julia Fryer on behalf of NRG Energy and NRG Companies (collectively, NRG) to consider the potential impact of the proposed merger on the New England electricity sector relative to market power and competition.

NRG asserts that the post-merger NU would have the financial incentive and enhanced ability to take a number of anti-competitive and market-damaging actions which are the following:

1. Building transmission projects that are not economically justified, saddling Connecticut consumers with the resulting unwarranted financial burden for decades and frustrating the ability of a market based system to identify optimal investments.
2. Dictating the terms and conditions of standard service purchases, particularly in the full requirements market.
3. Freezing out independent generation in favor of utility-owned projects.
4. Dominating renewable generation build in New England.
5. Lobbying to create legislative changes that will promote an anti-competitive agenda and further these market-destroying activities.

Brief, p. 2.

Based on this pre filed testimony, NRG recommended four mitigation measures<sup>9</sup> for the Authority's consideration which are as follows:

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<sup>9</sup> By Motion to Allow Intervenor Comment on settlement Agreement dated March 21, 2012, NRG Companies requested that four similar "conditions" should be considered as conditions to approval of the Settlement Agreement. The Authority accepted the language in that motion as something akin to a brief on the Settlement.

1. The merged NU/NSTAR should commit to strengthening the independent monitoring of their Standard Service/Last Resort Service procurements, in order to ensure that they are not wielding their buyer market power to the detriment of competitive power markets in the region. An independent monitor should have the ability and authority to consider whether the terms and conditions that NU-NSTAR applies to its solicitations for Standard Service/Last Resort Service are consistent with promoting workably the competitive wholesale power and retail electricity markets and are not distorting the playing field for participation by bidders in these solicitations.
2. The merged NU/NSTAR should make commitments to not undertake rate-based generation, renewable or otherwise, investment in the future beyond what has currently been authorized by Public Act 11-80, so that the potential competitive market threat is extinguished.
3. Require the merged NU/NSTAR if it desires to build and own generation, they should only be permitted to do so, if it is through an unregulated subsidiary on the same terms and conditions available to other bidders and with appropriate safeguards established by this Authority with no cross subsidization. This approach will ensure that there is a level playing field and we avoid inappropriately shifting development and operating risks back onto ratepayers. An independent procurement agent should administer this in order to ensure that consumers get the full benefit of competition, while avoiding the negative consequences of self-dealing.
4. Require the merged NU/NSTAR demonstrate to this Authority, at the outset of any of its plans to build a transmission project whose costs will be recovered through the regional or localized transmission tariff rates, that such transmission plans are the least cost alternative to meet the identified system needs relative to non-transmission alternatives. The purpose of this requirement is to ensure efficient investment and prevent inefficient investment associated with NU-NSTAR's natural monopoly position in transmission.

Fryer PFT, pp. 11-14.

The New England Power generator Association, Inc. (NEPGA) is a private non-profit organization that advocates for the business interests of non-utility electric power generators in New England. NEPGA's brief focused on the Applicants' plans to reenter the generation business beyond levels currently allowed by law and the effect that would have on ratepayers and competitive markets. Brief, p. 2.

Specifically, NEPGA advocates that the Authority should require that NU and NSTAR refrain from any additional investment in generation assets above the amount of limited investment currently allowed under Connecticut law.

NEPGA believes that re-entry by the Applicants into the generation business would have negative consequences for ratepayers. Brief, p. 12.

Further, NEPGA recommends that the Authority should reaffirm its policy promoting competition and adopt NRG's recommendations to support competitive markets. NEPGA asserts that competitive markets lead to more efficient operations and lower bills for ratepayers, a healthier economy, increase in jobs, and a more robust economic climate. Brief, p. 14.

The Authority appreciates NRG's and NEPGA's participation in this proceeding. General Statutes of Connecticut § 16-11 requires that the Authority keep fully informed of the manner of operation of all Public Service Companies in respect to their adequacy and suitability to accomplish the duties imposed upon them. In this respect, NRG's and NEPGA's testimony has aided the Authority.

However, the Authority declines to take any of the four proposed "mitigation measures" of NRG for the reasons to follow. The Authority notes the following regarding each of the proposed measures.

**a. Standard Service and Supplier of Last Resort Procurements**

The EDCs purchase of wholesale electricity and other products and services to supply electricity and other products and services to supply Standard Service and Supplier of Last Resort Service for electricity customers in CT is governed by CT General Statutes of Connecticut § 16-244c and Authority precedent in accordance with an approved procurement process designed to be fair and impartial and produce results that accurately reflect the wholesale market at the time of the procurement. Purchases are made through a competitive auction procurement processes periodically conducted by the EDCs and overseen PURA and the Office of Consumer Counsel with the assistance of expert consultants. The competitive auction process and the recommended bid portfolio are reviewed to ensure that the process was competitive, fair and impartial and that the results accurately reflected the wholesale market at the time of the procurement. See, Decisions Dated January 25 and February 8, 2012 in Docket No 06-01-08PH02, DPUC Development and Review of Standard Service and Supplier of Last Resort Service--Auction Approval.

Buyer market power issues relating to competitive wholesale electricity sales are also FERC jurisdictional. NEPGA and NRG previously raised the same buyer market power concerns in the FERC proceeding reviewing this proposed merger. In a July 6, 2011 Order, FERC determined that the NU/NSTAR merger will not increase the post-merger company's ability to exercise buyer market power in the ISO New England wholesale energy market. Tr. 2/24/12, p. 1165; NSTAR, Northeast Utilities, Federal Energy Regulatory Commission Docket No. EC11-35-000, Order dated July 6, 2011, paragraphs 49-52 (136 F.E.R.C. P61,016; 2011 FERC LEXIS 1294).

If on a going forward basis, NRG has any specific buyer market power concerns with the process for procuring Standard Service or Supplier of Last Resort Service or any other buyer market power concerns relating to the conduct of CL&P or Yankee, it has recourse to petition the legislature requesting remedial legislation, including

revisions to statutes governing Standard Service and Supplier of Last Resort Service procurement. NRG can also petition the Authority for relief, including requesting changes to the Standard Service and Supplier of Last Resort Service procurement process. Additionally, NRG can request that FERC approve changes to wholesale market rules governing procedures for selling and pricing electricity products and services to address any market power concerns.

#### **b. Rate-Based Generation Authorized by Public Act 11-80**

The issue of how much and what form of rate-based generation, renewable or otherwise that should be procured by EDC's is in the purview of the Legislature to decide. As such, there is no justification for the Authority to impose such a commitment.

#### **c. Renewable Generation**

The request of NRG that if NU/NSTAR desires to build and own generation, they should only be permitted to do so through an unregulated subsidiary on the same terms and conditions available to other bidders and with appropriate safeguards established by this Authority with no cross subsidization meets the same conclusion as the Authority has identified in section b. Rate-Based Generation Authorized by Public Act 11-80, above.

