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A Northeast Utilities Company

Robert A. Bersak
Assistant Secretary and
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February 1, 2011

Ms. Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, New Hampshire 03301-2429

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Re: *Northeast Utilities-NSTAR Merger Review*
Docket No. DE 11-014

Dear Secretary Howland:

In response to the Commission's letter dated January 18, 2011, Northeast Utilities ("NU") and Public Service Company of New Hampshire ("PSNH", and together with NU, the "Companies") welcome the opportunity to participate in the public informational session to be held by the Commission on February 7, 2011. In advance of that session, the Companies are submitting this letter to provide the Commission with background information on the merger agreement with NSTAR, including a description of the transaction structure and other details. In addition, this letter addresses the issue of the Commission's jurisdiction over the transaction, and its expected effects on PSNH's rates, terms, services or operations.

As explained in this letter, the transaction contemplated by the merger agreement will result in NU acquiring all of the shares of NSTAR, and NSTAR and its subsidiaries becoming subsidiaries of NU. Neither NU nor PSNH are being acquired, sold or merged as a result of this transaction. As described more fully below, the transaction will involve NSTAR being acquired by NU through mergers involving NSTAR and two specially created merger subsidiaries of NU.

The NU/NSTAR transaction will not result in a new company, will not result in a change of control over NU or PSNH, and will not change the existing holding company-public utility relationship of NU and PSNH. NU shares will continue to be traded before and after the transaction is completed. From a corporate and legal perspective, NU will be the same company following the proposed merger as it is today. PSNH will remain a wholly-owned, independent subsidiary of NU and will not merge with any other company. Accordingly, New Hampshire law does not require Commission approval of the proposed transaction.

Most importantly, however, the transaction will not change or limit the Commission's continuing jurisdiction over PSNH. PSNH will continue to be regulated by the Commission as a public utility, all outstanding orders and commitments will remain effective, and the interests of customers will be fully protected following the merger, as they are today, through the Commission's continuing authority over the rates, terms, services and operations of PSNH.

Description of the Transaction

NU is a Massachusetts business trust and the parent holding company of four regulated utility subsidiaries, including PSNH, which is a New Hampshire public utility.¹ NSTAR is also a Massachusetts business trust and is the parent holding company of NSTAR Electric Company and NSTAR Gas Company, which together provide service to approximately 1.1 million electric distribution customers and approximately 300,000 natural gas distribution customers in Massachusetts. NSTAR has no plant, operations or customers in New Hampshire, and none of its subsidiaries are New Hampshire public utilities.² NU and NSTAR entered into an Agreement and Plan of Merger dated October 16, 2010, as amended on November 1, 2010 and December 16, 2010 (the "Merger Agreement"), which provides for the acquisition of NSTAR by NU, subject to necessary approvals of shareholders and government regulatory authorities having jurisdiction over the transaction. NU and NSTAR first mailed to their respective shareholders a joint proxy statement/prospectus on January 5, 2011, which provides additional information regarding the companies, the transaction, and includes a copy of the Merger Agreement. The joint proxy statement/prospectus is enclosed with this letter as Attachment A.

Pursuant to the Merger Agreement, consideration for the proposed merger will be 100 percent equity, in the form of NU common shares (although cash will be paid in lieu of fractional shares). At closing, each holder of an NSTAR common share will be entitled to receive 1.312 NU common shares (the "exchange ratio"). The exchange ratio is based on the average closing share prices of NSTAR and NU over the 20 trading days immediately preceding the announcement of the Merger Agreement and reflects no merger premium for the shareholders of NU or NSTAR. See Attachment A, Merger Agreement, §1.6.

The proposed merger will be accomplished in a two-step process, as set forth in the Merger Agreement. As described therein, the transaction will consist first of a merger under Massachusetts law whereby NSTAR will merge with and into NU Holding Energy 1 LLC ("Merger Sub"), a new first tier, wholly owned subsidiary of NU created for the transaction. In this part of the transaction, Merger Sub will cease to exist and NSTAR will be the surviving entity (termed the "Surviving Trust"). Immediately thereafter, NSTAR, the Surviving Trust, will

¹ RSA 362:2(I) defines "public utility" to include "every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court, except municipal corporations and county corporations operating within their corporate limits, owning, operating or managing any plant or equipment or any part of the same for the conveyance of telephone or telegraph messages or for the manufacture or furnishing of light, heat, sewage disposal, power or water for the public, or in the generation, transmission or sale of electricity ultimately sold to the public"

² NSTAR derives approximately 99% percent of its consolidated operating revenues from the utility operations of NSTAR Electric and NSTAR Gas, neither of which are New Hampshire public utilities.

