



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 20-59

October 7, 2020

Joint Petition of Eversource Energy, NiSource Inc., Eversource Gas Company of Massachusetts, and Bay State Gas Company d/b/a Columbia Gas of Massachusetts for approval by the Department of Public Utilities of (1) the sale of Bay State Gas Company to Eversource Energy; and (2) a settlement agreement resolving the proposed sale and two pending Department investigations into the Merrimack Valley Incident: Bay State Gas Company, D.P.U. 19-140 and Bay State Gas Company, D.P.U. 19-141.

D.P.U. 19-140

Investigation by the Department of Public Utilities on its own Motion into Bay State Gas Company d/b/a Columbia Gas of Massachusetts' responsibility for and response to the September 13, 2018 Merrimack Valley Incident, pursuant to 49 U.S.C. § 60105, G.L. c. 164, § 76, G.L. c. 164, § 105A, and 220 CMR 69.00.

D.P.U. 19-141

Investigation by the Department of Public Utilities on its own Motion into the Preparation and Response of Bay State Gas Company d/b/a Columbia Gas of Massachusetts with respect to the September 13, 2018 Merrimack Valley Gas Event pursuant to G.L. c. 164, §§ 1J, 76, and 85B, and 220 CMR 19.00.

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## I. BACKGROUND

On September 13, 2018, Columbia Gas of Massachusetts (“Bay State”) experienced an overpressurization of its low-pressure distribution system that serves the City of Lawrence, the Town of Andover, and the Town of North Andover in the Merrimack Valley, allowing gas from a high pressure distribution system to enter the low pressure distribution system (“September 13, 2018 Incident”). This resulted in the damage or destruction of 131 homes and businesses, the hospitalization of 22 individuals, and the death of one person.

Following the incident, the National Transportation Safety Board (“NTSB”) conducted an investigation into the September 13, 2018 Incident and issued its final report on October 24, 2019.<sup>1</sup> The NTSB concluded that Bay State caused the overpressurization through its failure to “adequately plan, review, sequence, and oversee the construction project that led to the abandonment of a cast iron main without first relocating regulator sensing lines to the new polyethylene main.”<sup>2</sup>

In addition to the NTSB investigation, the United States Attorney for the District of Massachusetts (“United States Attorney”) charged Bay State with violations of the Pipeline

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<sup>1</sup> National Transportation Safety Board, Overpressurization of Natural Gas Distribution System, Explosions, and Fires in Merrimack Valley, Massachusetts September 13, 2018, available at: <https://www.nts.gov/investigations/AccidentReports/Reports/PAR1902.pdf> (2019).

<sup>2</sup> National Transportation Safety Board, Overpressurization of Natural Gas Distribution System, Explosions, and Fires in Merrimack Valley, Massachusetts September 13, 2018, at vii, available at: <https://www.nts.gov/investigations/AccidentReports/Reports/PAR1902.pdf> (2019).

Safety Act. The United States Attorney entered into a Plea Agreement with Bay State and a Deferred Prosecution Agreement (“DPA”) with NiSource, Inc. (“NiSource”), Bay State’s parent company. The plea agreement, which attaches and references the DPA, was accepted by the Court on June 23, 2020. Pursuant to the terms of the plea agreement, Bay State was required to pay a criminal fine of \$53,030,116 and, under the DPA, NiSource was required to make all reasonable best efforts to sell Bay State, forfeit any profit from the sale of Bay State, and cease all gas pipeline activities in Massachusetts upon the sale of Bay State.<sup>3</sup>

## II. PROCEDURAL HISTORY

### A. D.P.U. 20-59

On July 2, 2020, Eversource Energy (“Eversource”), Eversource Gas Company of Massachusetts (“EGMA”), NiSource, and Bay State (collectively, “Companies”) filed a petition jointly with the Department of Public Utilities (“Department”) for approval of the sale of substantially all of Bay State’s assets to Eversource pursuant to G.L. c. 164, § 96 (“Section 96”). If approved, Eversource would assign its rights under the proposed sale to EGMA. Concurrently with the petition, the Companies, the Attorney General for the Commonwealth of Massachusetts (“Attorney General”), the Department of Energy Resources (“DOER”), and the Low-Income Weatherization and Fuel Assistance Program Network (“Network”) (collectively, “Settling Parties”) filed a proposed settlement agreement

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<sup>3</sup> United States Department of Justice, United States v. Bay State Gas Company, d/b/a Columbia Gas of Massachusetts, available at <https://www.justice.gov/usao-ma/victim-and-witness-assistance-program/united-states-v-bay-state-gas-company-dba-columbia-gas-massachusetts> (last visited September 17, 2020).