In addition, the threshold decision of whether or not an EDC can legally build or propose to build renewable generation and under what conditions is a policy decision for the legislature. There are statutory provisions in Connecticut that currently only permit EDCs to build generation under certain specific and limited circumstances. NRG needs to petition to the legislature with respect to repealing or revising such legislation, if NRG opposes this policy as it exists, or as it may be taken under consideration by the legislature in the future.

#### **d. Transmission Builds**

NRG can raise any concerns regarding NU's transmission activities or plans with ISO New England, Inc. (ISO NE), the Regional Transmission Operator (RTO) charged with resource planning for and reliable operation of the electricity system in New England, and the FERC, the federal agency responsible for regulating interstate wholesale transmission of electricity, including RTOs. Under FERC-approved rules, a transmission company, such as NU, is obligated to build transmission lines that the ISO NE determines are needed to serve system reliability. If NRG objects to any determination made by the ISO NE that NU needs to build certain transmission lines in CT, MA or RI to maintain reliability, NRG must contest that determination at the ISO NE and then take an appeal to the FERC.

No fact has been shown that Applicants can or are influencing market behavior. The allegation that the merged entity will have the ability to influence market power is unsupported by any record evidence. Moreover, the Authority notes that FERC has made a determination that the NU/NSTAR merger will not increase applicant's ability to exercise buyer market power in the ISO New England wholesale energy market. Tr. 2/24/12, p. 1165; NSTAR, Northeast Utilities, Federal Energy Regulatory Commission

Docket No. EC11-35-000, Order dated July 6, 2011, at paragraphs 49-52 (136 F.E.R.C. P61,016; 2011 FERC LEXIS 1294). This condition meets the same objections as section b. Rate-Based Generation Authorized by Public Act 11-80, above.

## 11. Environmental Issues

The Connecticut Fund for the Environment Inc. (CFE) provided pre filed testimony that expressed concerns on open space lands. The CFE recommended that the Authority condition the merger on a commitment from NU and NSTAR to extend the term of the memorandum of understanding (MOU) with the then Department of Environmental Protection (DEP), now the Department of Energy and Environmental Protection (DEEP), beyond its initial ten year term ideally with no expiration but at a minimum of an additional 20 years.

The Authority is satisfied that the Public Parties and Applicants addressed this issue in a proper manner in the Settlement Agreement. The CT Settlement addressed CFE concerns in that NU made the following commitments with respect to open-space land: (a) Upon closing of the Transaction, NU agrees to extend the term of the April 12, 2000 open space land MOU between NU and the DEP as predecessor to DEEP, for a period of 10 years from the current MOU expiration date of July 1, 2014, and further commits to evaluate and consider additional substantive changes to the MOU that may be proposed by DEEP in connection with such extension; (b) within 12 months of the closing of the Transaction, NU shall form an irrevocable NU preservation land trust, and within 24 months of the closing, shall transfer into said trust the following properties, currently owned by Rocky River Realty:

1. King's Island, Enfield/Suffield Connecticut (approximately 188 acres).
2. Skiff Mountain, Sharon, Connecticut (approximately 723 acres).
3. Hanover Road, Newtown, Connecticut (approximately 57 acres).
4. Barlett Road, Waterford, Connecticut (approximately 13 acres).

CT Settlement, paragraph 3.2.

NU commits to work with DEEP to explore opportunities to ensure and/or expand public access to the properties held by the NU preservation land trust for passive recreation, where such public access is appropriate and consistent with any existing use of these properties in support of NU's business activities; and (c) NU shall work cooperatively and in good faith with the State of Connecticut and appropriate historical and cultural stakeholders to preserve the property known as the "Venture Smith Homestead." CT Settlement, p. 5, paragraph 3.2. The Authority agrees with this commitment to preserve open space and finds this to be in the public interest.

## 12. Energy Efficiency

Environment Northeast (ENE) is a non-profit organization that advocates regarding policies on the environment while promoting sustainable economies. The Authority gave limited intervener status and therefore ENE was not allowed to issue interrogatories or cross exam witnesses. ENE advocates that energy efficiency,

conservation, and load management are in the public interest and should be addressed in the instant proceeding. ENE Brief, pp. 2-6.

ENE requested that the Authority condition any approval of the proposed merger on the following:

1. Ensure that the level of staffing for conservation and load management for the Connecticut distribution companies does not decrease post-merger.
2. Ensure that post-merger energy efficiency programs are coordinated across post-merger NU and managed by a Vice President level employee. This person's primary responsibility would be overseeing efficiency program implementation and achieving investments in all cost-effective energy efficiency.
3. Ensure that appropriate senior members of the post-merger NU's management team attend Energy Efficiency Board meetings once per quarter and appear at company events related to energy efficiency.
4. Initiate a public outreach campaign in support of energy efficiency, clean energy, the Regional Greenhouse Gas Initiative, and Global Warming Solutions Act.
5. Explicit commitment to decoupling, consistent with current decoupling mechanism of The United Illuminating Company as determined in the Decision dated February 24, 2009 in Docket No. 08-07-04, Application of The United Illuminating Company to Increase Its Rate and Charges.
6. Explicit commitment to examine non-wires alternatives in distribution system planning and upgrades and work with stakeholders to refine this planning and investment process and propose any needed policy or regulatory changes.
7. Explicit commitment to advocate for changes to ROEs, incentives, and cost recovery rules for transmission and non-wires alternatives at state, regional, and federal levels to ensure parity and consistency with Connecticut energy policy.

EWE Brief, pp. 6 and 7.

In addition, ENE asserts that decoupling should be a concern in the instant proceeding. ENE cites the Mass DPU order in D.P.U. 07-50-A on July 16, 2008, that provided a detailed description of how Massachusetts would transition, for both electric and gas, into a new set of rate structures that would eliminate the economic disincentives to utility investment in energy efficiency and distributed generation. ENE requests that as the Authority and DEEP are in the process of reviewing the Integrated Resource Plan as well as the 2012 C&LM Plan, decoupling may become an important method for aligning efficiency goals and revenues as CL&P and Yankee prepare to achieve more aggressive savings targets. Since decoupling occurs as a result of a rate case pursuant to Conn. Gen. Stat. §16-19tt, ENE requests that the Authority's Decision in this proceeding take into consideration the impact of a rate freeze on the energy policies and goals in Connecticut. Id., pp. 7-9.

These issues are very important and some have been addressed in the CT Settlement. As a condition of the CT Settlement, NU will be required to work with DEEP to develop a targeted plan to advance Connecticut's interests in the areas of: (a) expanded energy efficiency programs, including but not limited to low income energy efficiency programs and a small business energy efficiency strike force; (b) electric

vehicles; (c) micro grids; (d) renewable projects; and (e) other related areas consistent with the Governor's energy policy goals. CT Settlement, p. 3, paragraph 2.1.