NU

merge with and into NU Holding Energy 2 LLC (“Acquisition Sub”), a second, wholly-owned first tier subsidiary of NU created for the transaction. Acquisition Sub will be the surviving entity and, immediately following the second merger, will be renamed NSTAR LLC. As a consequence of the two sequential mergers, NSTAR will become a wholly owned, first tier subsidiary of NU in a transaction intended to be a tax-free exchange of stock for the present shareholders of NSTAR.³ See Attachment A, Merger Agreement, §1.1. The corporate organization chart depicting NU’s subsidiaries following the transaction is attached as Attachment B.

The transaction is subject to a series of approvals by the NU shareholders. As described in the Merger Agreement, the NU shareholders must approve the issuance of the NU common shares constituting the merger consideration, and must also adopt the Merger Agreement and approve the proposed merger. See Merger Agreement, §3.3. The NU shareholders must also approve fixing the number of trustees of the NU board of trustees (“NU Board”) at 14. Existing NU shareholders are expected to hold approximately 56.3% of NU’s common shares outstanding immediately following the completion of the transaction. Therefore, the NU shareholders will determine whether the proposed merger may go forward, as well as retain control over NU, including the NU Board, after the transaction.⁴

As a matter of law, NU from a corporate perspective will be the same company following the proposed merger as it is today. Although the Merger Agreement contemplates various changes to the NU Board and officers following the transaction, these changes do not amount to a “change of control” of NU.⁵ NU will continue to be publicly traded, owned and controlled by a large, diverse group of shareholders, none of which owns a controlling interest in the company. NU will continue in existence following the transaction, with no provision in the Merger Agreement calling for the creation of a new holding company that would exercise control over NU, PSNH or its other subsidiaries. The transaction will not combine holding companies, but rather, will combine NSTAR and two special purpose *subsidiaries* of NU created to effectuate the proposed merger. See Merger Agreement, §1.1.

Commission Jurisdiction

The Commission regulates the acquisition, sale and merger of public utilities and public utility holding companies doing business in New Hampshire. New Hampshire law requires Commission approval of any transaction in which a public utility or holding company would acquire a controlling interest in a public utility or public utility holding company incorporated in or doing business in New Hampshire. The Commission’s jurisdiction is based on whether the company being acquired is a New Hampshire public utility or a public utility holding company doing business in New Hampshire. The Commission’s jurisdiction is not triggered if the transaction involves an acquisition of an out-of-state utility or the holding company of an out-of-

³ NSTAR Electric Company and NSTAR Gas Company will continue in their current form as separate corporations, subsidiaries of NSTAR LLC, with NU as the parent holding company.

⁴ With respect to NSTAR’s participation in the transaction, NSTAR shareholders must also approve the adoption of the Merger Agreement and consummation of the proposed merger. See Merger Agreement, §2.3.

⁵ The Commission also does not regulate management and personnel changes within a utility.

state utility (such as NSTAR), by the holding company of a New Hampshire public utility (such as NU). The Commission has consistently adhered to this jurisdictional threshold in prior cases.

The Commission typically reviews public utility acquisitions pursuant to its authority under RSA 374:33 and RSA 369:8, II(b).⁶ RSA 374:33 states as follows:

No public utility or public utility holding company . . . shall directly or indirectly acquire more than 10 percent, or more than the ownership level which triggers reporting requirements under 15 U.S.C., section 78-P, whichever is less, of the stocks or bonds of any other public utility or public utility holding company *incorporated in or doing business in this state*, unless the commission finds that such acquisition is lawful, proper and in the public interest. . . .