(“Settlement”) and joint motion for approval of the settlement that would resolve both the proposed sale and the Department’s pending investigations in the following proceedings: Bay State Gas Company, D.P.U. 19-140 and Bay State Gas Company, D.P.U. 19-141. The Department has docketed this matter as D.P.U. 20-59.<sup>4</sup>

The Department granted the timely filed petitions to intervene of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (“United Steelworkers”); Laborers’ International Union of North America (“LIUNA”); Conservation Law Foundation (“CLF”); Groundwork Lawrence; and the Town of Longmeadow.<sup>5</sup> Pursuant to notice duly issued, the Department held public hearings on August 25 and August 27, 2020. The Department received 18 written comments, including comments from Groundwork Lawrence, and 20 comments at the public hearings, including comments from CLF and LIUNA. Additionally, on September 30, 2020,

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<sup>4</sup> On July 10, 2020, the Settling Parties filed a joint motion to consolidate D.P.U. 20-59 with D.P.U. 19-140 and D.P.U. 19-141 that requested the Department suspend proceedings in D.P.U. 19-140 and D.P.U. 19-141, conduct a single discovery process and hearings, and consolidate the cases in the final order if the Department approved the Settlement. The Department received no opposition to this motion and we hereby grant the motion to consolidate this proceeding, D.P.U. 20-59, with D.P.U. 19-140 and D.P.U. 19-141.

<sup>5</sup> Additionally, because the Settlement was filed concurrently with the petition, at the public hearings, the Attorney General, DOER, and the Network were all granted (without opposition) status as full intervenors.

the Town of Longmeadow filed a motion to submit comments on the Settlement along with comments regarding the proposed Settlement.<sup>6</sup>

On September 29, 2020, the Settling Parties filed an amendment to the Settlement and the joint motion for approval of the Settlement that extended the requested deadline for approval to October 7, 2020.

In support of their petition, the Companies sponsored the testimony of the following witnesses: (1) William J. Akley, president of the Eversource Energy gas distribution business; (2) Penelope M. Conner, chief customer officer and senior vice president of the customer group for Eversource Energy; (3) Douglas P. Horton, vice president of distribution rates and regulatory requirements for Eversource Energy; and (4) Shawn Anderson, senior vice president, chief strategy and risk officer of NiSource.

The Companies responded to 46 information requests from the Department, two information requests from the Network, 120 information requests from LIUNA, 17 information requests from CLF, four information requests from the Town of Longmeadow, and three information requests from Groundwork Lawrence.

B. D.P.U. 19-140/D.P.U. 19-141

On October 25, 2019, the Department opened an investigation into Bay State's responsibility for and response to the September 13, 2018 Incident and Bay State's restoration efforts following that incident. The Department docketed this proceeding as D.P.U. 19-140.

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<sup>6</sup> The Department hereby grants the Town of Longmeadow's motion.

That same day, the Department also opened an investigation into Bay State's efforts to prepare for and restore service following the September 13, 2018 Incident. The Department docketed this proceeding as D.P.U. 19-141. As part of each investigation, the Department solicited comments from interested stakeholders.

The Attorney General filed a notice of intervention pursuant to G.L. c. 12, § 11E, and was recognized as a full party to these proceedings. The Department also granted the timely filed petition to intervene as a full participant of DOER. The Department received timely petitions to intervene as full participants from the following entities: (1) Direct Energy Services LLC, Direct Energy Business LLC, and Direct Energy Business Marketing LLC; (2) the Network; and (3) CLF. The Department also received a request to participate as a limited participant from Groundwork Lawrence. The Department allowed all these entities limited participant status in both D.P.U. 19-140 and D.P.U. 19-141 (D.P.U. 19-140/19-141, Hearing Officer Ruling on Petitions to Intervene, at 1).

Pursuant to notice duly issued, the Department held public hearings on January 29, 2020, in Lawrence, Massachusetts; and February 10, 2020, in Andover, Massachusetts. The Department received numerous written and oral comments for each docket.