Any remaining issues raised by ENE can be further developed as a result of the process identified above and may also be adjudicated in the next rate cases of CL&P and Yankee. By the terms of the CT Settlement, CL&P must make application for new rates to go into effect the end of the base rate freeze period of December 14, 2014.

### **13. Montville Generating Station**

Ronald K. McDaniel Jr., Mayor of the Town of Montville Connecticut, submitted comment in this proceeding on February 28, 2012. Mayor McDaniel indicates that Montville is the proposed home of NRG's 40MW Montville Biomass generating station. Mayor McDaniel requests that PURA require NU and NSTAR to put out bids for new biomass generation, located in Connecticut, as a condition of the merger. Mayor McDaniel goes on to point out all of the benefits such construction could bring to the State of Connecticut.

NRG also supports the recommendation of Mayor McDaniel, the AFL-CIO, and Montville legislative delegation,<sup>10</sup> that PURA should condition any merger decision on the issuance of a competitive solicitation for 50 MW or more of in-state renewable biomass generation. Such a commitment would provide immediate job, tax base and environmental benefits to Connecticut. Further, either a PURA-mandated or voluntary concession that NU-NSTAR shareholders fund any over-market portion of the contract resulting from the RFP would immediately secure for Connecticut a small portion of the substantial shareholder value created by this transaction. Brief, p. 4.

From what has been presented to PURA in comments and briefs, it is argued that a Biomass Plant in Montville may arguably pose benefits to Connecticut. Notwithstanding, there is no evidence in the record that allows the Authority to determine the costs or benefits of such a proposal. None of the information entered the record in this proceeding as sworn testimony and it was not included in the Settlement Agreement put forward by the Parties to this proceeding. Therefore, PURA will not condition this Decision on the issuance of a competitive solicitation for 50 MW or more of in-state renewable biomass generation.

### **14. Massachusetts Settlement Agreement**

The Authority notes that the Applicants came to a dual Settlement Agreement between NSTAR Electric Company, NSTAR Gas Company, NSTAR, Western Massachusetts Electric Company, Northeast Utilities, the Massachusetts Department of Energy Resources, and the Attorney General of the Commonwealth of Massachusetts (Mass AG Settlement). In addition a Settlement Agreement between NSTAR Electric Company, NSTAR Gas Company, Western Massachusetts Electric Company, and the Massachusetts Department of Energy Resources (Mass DOER Settlement) was agreed upon. These settlement agreements are similar in nature. Tr. 2/23/12, pp. 838 and 839.

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<sup>10</sup> See March 2, 2012 Letter to Governor Malloy from State Representatives Ritter, Ryan and Reynolds and State Senators Prague and Stillman, filed in this proceeding as public comment.

The Authority finds the Mass DOER Settlement focus is on energy issues which included the Cape Wind Project. The Applicants have testified that both the Mass AG Settlement and the Mass DOER Settlement will not affect the financial, managerial, or technical suitability of the Applicants to be approved for this merger. Tr. 2/23/12, pp. 839-841. The Authority agrees that these settlement agreements do not affect the criteria of Conn. Gen. Stat. §16-47. Any change to the two Massachusetts settlement agreements by the Mass DPU could constitute grounds to reopen this proceeding pursuant to Conn. Gen. Stat. §16-9. See also CT Settlement article 6, paragraph 6.9.

### **III. FINDINGS OF FACT**

1. By joint application received on January 19, 2012, pursuant to Conn. Gen. Stat. §16-47, NU and NSTAR requested the approval of the Authority whereby NSTAR would become a first-tier wholly-owned subsidiary of NU.
2. In the Decision dated January 18, 2012 in Docket No. 10-12-05RE01, the Authority concluded that it must review the proposed merger between NU and NSTAR and that the proposed merger must receive the PURA's approval pursuant to Conn. Gen. Stat. §16-47.
3. NU is a Massachusetts business trust and public utility holding company headquartered in Hartford, Connecticut.
4. NU is a public utility holding company that has four utility operating subsidiaries which are The Connecticut Light and Power Company, Public Service Company of New Hampshire, Western Massachusetts Electric Company, and Yankee Gas Services Company.
5. NU provides electric service to approximately 1.9 million customers in 419 cities and towns in Connecticut, New Hampshire and western Massachusetts.
6. NU provides franchised natural gas service to approximately 200,000 residential, commercial, and industrial customers in 71 cities and towns in Connecticut.
7. NSTAR is a Massachusetts business trust headquartered in Boston, Massachusetts.
8. NSTAR is primarily an energy delivery holding company conducting business through utility operating subsidiaries.
9. NSTAR's principal subsidiaries are NSTAR Electric Company which serves approximately 1.1 million electric customers in 81 communities and NSTAR Gas Company which serves approximately 300,000 natural gas distribution customers in 51 communities.
10. NU and NSTAR entered into a merger agreement dated October 16, 2010, and amended on November 1, 2010, and December 16, 2010.

11. The NU board of trustees and the NSTAR board of trustees unanimously approved the Merger Agreement on October 16, 2010.
12. The Merger Agreement was approved by NU shareholders and NSTAR shareholders in separate meetings on March 4, 2011.
13. The mechanics of the Transaction of the merger requires four parties to the Merger Agreement of NU, NSTAR, NU Holding Energy 1 LLC, and NU Holding 2 LLC.
14. The merger agreement provides that NSTAR Electric and NSTAR Gas will be subsidiaries of NSTAR LLC and therefore, second-tier subsidiaries of NU.
15. By the merger agreement, NU will continue to be the holding company of CL&P and Yankee.
16. The NU and NSTAR regulated utility operating companies are not parties to the Merger Agreement.
17. After the close of the transaction, CL&P and Yankee will remain separate companies as they are at present.
18. The merger agreement provides that CL&P and Yankee will not merge or consolidate with each other or with any of the NSTAR companies.
19. The merger agreement provides that CL&P and Yankee will not transfer any of their respective assets or franchises as part of the Transaction.
20. The merger agreement provides that CL&P and Yankee will continue to operate as public service companies under PURA's jurisdiction as before completion of the Transaction.
21. The merger agreement provides that NU will continue to be the holding company of CL&P and Yankee.
22. By the terms of the merger, consideration for the Transaction will be 100% equity in the form of NU common shares.
23. The merger agreement provides that cash will be paid in lieu of fractional shares.
24. At the time of closing, each NSTAR shareholder will receive 1.312 NU common shares for each of their NSTAR common shares.
25. There is no merger premium for either NU or NSTAR shareholders.
26. Upon closing the Transaction, the former NSTAR shareholders will own approximately 44% of the common equity in the post-merger NU. Existing NU shareholders will own the remaining 56%.