RSA 374:33 (emphasis added). This statute expressly states that the Commission's jurisdiction is triggered only if the company to be acquired is incorporated in or doing business in New Hampshire."

RSA 369:8, II(b)(1) states as follows:

To the extent that the approval of the commission *is required by any other statute* for any corporate *merger or acquisition* involving parent companies of a public utility whose rates, terms, and conditions of service are regulated by the commission, the approval of the commission shall not be required if the public utility files with the commission a detailed written representation no less than 60 days prior to the anticipated completion of the transaction that the transaction will not have an adverse effect on rates, terms, service, or operation of the public utility within the state.

RSA 369:8, II(b)(1) (emphasis added). This statute establishes an expedited process for certain mergers or acquisitions, but the Commission's authority is derivative and dependant upon whether the proposed transaction is in the first instance subject to its approval under another statute, such as RSA 374:33.⁷ Neither of these statutes authorizes the Commission to approve an acquisition of an out-of-state utility by the holding company parent of a New Hampshire public utility.

In addition to these two statutes, the Commission's January 18, 2011 letter directs the Companies to also address RSA 369-B:3, IV, (b)(4) (the "Con Ed Merger Statute") and RSA 374:30. The Con Ed Merger Statute was implemented in the year 2000, and sets forth required terms for inclusion in any financing orders for rate reduction bonds ("RRBs"). Among those

⁶ See, e.g., DG 08-048, *Unitil Corporation and Northern Utilities, Inc. Joint Petition for Approval of Stock Acquisition*, Order No. 24,906, Oct. 10, 2008; DG 07-083, *Iberdrola, S.A., et al, Joint Petition for Approval of the Acquisition of New Hampshire Gas Corporation*, Order No. 24,812, Dec. 28, 2007 ("Iberdrola"); DG 06-107, *National Grid plc, et al, Petition for Approval of Merger Transaction*, Order No. 24,777, July 12, 2007.

⁷ The standard of review by the Commission is whether the proposed acquisition is "lawful, proper and in the public interest" pursuant to RSA 374:33, and whether there is "no adverse effect on the rates, terms, service or operation of the utility" pursuant to RSA 369:8, II(b), in essence a "no net harm" test. See, *Iberdrola*, at 7-8, citing *Grafton County Electric Light and Power Co. v. State*, 77 N.H. 539, 540 (1915); *Parker-Young Co. v. State*, 83 N.H. 551, 561-562 (1929); *Appeal of Pinetree Power*, 152 N.H. 92, 97 (2005).

terms is a provision to require Commission approval “[i]n the event that PSNH or its parent company is *acquired or otherwise sold or merged*” (emphasis added). This provision is inapplicable in the current case, because neither PSNH nor NU is being “acquired or otherwise sold or merged” with NSTAR. The transaction is structured as an acquisition of NSTAR by NU, as described above.

RSA 374:30 is also inapplicable to the transaction. This statute allows a public utility to “transfer or lease its franchise, works or system . . . exercised or located in this state, or contract for the operation of its works and system located in this state” upon approval of the Commission.

The proposed merger will not change the ownership or operation of PSNH’s franchise, works or system. PSNH will continue as a wholly-owned subsidiary of NU, will retain all of its assets, and will not be merged with or transferred to another company. The transaction preserves the legal identity of PSNH and the current holding company-public utility relationship of NU and PSNH.

The Commission has previously determined that it does not have jurisdiction over the acquisition of an out-of-state utility holding company by the holding company of a New Hampshire public utility. *See National Grid Group, PLC Petition for Approval of Merger*, Order No. 23,640, 86 NH PUC 95 (2001) (“NGG Order”). In that case, the Commission was presented with an application for approval pursuant to RSA 374:33 and RSA 369:8, II, in which National Grid Group (“NGG”), the holding company parent of two New Hampshire public utilities, was subject to a “technical” change of control to a new corporate entity being created to facilitate NGG’s acquisition of Niagara Mohawk. In the transaction, which was approved by the Commission, the new corporate entity was taking the place of NGG as the parent holding company of its current subsidiaries, and would also become the parent holding company of Niagara Mohawk. In the Order, the Commission cited to prior cases in which it “discussed at some length the statutory framework within which it must act in considering *acquisitions of New Hampshire public utilities and/or their parent companies*.” 86 NH PUC at 98 (emphasis added).