Prior to the Department's Order opening D.P.U. 19-140, Bay State had responded to 26 information requests from the Department's Pipeline Safety Division ("Division").<sup>7</sup> In the Order opening D.P.U. 19-140, the Department transferred those responses into the D.P.U. 19-140 docket. D.P.U. 19-140, Vote and Order Opening Investigation at 5 (October 25, 2019). In D.P.U. 19-141, Bay State responded to 13 information requests from the Department.<sup>8</sup> On May 22, 2020, Bay State, Eversource, the Attorney General, and DOER filed a joint motion for appointment of Department Settlement Intervention staff in D.P.U. 19-140, which the Department granted on May 29, 2020. On August 14, 2020, Bay State and the Division executed a Consent Order resolving compliance actions associated with D.P.U. 19-140 and all other pending matters before the Division.

### III. DESCRIPTION OF THE PROPOSED TRANSACTION

#### A. Introduction

In its initial filing, Eversource, Bay State, and NiSource requested approval of (1) their February 26, 2020 asset purchase agreement ("APA") for Eversource to purchase substantially all of Bay State's assets and all of the assets held by any Bay State affiliate

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<sup>7</sup> The 26 information requests had been issued by the Division to Bay State as part of the Division's investigation into the September 13, 2018 Incident. Bay State Gas Company, D.P.U. 19-PL-07.

<sup>8</sup> The Department, on its own motion, moves into the evidentiary record the Companies' initial filing, the Settlement and its appendices, the amended Settlement, the 192 responses to information requests in D.P.U. 20-59, the 26 responses to information requests in D.P.U. 19-140, and the 13 responses to information requests in D.P.U. 19-141.

primarily related to storing, distributing, or transporting natural gas to customers in Massachusetts; (2) a rate stabilization plan; (3) assignment of Eversource's rights under the APA to EGMA; and (4) Eversource's transition plan (collectively "Proposed Transaction") (Exhs. JP-SA-1, at 5; JP-SA-2, at 7, 20-26). Eversource agreed to purchase these assets for a base price of \$1.1 billion that will be adjusted up or down based on Bay State's net working capital<sup>9</sup> and target working capital<sup>10</sup> (Exhs. JP-SA-2, at 28, 31-33; JP-DPH-1, at 8, 9-10; JP-WJA/PMC-1, at 12-50).

B. The Companies

NiSource is an energy holding company with subsidiaries that operate regulated natural gas and electric utility companies in seven states (Exh. JP-SA-1, at 4). NiSource Gas

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<sup>9</sup> "Net working capital" is defined as

(a) the categories of current assets of [Bay State] described in the line items designated as "included" on Exhibit B to the extent included in the Purchased Assets, minus (b) the categories of current liabilities of [Bay State] described in the line items designated as "included" on Exhibit B to the extent included in the Assumed Liabilities, each determined as of 12:01 am (Eastern time) on the Closing Date in accordance with the Agreed Accounting Principles. Net Working Capital shall be based exclusively on the facts and circumstances as they exist as of immediately preceding the Closing and shall exclude the effects of Buyer consummating the Closing (including Buyer's financing of the Purchase Price); provided, however, that Net Working Capital shall exclude any costs or liabilities related to the redemption of Business Indebtedness but shall be increased by the Debt Breakage Cost Amount.

(Exh. JP-SA-2, at 15).

<sup>10</sup> The target working capital is \$30,263,516 (Exh. JP-SA-2, at 18).

Distribution Group, Inc., a wholly owned subsidiary of NiSource, owns six distribution subsidiaries that provide natural gas to approximately 2.7 million customers in Kentucky, Maryland, Massachusetts, Pennsylvania, Ohio, and Virginia. Additionally, Northern Indiana Public Service Company LLC, a wholly owned subsidiary of NiSource, distributes natural gas to approximately 839,000 customers in northern Indiana (Exh. JP-SA-1, at 4).

Bay State is a subsidiary of NiSource and operates as a local gas distribution company in Massachusetts, providing retail natural gas distribution service to approximately 321,000 residential, commercial, and industrial customers (Exh. JP-WJA/PMC-1, at 9). Bay State operates in three non-contiguous service areas centered in Springfield, Brockton, and Lawrence, Massachusetts (Exh. JP-WJA/PMC-1, at 9).