27. The merger agreement provides that NSTAR will no longer exist as a public company and its stock will no longer be traded on the NYSE.
28. There is no person who now owns or will own as a result of the Transaction in excess of 10% of NU's outstanding common shares.
29. The proposed Transaction is subject to not only Connecticut review, but also review by several states and federal regulatory reviews upon which the closing is conditioned.
30. After the Transaction is completed, NU will retain its current corporate headquarters located in Hartford, Connecticut with an additional corporate headquarters in Boston, Massachusetts.
31. The local distribution operations of CL&P and Yankee will continue to function as they have previously subject to local control.
32. Current field operations and employees of CL&P and Yankee will remain in place to conduct operations in accordance with the expectations and requirements of the Authority.
33. All union contracts at CL&P and Yankee will continue to be honored.
34. Any reductions in staff to achieve operational cost savings are anticipated to result from normal employee attrition and retirements rather than from broad based layoffs.
35. Upon completion of the Transaction, the NU Board of Trustees will consist of 14 members comprised of 7 trustees designated by NU and 7 trustees designated by NSTAR prior to the closing of the Transaction.
36. No provision of the Merger Agreement limits the respective powers of the NU shareholders or Board of Trustees regarding control over the service of the trustees in accordance with the NU Declaration of Trust.
37. The Merger Agreement specifies officers that shall report to the CEO as of the time the Transaction is completed.
38. The Merger Agreement does not identify or specify a term of service of the CEO or other officers or otherwise limit the powers of the Board of Trustees relative to control over the service of the merged company's officers.
39. The Transaction will be accounted for in accordance with FASB Accounting No. 805 (ASC 805), Business Combinations and will be accounted for as an acquisition of NSTAR by NU.
40. The CT Settlement provides the books and records of NSTAR will be recorded at fair value and goodwill will not be recorded on the books and records of NSTAR

- and not allocated to NSTAR Electric or NSTAR Gas or allocated in any way to CL&P or Yankee.
41. The CT Settlement provides for a one-time, non-recoverable \$25 million rate credit to customers of CL&P.
  42. The CT Settlement provides that the \$25 million rate credit will be allocated to CL&P retail customers classes of residential, commercial, and industrial based on their proportional share of the monthly customer charges.
  43. The CT Settlement offers a distribution rate freeze until December 31, 2014.
  44. The CT Settlement provides that a plan for energy efficiency and related initiatives will be worked on by NU in consultation with the DEEP committing to \$15 million for implementation of the plan.
  45. The CT Settlement provides that CL&P will collaborate with the DEEP to develop microgrid infrastructure in the CL&P service territory, including the trips and transfers necessary to isolate portions of the grid and a pilot set of distributed generation sites.
  46. The CT Settlement provides that in completing the Transaction, CL&P and Yankee will not make any accounting adjustment that has the result of increasing the net book value of utility assets for ratemaking.
  47. The CT Settlement provides that no transaction costs incurred to negotiate, draft, or execute the merger agreement, or to obtain the regulatory approvals required to consummate this Transaction will be recorded on the books of CL&P and Yankee.
  48. The Authority in its in Docket No. 10-12-02 imputed savings to Yankee based on the probable merger of NU and NSTAR.
  49. The Authority in Docket No. 10-12-02 used the same net benefit analysis, presented in Exhibit 13, in this proceeding and reduced Yankee's rate case expenses by \$1.561 million in rate year 1 which is 2012 and by \$3.0 million in rate year 2 which is 2013.
  50. Yankee customers have already received a credit, based on the merger, through the reduction of expenses in Docket No. 10-12-02.
  51. NU as of the 12-months ending December 31, 2011, had operating revenues of approximately \$4,465.7 million and net income from continuing operations of approximately \$400.5 million.
  52. NU as of the 12-months ending December 31, 2011, had net property plant and equipment of approximately \$10,403.1 million, total assets of approximately \$15,647.1 million, and total capitalization of approximately \$9,078.3 million.

53. NU as of the 12-months ending December 31, 2011, had earnings per common share of \$2.22 and dividends declared per share of \$1.10.
54. NSTAR as of the 12-months ending December 31, 2011, had operating revenues of approximately \$2,930.4 million and net income from continuing operations of approximately \$269.4 million.
55. NSTAR as of the 12-months ending December 31, 2011, had assets from continuing operations of approximately \$8,065.4 million and total capitalization of approximately \$ 4,239.3 million.
56. NSTAR as of the 12-months ending December 31, 2011, had earnings per common share of \$2.60 and dividends declared per share of \$1.56.
57. The effect of the merger on the combined NU and NSTAR, with pro forma adjustments, produces operating revenues of approximately \$7.5 billion and operating income of approximately \$1.3 billion.
58. The effect of the merger on the combined NU and NSTAR, with pro forma adjustments, produces total current assets of approximately \$2.2 billion and total capitalization of approximately \$15.9 billion.
59. The effect of the merger on the combined NU and NSTAR, with pro forma adjustments, produces net cash flows provided by operating activities of approximately \$1.8 billion.
60. The effect of the merger on the combined NU and NSTAR, with pro forma adjustments, produces a capital structure of 55.9% equity and 44.1% debt.
61. The effect of the merger on the combined NU and NSTAR, with pro forma adjustments, produces a ratio of earnings to fixed charges of 3.63.
62. Pursuant to Conn. Gen. Stat. §16-47(d), the Authority is required to assess the managerial suitability of NU and NSTAR to enter into their proposed merger.
63. The Merger Agreement provides that Mr. Shivery, currently the President and CEO of NU, will be one of the seven trustees designated by NU, and Mr. May, currently President and CEO of NSTAR, will be one of NSTAR designees.
64. Mr. May will be appointed as the CEO of NU upon completion of the Transaction pursuant to the Merger Agreement.
65. The NU operating companies will continue to be under the leadership of Mr. Olivier, NU's current chief operating officer, and Mr. McHale will be responsible for NU's customer service organization.
66. Mr. Powell, currently the President and Chief Operating officer for Yankee Gas, will become the President and Chief Operating Officer of both Yankee Gas and NSTAR Gas upon completion of the merger.

67. The NSTAR key officers and executives possess significant management expertise and acumen to run an electric and gas distribution utility successfully.
68. The Mass DPU administers a comprehensive and formalized service quality measurement program in which NSTAR Electric and NSTAR Gas are top performers in relation to service quality, safety and reliability and emergency response.
69. In the last five years, NSTAR has had zero service quality penalties in Massachusetts.
70. The dual headquarters will remain in a close geographic connection with NU's customer base and associated assets, while also providing continued accessibility and responsibility to state regulators of its relevant local utility operations.
71. The regulated operating subsidiaries will continue to function under control of local management personnel, with employees and field operations remaining in place to conduct operations in accordance with the expectations and requirements of state regulators.
72. The organizational chart for NU at the time of closing shows functional areas of the general counsel, human resources, chief financial officer, chief administrative officer, corporate relations, and chief operating officer all reporting to the president and chief executive officer.
73. The headquarters will serve as corporate offices for senior management and other corporate functions.
74. The service companies of NUSCO and NSTAR will continue to provide services such as human resources, treasury functions accounting, and information and technology to support the utility operating companies.
75. The Applicants submitted NSTAR Electric and CL&P reliability data for the last ten years, both including and excluding the effects of major storms.
76. NSTAR Electric uses different major storm exclusion criteria than are used by CL&P.
77. NSTAR Electric's electric distribution system infrastructure is comprised of 47% underground construction.
78. CL&P electric distribution system is comprised of 27% underground construction.
79. The Applicants submitted histories of investigations of safety and reliability issues by the Mass DPU for the last ten years.