The Commission further explained that upon completion of the NGG transaction, “the result would be no different from the situation in which NGG bought Niagara Mohawk outright, *a transaction over which the Commission would have no jurisdiction*.” *Id.* (emphasis added). The current case involving NU and NSTAR is identical to the scenario described by the Commission (i.e, if NGG had bought Niagara Mohawk outright). The NU/NSTAR transaction is a “transaction over which the Commission would have no jurisdiction,” because there is no change in control over a New Hampshire public utility or its parent holding company.

Finally, the Companies note that the NSTAR transaction is similar, although larger in scope, to NU’s acquisition of Yankee Energy System, Inc. in the year 2000. The Commission did not review or approve that transaction, because there was no change in control of NU, and because Yankee is not a New Hampshire public utility. The Commission’s posture with respect to NU’s acquisition of Yankee was consistent with a line of other recent cases that proceeded without Commission approval, in which the parent holding companies of various New Hampshire public

utilities acquired out-of-state utility.⁸ The transaction contemplated in the Merger Agreement is structured in a similar manner and is not subject to the Commission's jurisdiction.

PSNH Customers Will Be Unaffected by the Merger

The Merger Agreement will not change or limit the Commission's jurisdiction over PSNH. PSNH will continue to be locally-controlled and managed. The company will continue to be regulated by the Commission as a public utility. The Commission will retain its full jurisdiction with respect to PSNH's provision of electric service, the condition of its plant and equipment, and its manner of operations.

The Commission also will retain its full authority over the rates and terms of service of PSNH. NU and NSTAR are not proposing any rate changes in connection with the transaction. PSNH's rates will be unaffected by the proposed merger and will remain at current levels unless and until a change in rates is authorized by the Commission. In the future, to the extent that the proposed merger results in efficiencies, cost savings or potential new business practices for PSNH, these issues would ultimately be addressed by the Commission in future rate cases and related proceedings. PSNH will also continue to be subject to all compliance obligations under applicable statutes, rules and Commission orders. As a result, the interests of customers are fully protected.

Following the consummation of the transaction, via the normal ratemaking process, PSNH's customers will benefit as a just and reasonable amount of any cost savings that result from such merger, acquisition or sale are allocated amongst all NU operating companies. Moreover, it is important to note that no acquisition premium is being paid by NU to consummate the transaction. Thus, there is no acquisition premium that could in any way increase rates at any time. And, as noted earlier, the transaction will not adversely affect rates, terms, service, or operation of the public utility within the state. The Companies will be providing the Commission with detailed written information substantiating these statements as part of this informational docket. Thus, notwithstanding that the NU/NSTAR transaction is a transaction over which the Commission has no jurisdiction, the transaction still is consistent with and complies with all New Hampshire statutory requirements.

⁸ The following are three recent examples: In 2001, Energy East (parent company of New Hampshire Gas Corporation, a New Hampshire public utility) acquired RGS Energy (parent company of Rochester Gas & Electric). Further information is available at:

<http://www.sec.gov/Archives/edgar/data/1046861/000091205701509743/a2043268zs-4.txt>

In 2005, FPL Group, Inc. (parent company of Florida Power and Light Co., a New Hampshire public utility due to its ownership of Seabrook transmission assets) acquired Gexa Corp. Further information is available at:

<http://www.sec.gov/Archives/edgar/data/753308/000104746905011899/a2156967zs-4.htm>

In 2005, Verizon Communications Inc. (parent company of Verizon New England, a New Hampshire public utility) acquired MCI. Further information is available at:

<http://www.sec.gov/Archives/edgar/data/732712/000119312505074187/ds4.htm>

PSNH looks forward to participating in the February 7, 2011 informational session, and appreciates this opportunity to provide further information on the NU/NSTAR transaction.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Bersak". The signature is fluid and cursive, with a prominent initial "R" and a long, sweeping underline.

Robert A. Bersak
Assistant Secretary and
Assistant General Counsel

Enclosures

cc: Office of Consumer Advocate