Eversource is a voluntary association and Massachusetts business trust headquartered in both Boston, Massachusetts and Hartford, Connecticut (Exh. JP-WJA/PMC-1, at 8). Electric, gas, and water subsidiaries of Eversource include NSTAR Gas Company (“NSTAR Gas”), NSTAR Electric Company, The Connecticut Light and Power Company, Yankee Gas, Public Service Company of New Hampshire, and Eversource Aquarion Holdings, Inc. (Exh. JP-WJA/PMC-1, at 8). NSTAR Gas, a wholly owned subsidiary of Yankee Energy System (“Yankee Energy”), serves approximately 296,000 customers in central and eastern Massachusetts (Exh. JP-WJA/PMC-1, at 8).

EGMA is a wholly owned subsidiary of Eversource that was incorporated in Massachusetts on May 15, 2020, to own and operate Bay State’s business

(Exh. JP-WJA/PMC-1, at 10). Eversource intends to assign its rights and interests to acquire Bay State's business pursuant to the APA to EGMA (Exh. JP-WJA/PMC-1, at 10).

C. The Proposed Acquisition

1. Assets and Liabilities

Pursuant to the terms of the APA, Eversource would acquire most but not all of Bay State's assets in Massachusetts. Among the assets that Eversource will purchase are owned property, leases, easements, permits, and other business assets such as machinery and equipment (Exh. JP-SA-2, at 20-22). The APA specifically excludes several categories of assets, including any collective bargaining agreements or other contract with a labor union, most employee benefit plans and programs sponsored by NiSource or its affiliates, and any insurance contracts or proceeds from insurance policies, including any payouts for the September 13, 2018 Incident<sup>11</sup> (Exh. JP-SA-2, at 22-23). Additionally, pursuant to the APA, Eversource would not assume responsibility for all the liabilities of Bay State or its affiliates. Among the liabilities specifically excluded from the transaction are any liabilities related to the September 13, 2018 Incident, as well as any liabilities related to the excluded assets (Exh. JP-SA-2, at 24-26).

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<sup>11</sup> The APA refers to the "Greater Lawrence Incident," which is defined as including the same events described in D.P.U. 19-141, Order on Scope (December 23, 2019) (Exh. JP-SA-2, at 12). For this Order, the events referred to as the September 13, 2018 Incident cover the same events as those referred to as the Greater Lawrence Incident in the APA.

## 2. Rate Stabilization Plan

In its initial filing, the Companies proposed to implement a ten-year rate stabilization plan, consisting of three components. First, EGMA would submit a base-rate petition pursuant to G.L. c. 164, § 94 during the first quarter of 2021, requesting a change in base rates by year-end 2021 (Exh. JP-DPH-1, at 12). The Companies estimated that this base distribution rate increase would be for \$56 million (Exh. JP-DPH-1, at 15).

The proposed base distribution rate increase would include a number of distinct features. One feature that the Companies proposed was to create a rate base offset (“RBO”) for use in EGMA’s applicable ratemaking proceedings for 20 years following the Closing (i.e., through 2040) in order to mitigate any harm to EGMA’s customers from the inability to transfer Bay State’s accumulated deferred income tax (“ADIT”) to EGMA<sup>12</sup> (Exh. JP-DPH-1, at 20-21). The RBO would be recorded as a liability and would be calculated by EGMA using rate base-related ADIT information to be provided by NiSource (Exh. JP-DPH-1, at 22-23). The RBO would be amortized on a straight-line basis over 20 years, and the annual amortization would not be incorporated in the calculation of EGMA’s utility operating income (Exhs. JP-DPH-1, at 23; JP-DPH-3).

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<sup>12</sup> Because the transaction is structured as an asset purchase, tax laws require Bay State’s ADIT balances that exist as of the date of the Closing to remain with NiSource (Exh. JP-DPH-1, at 19-20). Bay State’s excess ADIT associated with the Tax Cut and Jobs Act of 2017 have already been recorded as a regulatory liability and thus would be transferred to EGMA upon the sale (Exh. JP-DPH-1, at 19-20).