80. The Companies developed a forecast of the potential cost savings in a Net Benefits Analysis.
81. The Net Benefits Analysis was developed by first analyzing the current cost structures of NU and NSTAR, with total actual labor costs disaggregated into nine principal functional areas for analysis.
82. For non-labor cost savings, the Companies examined actual costs in 17 potential areas of savings, including 13 categories of Corporate and Administration costs (e.g., insurance, facilities, benefits and fleet costs) and three categories of Purchasing costs (procurement, inventory and contract services) and energy costs.
83. Once classified, the Companies developed an estimate of anticipated reduction in actual costs by analyzing the post-merger changes expected for each specific category of costs.
84. The post-merger changes were quantified using cost-reduction metrics that were either developed specifically for the Transaction based on transaction-specific circumstances, or that were used successfully by NSTAR to quantify cost savings in the prior BEC-CES merger and determined to apply equally to the Transaction.
85. The Net Benefits Analysis shows operational savings are projected to be approximately \$948 million on an enterprise-wide basis over the first ten years after the merger, offset by approximately \$164 million in merger-related costs, resulting in net savings of approximately \$784 million.
86. Savings were computed using the Base Year costs, assuming a merger closing date of October 1, 2011, escalated through 2021.
87. Approximately \$783.8 million of net savings, on an enterprise-wide basis over the first ten years, of which an estimated \$351 are attributable to Connecticut will be allocated among NU's CL&P and Yankee subsidiaries.
88. The Companies actual 2011 cost data produced \$356.6 million of net benefits attributable to the Connecticut regulated subsidiaries.
89. The NSTAR Merger Savings Report describes the anticipated source of the savings and the basis of the savings forecast calculation.
90. The NSTAR Merger Savings Report presents the actual results indicating whether the company achieved the forecast savings and provided an explanation of any major deviation from the forecast level.
91. The Transaction will not result in any utility assets or intellectual property being transferred between NU subsidiaries and NSTAR subsidiaries.

92. Since the Transaction is a stock-for-stock transaction, there is no debt being issued by NU and as such CL&P, Yankee and their customers will not be responsible for, or allocated additional debt or associated interest expense due to the merger.
93. CL&P and Yankee will continue to be locally operated and will continue to provide the same services to customers as they do.
94. The approval of the Transaction will not change the process by which capitalization ratios are established and CL&P and Yankee will continue to manage to their respective Authority-allowed capital structures as they have done in the past.
95. The Transaction will not have a material impact on the cash flow of CL&P and Yankee due to the way their capital structures are managed and their regulation as a public utility whereby the rates charged to customers are based on their costs of service.
96. Approval of the Transaction will not change the process by which CL&P and Yankee set their dividend payout ratio.
97. Since 2001, NSTAR has had a performance-oriented operational plan to meet Mass DPU requirements.
98. In July 2011 NSTAR Electric was ranked by J.D. Power and Associates in the top quartile of performers for the eastern United States region in customer satisfaction.
99. In September 2011 NSTAR Gas was ranked by J.D. Power and Associates as the highest performing gas utility for the eastern U.S. region.
100. Financially, the combining of NU and NSTAR will produce increased operating revenues, net profits, and cash flows.
101. Without this merger NU would be required to raise equity capital to maintain its current capital ratios during the planned transmission build up.
102. Post-merger NSTAR's strong positive cash flow will enable NU to fund investments without an equity issuance.
103. Technological suitability is increased through implementing best practices.
104. The CT Settlement provides that the Companies have committed to improve non-storm and storm-related service quality performance.
105. The CT Settlement provides that failure to maintain service quality performance consistent with historical averages over the last ten years will subject the Companies to penalties.

106. There are no plans to merge the gas operating companies, and each company will continue to keep its individual responsibilities and identities.
107. There are many areas, such as construction standards, training programs, purchasing, operations and maintenance budgets, and SCADA systems that could see changes based on reviews of best practices within each company.
108. Testimony was provided on behalf of NRG to consider the potential impact of the proposed merger on the New England electricity sector relative to market power and competition.
109. The FERC has ruled on the NU/NSTAR merger that the proposed merger will not increase the post-merger NU's ability to exercise buyer market power in the ISO New England wholesale energy market.
110. The Connecticut Fund for the Environment expressed concerns on open space lands.
111. The CT Settlement provided for extension of the term of the April 12, 2000 open space land MOU between NU and the DEEP, for a period of 10 years from the current MOU expiration date of July 1, 2014.
112. Under the CT Settlement NU will form an irrevocable NU preservation land trust, and within 24 months of the closing, will transfer into said trust properties, currently owned by Rocky River Realty.
113. NU will work with the DEEP to explore opportunities to ensure and/or expand public access to the properties held by the NU preservation land trust for passive recreation.
114. NU will work cooperatively and in good faith with the state and appropriate historical and cultural stakeholders to preserve the property known as the Venture Smith Homestead.
115. In Massachusetts, the Applicants came to a dual Settlement Agreement between NSTAR Electric Company, NSTAR Gas Company, NSTAR, Western Massachusetts Electric Company, Northeast Utilities, the Massachusetts Department of Energy Resources, and the Attorney General of the Commonwealth of Massachusetts.
116. The Mass AG Settlement and the Mass DOER Settlement will not affect the financial, managerial, or technical suitability of the Applicants to be approved for this merger.

## **IV. CONCLUSIONS AND ORDERS**

### **A. CONCLUSION**

The Authority conducted this proceeding pursuant to Conn. Gen. Stat. §16-47 and has satisfied the procedural due process requirements. The Applicants have satisfied the filing requirements of Conn. Agencies Regs. §16-41-1 et seq.

The Authority hereby approves the merger by stock exchange of NU and NSTAR subject to the Orders cited below. The Applicants have demonstrated that this Transaction is in the public interest. NU will: 1) have the financial, technological, and managerial suitability and responsibility to provide service; 2) possess the ability to provide safe, adequate and reliable service to the public through the public service company's plant, equipment and manner of operations; and 3) maintain adequate and local accessibility to management and operations. The CT Settlement is approved by the Authority and is advantageous to rate payers based on a rate credit of \$25 million to CL&P ratepayers and a CL&P rate freeze until December 1, 2014. In addition, the CT Settlement provides for \$15 million to fund an energy efficiency program; development of a micro grid infrastructure; provides for the same levels and types of charitable cash donations and civic commitments; provides for lineman apprenticeship program; improved storm response; establishment of an irrevocable land trust; and \$300 million spending in additional system resiliency. The Authority based on the specifics of the CT Settlement both monetary and non-monetary finds that it is in the public interest.