Additionally, the Companies represented that NiSource would not recover any capital costs incurred in response to the September 13, 2018 Incident through future base rate proceedings or through this proceeding, nor would NiSource receive any direct value associated with the investment (Exh. JP-DPH-1, at 16). The Companies also stated that because EGMA would be purchasing distribution assets that are used and useful in the business, the transaction has been structured so that EGMA could commence operations with an established rate base that would be used for future ratemaking purposes and that has been accepted by the Department for ratemaking purposes as of the Closing date (Exh. JP-DPH-1, at 17-18). The Companies stated that based on Bay State's actual book data available, the company had a rate base of \$1,132,271,367 as of December 31, 2019 (Exhs. JP-DPH-1, at 19; JP-DPH-2). The Companies noted that this figure was not final and subject to normal additions and subtractions during 2020 and to the computation of ADIT as of Closing (Exhs. JP-DPH-1, at 19; JP-DPH-2). The Companies stated that under the terms of the APA, Department approval of this rate base as of the Closing date is a condition precedent of the transaction, and that Eversource is not required to move forward with the transaction without such Department approval (Exh. JP-DPH-1, at 19; Exh. JP-SA-2, at 52).

Second, the Companies proposed to implement an annual capital cost recovery mechanism that provides for annual recovery of non-gas system enhancement plan

("GSEP")<sup>13</sup> capital projects completed and placed in service through December 31, 2028 (i.e., for the years 2021 through 2028), to be implemented one year following the setting of new distribution base rates in 2021 (Exh. JP-DPH-1, at 25-26). To stabilize rates for customers over that period, EGMA represented that it would be precluded from filing for new base distribution rates taking effect prior to November 1, 2030 (Exh. JP-DPH-1, at 24).

Third, the Companies proposed that the Department authorize the transfer of Bay State's liquified natural gas ("LNG") and liquid propane gas ("LPG") peaking assets into Hopkinton LNG Corp. ("HOPCO")<sup>14</sup> (Exh. JP-DPH-1, at 26-27). This transaction was intended to consolidate the management of the gas resource portfolios of both Bay State and NSTAR Gas and provide reliability and cost benefits for customers of both companies (Exh. JP-DPH-1, at 26-27).

The Companies estimated that the total transaction costs associated with the merger would be between \$15 million and \$20 million, and an as-yet unquantified level of integration costs associated with evaluating and reorganizing Bay State's operations to exist within Eversource's operating platform (Exh. JP-DPH-1, at 39-40, 44). The Companies proposed

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<sup>13</sup> The GSEP is a cost recovery mechanism implemented pursuant to G.L. c. 164, §145 to replace aging natural gas pipeline infrastructure in the interest of public safety and to reduce lost and unaccounted for natural gas.

<sup>14</sup> HOPCO is a wholly owned subsidiary of Yankee Energy and owns a LNG storage and production facility in Hopkinton, Massachusetts, and peaking facilities in Acushnet, Massachusetts (Exh. JP WJA/PMC 1, at 9). HOPCO provides winter peaking services to NSTAR Gas pursuant to a long-term gas service agreement ("GSA") that was approved by the Department in NSTAR Gas Company, D.P.U. 14-64 (2015).

that transaction and reasonable integration costs be considered eligible for recovery in a future proceeding to the extent that transaction-related savings are demonstrated to equal or exceed those costs (Exh. JP-DPH-1, at 43-44).

### 3. Eversource Gas Company of Massachusetts

Prior to Closing, Eversource intends to assign its rights in the APA to EGMA (Exh. JP-DPH-1, at 8). Following Closing, EGMA would continue to operate as Columbia Gas of Massachusetts for up to one year to allow time to transition to the new EGMA name (Exh. JP-DPH-1, at 8). Bay State customers would become EGMA customers under the same rate schedules and terms of services currently in effect for Bay State. EGMA would remain legally and functionally separate from NSTAR Gas (Exh. JP-DPH-1, at 9). Eversource did not propose any changes to its corporate organization beyond incorporating EGMA into the Eversource corporate organization (Exh. JP-DPH-1, at 9).

Effective as of Closing, Eversource would offer employment to all Bay State business employees<sup>15</sup> that are actively employed and in good standing as of Closing (Exhs. JP-SA-2, at 60; JP-DPH-1, at 49-50). Employment will also be offered to those employees who are in good standing and on an approved leave of absence or disability leave as of Closing<sup>16</sup>

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<sup>15</sup> The APA defines “Business Employees” as (a) any employee of [Bay State] other than the employees listed on [APA] Exhibit A-1, and (b) the individuals listed on [APA] Exhibit A-2 (Exh. JP-SA-2, at 8).

<sup>16</sup> In this case, the offer will be effective as of the earlier of the date the employee is scheduled to return to work or six months after Closing, unless the employee has a statutory right to return at a date later than six months (Exh. JP-SA-2, at 60).

(Exhs. JP-SA-2, at 60; JP-DPH-1, at 49-50). Pursuant to the APA, Eversource would offer employment to collective bargaining employees with wages and benefits substantially comparable in the aggregate to those received by employees currently employed pursuant to one of two collective bargaining agreements: (1) the agreement between NSTAR Electric Company and NSTAR Gas and Utility Workers Union of America, A.F.L.-C.I.O., Local 369, dated June 2, 2018 to June 1, 2021; or (2) the agreement between NSTAR Gas and The United Steelworkers, AFL-CIO-CLC, Local 12004, dated March 31, 2020 to March 31, 2024 (Exhs. JP-SA-2, at 60-61; JP-DPH-1, at 49-50). Employees who are not subject to collective bargaining agreements would be offered employment with wages and benefits substantially comparable in the aggregate to similarly situated employees of Eversource and its affiliates (Exhs. JP-SA-2, at 61; JP-DPH-1, at 50). Non-union employees would also be covered by the existing Eversource Energy Severance Plan, which provides for a severance payment of two weeks' pay for every year of eligible service up to a maximum of 52 weeks, as well as the continuation of some benefits. The severance pay for these employees would be calculated based on the employee's combined service with Bay State and Eversource, though Eversource noted that it may institute a minimum term of employment by Eversource to qualify for the severance plan (Exh. JP-SA-2, at 61; JP-DPH-1, at 50). Eversource emphasized that it is offering employment to Bay State employees as described above and is seeking to avoid the loss of human resources at the outset of the transition (Exh. JP-DPH-1, at 50).

#### 4. Transition Plan

As part of the petition, Eversource also provided testimony regarding its transition plans if the Proposed Transaction is approved. Regarding operations, Eversource stated that it has already started implementing a four-phase process to assume operation of Bay State's operating assets and ensure safe and reliable operations of those assets

(Exh. JP-WJA/PMC-1, at 23). The four phases of Eversource's process are as follows:

(1) assessment and evaluation of all phases and functions of the Bay State operations;

(2) extension of the existing NSTAR Gas operations management structure to the Bay State

operations in the NSTAR Gas management model; (3) management "drill-downs" into all engineering, operations, and construction processes to instill leadership structures and align

processes with those followed on the NSTAR Gas platform; and (4) systematic planning and

investment in the distribution system to reinforce, refurbish, or replace non-GSEP system

components to operate efficiently and effectively in providing safe and reliable service to

customers (Exh. JP-WJA/PMC-1, at 23). Additionally, Eversource stated that it will work

closely with NiSource to transition the functions currently provided by NiSource Corporate

Service Company to the Eversource organization (Exh. JP-WJA/PMC-1, at 36). Eversource

stated that it expects that the process of transitioning Bay State's operations will continue for

several years after Closing, but also states that it and NiSource are committed to a successful,

seamless transition (Exh. JP-WJA/PMC-1, at 36-37).

#### IV. DESCRIPTION OF THE PROPOSED SETTLEMENT

##### A. Introduction

The Settlement proposes to approve the Proposed Transaction and includes several additional requirements (Settlement § 2.1; Explanatory Statement at 10).<sup>17</sup> The Settlement is expressly conditioned on the Department's acceptance of all provisions therein, without change or condition, on or prior to September 30, 2020 (Settlement §§ 3.8, 3.9; Explanatory Statement at 23). Below is a summary of key provisions of the Settlement that the Department has evaluated in determining whether the Settlement and the Proposed Transaction are consistent with the public interest and produce a reasonable result.

##### B. Rate Plan

###### 1. Distribution Rate Increases

According to the Rate Plan contained in the Settlement Agreement, the Settling Parties agree to a two-step base distribution rate increase based on Bay State's proposed rate settlement in Bay State Gas Company, D.P.U. 18-45, that was withdrawn in the aftermath of the September 13, 2018 Incident<sup>18</sup> (Settlement § 2.4 & App. 2). The first step of the rate

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<sup>17</sup> The Settlement would also update certain aspects of the Proposed Transaction (e.g., compare Settlement § 2.4.5.3 with Exh. JP-DPH-1, at 12, 24) (modifying the date when new rates under future G.L. c. 164, § 94 base-rate petitions may take effect).