### **B. ORDERS**

For the following Orders, submit one original copy of the required documentation to the Executive Secretary, 10 Franklin Square, New Britain, Connecticut 06051, and file an electronic version through the Authority's website at [www.ct.gov/pura](http://www.ct.gov/pura). Submissions filed in compliance with Authority Orders must be identified by all three of the following: Docket Number, Title and Order Number.

1. No later than June 29, 2012, NU shall provide the Authority a letter stating that the merger has been completed together with copies of closing documents on the stock exchange.
2. No later than June 29, 2012, NU shall notify the Authority that no material modifications were made to the terms and conditions of the merger agreement.
3. No later than July 31, 2012, NU shall file with the Authority a worksheet detailing the amounts of fees incurred for the stock exchange transaction.
4. No later than July 31, 2012, NU shall file with the Authority a worksheet showing transaction costs incurred, exclusive of the stock exchange fees but inclusive of financial advisory, accounting and legal fees, to consummate the merger.
5. Yankee shall submit to the Gas Pipeline Safety Unit, any and all proposed changes or revisions to its operating procedures, maintenance procedures or

construction standards, no later than 10 days prior to their implementation. If an unforeseen circumstance does not allow for that notification, Yankee shall telephonically notify the Gas Pipeline Safety Unit as soon as possible. This order shall remain in effect until the Authority issues its final Decision in Yankee's next rate application.

6. No later than April 30, 2015, and annually thereafter until April 30, 2017, the Companies shall file a Merger Savings Report, similar in form to the DTE 99-19 merger savings report, prepared for the period 2012 through year end 2014. Such report shall include a summary comparison of forecasted savings to actual savings and explanation of the variances.

**The Authority is an affirmative action/equal opportunity employer and service provider. In conformance with the Americans with Disabilities Act (ADA), the Authority makes every effort to provide equally effective services for persons with disabilities. Individuals with disabilities who need this information in an alternative format to allow them to benefit and/or participate in the agency's programs and services, should call 860-424-3035 or e-mail the ADA Coordinator, at [DEP.aaoffice@ct.gov](mailto:DEP.aaoffice@ct.gov). Persons who are hearing impaired should call the State of Connecticut relay number 711. Requests for accommodations must be made at least two weeks prior to the meeting date (Emphasis added).**





ARTICLE 1: MERGER-RELATED FINANCIAL BENEFITS

- 1.1 Merger Rate Credit: NU shall provide a one-time, non-recoverable \$25 million rate credit to customers of The Connecticut Light and Power Company ("CL&P") to be applied on the first billing cycle in the next billing month following the closing of the Proposed Transaction.
  - 1.1.1 The rate credit will be allocated to CL&P retail customer classes (i.e., residential, commercial and industrial) based upon their proportional share of the monthly customer charges, and will appear on the bill as a uniform dollar amount credit for each separate customer class as a separate line item, along with an explanatory bill message. All customers within a retail customer class shall receive the same rate credit dollar amount.
- 1.2 Distribution Rate Freeze: CL&P shall forego its right under Conn. Gen. Stat. §16-19 to implement a requested general increase in its distribution rates prior to December 1, 2014 (the "Base Rate Freeze Period"), and its distribution rates shall be frozen through that date.
  - 1.2.1 Only the distribution rates shall be subject to the freeze. Other retail rate components, including rate reconciling mechanisms, formula rates and other adjustment mechanisms now in place or pending approval by the Authority as of the date of this Settlement Agreement shall not be affected by this Settlement Agreement. CL&P shall not file for approval of or propose new formula rates, tariffs, or other charges, including but not limited to earning sharing mechanisms, capital trackers, or revenue decoupling mechanisms, during the Base Rate Freeze Period ("Prohibited Filings"), unless specifically mandated by the terms of this Settlement Agreement or by statutes enacted after the date of this Settlement Agreement. Prohibited Filings shall not include filings made pursuant to Article 1, §1.2.2, and Article 4, §§4.1 and 4.3, below.
  - 1.2.2 Exogenous Costs: During the Base Rate Freeze Period, distribution rates may only be adjusted up or down by the Authority due to exogenous factors that are outside the Companies' control ("Exogenous Costs"). CL&P may seek and the Authority may grant Exogenous Cost recovery in the event and only to the extent that the revenue requirements of CL&P are affected by more than \$3 million annually as the result of changes in law, taxes, administrative requirements or accounting standards adopted after the date of this Settlement Agreement, provided such accounting standards are adopted by entities that are independent of the Companies and have authority to issue such standards, or as the result of other events outside the Companies' control that cause CL&P to incur extraordinary and unanticipated expenses for the provision of safe and reliable electric service to the extent necessary to provide such service. Eligibility for Exogenous Cost recovery or rate credit shall be determined by the

Authority, consistent with the purposes of this Settlement Agreement and any applicable PURA precedent.

- 1.3 Rate Reviews: CL&P must make application for new rates to go into effect as of the end of the Base Rate Freeze Period (December 1, 2014). CL&P will propose an earnings sharing mechanism in that rate filing. CL&P also shall make application for a rate amendment within three years after the Base Rate Freeze Period, with new rates to go into effect no later than December 1, 2017.

#### **ARTICLE 2: ADVANCING STATE ENERGY GOALS**

- 2.1 Energy Efficiency and Related Initiatives: NU shall work with the Department of Energy and Environmental Protection ("DEEP") to develop a targeted plan to advance Connecticut's interests in the areas of: (a) expanded energy efficiency programs, including but not limited to low income energy efficiency programs and a small business energy efficiency strike force; (b) electric vehicles; (c) microgrids (d) renewable projects; and (e) other related areas consistent with the Governor's energy policy goals. A special emphasis shall be placed on increasing the number of qualified minority contractors providing energy efficiency services. NU shall provide a one-time, nonrecurring and non-recoverable payment of \$15 million for implementation of the plan during the Base Rate Freeze Period. NU shall establish a segregated account for these funds, to be disbursed at the direction of DEEP for projects in the plan described herein.
- 2.2 CL&P Collaboration: CL&P will collaborate with DEEP to develop microgrid infrastructure in the CL&P service territory, including the trips and transfers necessary to isolate portions of the grid and a pilot set of distributed generation sites. CL&P will work cooperatively and in good faith with DEEP to resolve any legal or financial issues that may arise in fostering the development of microgrids in support of state resiliency efforts. CL&P will promote and enhance the capabilities of the Center for Storm and Power System Resiliency at the University of Connecticut. CL&P also will collaborate with DEEP to invest in the development and deployment of an initial suite of public electric vehicle charging stations.

#### **ARTICLE 3: CORPORATE HEADQUARTERS, CIVIC INVOLVEMENT AND EMPLOYMENT**

- 3.1 Commitments: The Settling Parties acknowledge the critical importance of continuity of headquarters and executive presence in Connecticut after the merger. The Settling Parties acknowledge that under the Companies' merger agreement, headquarters functions will be located in Massachusetts as well as Connecticut. The Settling Parties further acknowledge the critical importance of continuity of charitable and civic involvement, as well as employment practices. Therefore, in order to maintain continuity, for a period of no less than seven years after closing of the Proposed Transaction, the Companies commit that:

- 3.1.1 NU will maintain principal Board and Executive offices and functions in Hartford, Connecticut, and will provide staffing and executive presence consistent with the continued presence of such offices and functions.
- 3.1.2 NU will not sell the current headquarters office at 56 Prospect Street, Hartford, Connecticut.
- 3.1.3 NU will maintain the headquarters of CL&P, Yankee Gas Service Company ("Yankee Gas") and the Transmission Business in Connecticut.
- 3.1.4 NU Call Center operations currently conducted in Windsor, Connecticut will remain in their current location, or at another location in Connecticut.
- 3.1.5 CL&P, Yankee Gas and the NU Foundation shall maintain levels and types of charitable cash donations and civic commitments consistent with typical past practice over the five years preceding the merger, provided that the overall financial performance during the commitment period is comparable to pre-merger levels. CL&P, Yankee Gas and the NU Foundation shall provide 60 days notice to the Authority and the other Settling Parties prior to any material reduction in the aggregate, pre-merger level and type of charitable donations and civic commitments due to financial performance.
- 3.1.6 Reductions in the Connecticut employee work force in connection with the achievement of merger synergies shall be made on a fair and equitable basis and will not be disproportionate to other jurisdictions in which the merged entity conducts operations, either with respect to the number of reductions or with respect to the relative number of high-compensation versus low-compensation positions. The determination of what is "disproportionate" among jurisdictions shall take into account the relative size of the Companies' pre-merger operations in each of the jurisdictions.
- 3.1.7 In the event of a facility closing or layoff of employees in Connecticut, NU shall provide 30 days' notice of such action to the Attorney General, OCC and the Authority, including a demonstration of how any such closing or layoffs are consistent with the standards of equity, fairness and proportionality set out in § 3.1.6.
- 3.1.8 In order to promote stability of employment among CL&P line workers, CL&P will work with local community colleges in Connecticut to develop a line worker apprenticeship program, and the Companies will ensure, consistent with the commitments made by their witnesses in Docket No. 12-01-07, that the aggregate number of line workers will not be reduced as a result of the Transaction, either in Connecticut or in Massachusetts.
- 3.1.9 Nothing in this Settlement Agreement shall be interpreted to abridge existing labor agreements.

- 3.2 Open Space Land: NU makes the following commitments with respect to open-space land: (a) Upon closing of the Proposed Transaction, NU agrees to extend the term of the April 12, 2000 open space land memorandum of understanding ("MOU") between NU and the Department of Environmental Protection, as predecessor to DEEP, for a period of 10 years from the current MOU expiration date of July 1, 2014, and further commits to evaluate and consider additional substantive changes to the MOU that may be proposed by DEEP in connection with such extension; (b) within 12 months of the closing of the Proposed Transaction, NU shall form an irrevocable NU preservation land trust, and within 24 months of the closing, shall transfer into said trust the following properties, currently owned by Rocky River Realty:
- King's Island, Enfield/Suffield, Connecticut (approximately 188 acres)
  - Skiff Mountain, Sharon, Connecticut (approximately 723 acres)
  - Hanover Road, Newtown, Connecticut (approximately 57 acres)
  - Barlett Road, Waterford, Connecticut (approximately 13 acres)

NU commits to work with DEEP to explore opportunities to ensure and/or expand public access to the properties held by the NU preservation land trust for passive recreation, where such public access is appropriate and consistent with any existing use of these properties in support of NU's business activities; and (c) NU shall work cooperatively and in good faith with the State of Connecticut and appropriate historical and cultural stakeholders to preserve the property known as the "Venture Smith Homestead."

#### ARTICLE 4: IMPROVING SYSTEM PERFORMANCE

- 4.1 System Resiliency: CL&P shall, within 90 days of the closing of the Transaction, submit to the Authority a multi-year plan and cost recovery mechanism for \$300 million of spending in additional distribution system resiliency. The program shall be subject to the Authority's review and approval. CL&P will be allowed recovery, through the systems benefits charge, federally mandated congestion charge (FMCC) or similar mechanism, of the revenue requirements associated with such program at its weighted average cost of capital, with revenue requirements associated with up to \$100 million of such spending recoverable during the Base Rate Freeze Period. The total revenue requirements recoverable during the Base Rate Freeze Period, to be collected beginning January 1, 2013, shall not exceed \$25 million.
- 4.2 Storm Response: NU shall commit to maintain parity of service to each state within its service territory, such that the allocation of resources for restoration efforts following major storms shall be made fairly and equitably based on operational needs, system requirements and relative number of outages. NU will file with the Authority upgraded practices and policies relating to mutual aid by September 1, 2012. The CL&P Emergency Response Planning Process will at all

times be subject to review and approval by the Authority.

- 4.3 Recovery of 2011 Storm Costs: CL&P will file with the Authority a request for recovery of costs associated with Tropical Storm Irene and the October 2011 snow storm ("2011 Storm Costs") net of insurance proceeds and the storm reserve fund. Such request will be subject to review and approval by the Authority in an adjudicatory proceeding. However, CL&P will limit its recovery to an amount \$40 million less than the total 2011 Storm Costs ("\$40 million write-down"). Nothing in this Agreement shall restrict any party from advocating, or the Authority from determining, an appropriate level of 2011 Storm Cost recovery that is lower than 2011 Storm Costs less the \$40 million write-down. At the end of the Base Rate Freeze Period when new rates are implemented, any 2011 Storm Costs approved by the Authority for recovery will be recovered in rates consistent with standard cost review and recovery practice of the Authority over a six year recovery period.
- 4.4 Service Quality: CL&P and Yankee Gas shall commit to improve non-storm and storm-related service quality performance. Failure to at least maintain service quality performance consistent with historical averages over the last 10 years shall subject the companies to such penalties as may be within the Authority's jurisdiction and as may be imposed by the Authority from time to time for failure to maintain service quality.

#### ARTICLE 5: EQUITY AND TRANSPARENCY

- 5.1 Accounting for Goodwill: The transaction value recorded on the books of NSTAR LLC (the post-closing holding company that will be the sole shareholder of NSTAR Electric and NSTAR Gas) upon the close of the Proposed Transaction will include goodwill as defined under Generally Accepted Accounting Principles ("GAAP"). The Settling Parties agree that the goodwill resulting from the Proposed Transaction will not be recorded on the books of the operating companies post merger, including CL&P and Yankee Gas, unless required by a change in the rules or directives of the Securities Exchange Commission or a change in GAAP. If so required, the operating companies shall quantify the goodwill and its effects recorded on the financial books of account and shall exclude that amount, or any write-down thereof, from any ratemaking calculation used to set customer rates, tariffs or charges, and such amount would be excluded from the calculation of the earned rates of return or the debt-to-equity ratio of CL&P or Yankee Gas.
- 5.2 Net Book Value of Utility Assets: In completing the Proposed Transaction, CL&P and Yankee Gas shall not make any accounting adjustment that has the result of increasing the net book value of utility assets for ratemaking purposes.
- 5.3 Accounting Treatment and Future Ratemaking of Merger-Related Costs: No transaction costs incurred to negotiate, draft, or execute the merger agreement, or

to obtain the regulatory and shareholder approvals required to consummate the Proposed Transaction, shall be recorded on the books of CL&P or Yankee Gas. Any future recovery of transaction and integration costs is subject to Authority review and approval in a future rate proceeding. Parties are free to support or oppose such recovery in full or in part. Merger-related payments made to officers leaving the employ of NSTAR, NU, any of the temporary or surviving entities engaged in the proposed merger transactions, the operating companies, or their successors (together, the "post-merger organization") in the category of "change of control" payments, or to executives remaining with the post-merger organization in the category of "retention payments," shall be recorded at the parent company level upon the merger close and shall not be eligible for recovery as a merger-related cost or otherwise from customers.

- 5.4 Cape Wind and Other Massachusetts Initiatives: The Settling Parties agree that CL&P and Yankee Gas shall bear none of the costs associated with commitments made by the Companies or their Massachusetts operating companies with respect to the Cape Wind project or other Massachusetts initiatives in settlement agreements filed in Massachusetts related to the Proposed Transaction, and no such costs shall be recovered from CL&P or Yankee Gas customers.

#### ARTICLE 6: DEPARTMENT APPROVALS AND OTHER CONDITIONS

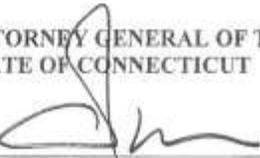
- 6.1 Settlement Approval: The Settling Parties assert that, if the Authority does not approve this Settlement Agreement in its entirety on or before April 2, 2012, this filing shall be deemed to be withdrawn and shall not constitute a part of the record in any proceeding or used for any other purpose.
- 6.2 Merger Approval: The Settling Parties agree that the Proposed Transaction is consistent with Connecticut law and the public interest. This Settlement Agreement is contingent upon the Authority's simultaneous approval of this Settlement Agreement and the Proposed Transaction on or before April 2, 2012.
- 6.3 The provisions of this Settlement Agreement are not severable. This Settlement Agreement is conditioned on its full approval by the Authority without additional conditions or requirements.
- 6.4 If, for any reason, the Proposed Transaction is not consummated, the terms of this Settlement Agreement shall be null and void and no longer apply even if already approved by the Authority subject to the terms set forth herein.
- 6.5 This Settlement Agreement shall not be deemed in any respect to constitute an admission by any party that any allegation or contention in this proceeding is true or false. Except as specified in this Settlement Agreement to accomplish the customer benefit intended by this Settlement Agreement, the entry of an order by the Authority approving the Settlement Agreement shall not in any respect

constitute a determination by the Authority as to the merits of any other issue raised in this proceeding.

- 6.6 The making of this Settlement Agreement establishes no principles and shall not be deemed to foreclose any party from making any contention in any proceeding or investigation, except as to those issues and proceedings that are stated in this Settlement Agreement as being specifically resolved and terminated by approval of this Settlement Agreement.
- 6.7 This Settlement Agreement is the product of settlement negotiations. The Settling Parties agree that the content of those negotiations (including any workpapers or documents produced in connection with the negotiations) are confidential, that all offers of settlement are without prejudice to the position of any party or participant presenting such offer or participating in such discussion, and, except to enforce rights related to this Settlement Agreement, comply with the Connecticut Freedom of Information Act or defend against claims made under this Settlement Agreement, that they will not use the content of those negotiations in any manner in these or other proceedings involving one or more of the parties to this Settlement Agreement, or otherwise.
- 6.8 Any number of counterparts of this Settlement Agreement may be executed, and each shall have the same force and effect as an original instrument, and as if all the parties to all the counterparts had signed the same instrument.
- 6.9 If there is any material change to the current agreement between the Companies and the Massachusetts Department of Energy Resources ("DOER") and the Massachusetts Attorney General prior to any approval by the Authority, any party may declare this Settlement Agreement null and void. If there is any material change to the current agreement between the Companies and the DOER and the Massachusetts Attorney General after approval by the Authority, the Attorney General and the OCC reserve the right to seek to reopen Docket No. 12-01-07 pursuant to Conn. Gen. Stat. § 16-9.

The signatories listed below represent that they are authorized on behalf of their principals to enter into this Settlement Agreement.

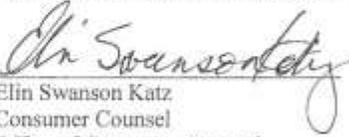
**ATTORNEY GENERAL OF THE  
STATE OF CONNECTICUT**

By:   
George Jepsen  
Attorney General  
Office of the Attorney General  
55 Elm Street  
Hartford, CT 06106

**NORTHEAST UTILITIES**

By: \_\_\_\_\_  
David R. McHale  
Executive Vice President and  
Chief Financial Officer  
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**OFFICE OF CONSUMER COUNSEL**

By:   
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Consumer Counsel  
Office of Consumer Counsel  
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**NSTAR**

By: \_\_\_\_\_  
James J. Judge  
Senior Vice President and Chief  
Financial Officer  
NSTAR  
800 Boylston Street  
Boston, MA 02109

Dated: March 13, 2012

The signatories listed below represent that they are authorized on behalf of their principals to enter into this Settlement Agreement.

**ATTORNEY GENERAL OF THE  
STATE OF CONNECTICUT**

By: \_\_\_\_\_  
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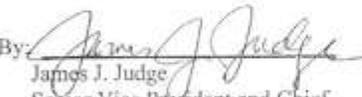
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New Britain, CT 06051

**NSTAR**

By:   
James J. Judge  
Senior Vice President and Chief  
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NSTAR  
800 Boylston Street  
Boston, MA 02109

Dated: March 13, 2012

**DOCKET NO. 12-01-07 APPLICATION FOR APPROVAL OF HOLDING COMPANY TRANSACTION INVOLVING NORTHEAST UTILITIES AND NSTAR**

This Decision is adopted by the following Directors:

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Kevin M. DeIGobbo

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John W. Betkoski, III

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**CERTIFICATE OF SERVICE**

The foregoing is a true and correct copy of the Decision issued by the Public Utilities Regulatory Authority, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.

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Kimberley J. Santopietro  
Executive Secretary  
Department of Energy and Environmental Protection  
Public Utilities Regulatory Authority

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Date