<sup>18</sup> In basing the Settlement's base distribution rate increases on the withdrawn D.P.U. 18-45 settlement, the Settling Parties identify what they consider to be inadvertent schedule errors affecting the revenue deficiency proposed in D.P.U. 18-45 (Settlement §§ 2.4.1.1, 2.4.1.3). The Settling Parties agree that the correct proposed revenue deficiency was \$25.9 million, which has been reduced to \$23.0 million as part of this Settlement (Settlement §§ 2.4.1.1, 2.4.1.2, 2.4.1.3).

increase consists of (1) a base distribution rate increase of \$32.8 million, of which approximately \$19.8 million is being currently recovered through Bay State's GSEP and targeted infrastructure recovery factor ("TIRF")<sup>19</sup> mechanisms, less (2) a tax credit of approximately \$6.7 million associated with the passback of excess ADIT accrued between January 1, 2018 and June 30, 2018<sup>20</sup> (Settlement §§ 2.4.2.1, 2.4.2.2). This first increase, with a combined net revenue change of approximately \$6.3 million, would take effect on November 1, 2021 (Settlement at §§ 2.4.2.1; 2.4.2.3). The second step would occur on November 1, 2022, with a distribution rate increase of \$10 million (Settlement § 2.4.2.4).

## 2. Cost of Capital

The Settlement establishes a return on equity of 9.70 percent as of January 1, 2021, which was originally proposed in the D.P.U. 18-45 Rate Settlement (Settlement § 2.4.4 & App. 2 § 1.5.1). The Settlement also establishes that EGMA would have a capital structure of 53.25 percent common equity and 46.75 percent long-term debt, resulting in a weighted average cost of capital of 7.50 percent (Settlement § 2.4.4).

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<sup>19</sup> The TIRF was approved in Bay State Gas Company, D.P.U. 09-30 (2009) to allow for the annual recovery of the revenue requirement associated with costs incurred in the prior calendar year for capital projects associated with the removal and replacement of non-cathodically protected steel mains and other eligible facilities. The TIRF was replaced with the GSEP in 2015.

<sup>20</sup> The tax credit would be provided to EGMA customers on their monthly bills from November 1, 2021, through April 30, 2022 (Settlement § 2.4.2.1).

### 3. Revenue Decoupling Mechanism

The Settlement also affects certain elements of Bay State's current Revenue Decoupling Mechanism ("RDM"). The Settling Parties agree that on November 1, 2021, EGMA shall adjust the Benchmark Revenue Per Customer targets associated with the RDM to move all customers in existence as of December 31, 2017, into the RDM<sup>21</sup> and to incorporate the revenue target established in the first base distribution rate increase (Settlement §§ 2.4.3, 2.6.1.5). The Settling Parties further agree that on November 1, 2022, EGMA shall further adjust the Benchmark Revenue Per Customer targets associated with the RDM to incorporate the revenue target established in the second distribution base rate increase (Settlement §§ 2.4.3, 2.6.2.4). Benchmark Revenue Per Customer targets under the EGMA RDM shall be updated to reflect EGMA's updated base distribution revenue inclusive of the revenue requirement for the First Rate Base Reset and Second Rate Base Reset (Settlement §§ 2.6.1.5, 2.6.2.4).

### 4. Rate Base Resets

The Settlement specifies that EGMA's rate base, as defined by those components normally used in the rate base calculation, will be equal to \$995 million as of Closing (Settlement §§ 2.6.1.1, 2.6.1.2; Exh. DPU-ES 2-2). The difference between Bay State's actual rate base calculated as of Closing and the \$995 million rate base provided for under

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<sup>21</sup> Under Bay State's current RDM, the company is permitted to retain the revenues associated with customers who were added since December 31, 2014, the end of the test year used in the company's last distribution rate case, Bay State Gas Company, D.P.U. 15-50 (2015). Bay State Gas Company, M.D.P.U. No. 285A, § 4.

the Settlement would be written off for both ratemaking and financial accounting purposes, with the associated adjustment to plant in service applied entirely to the capital assets booked as plant by Bay State related to restoration of service following the September 13, 2018 Incident<sup>22</sup> (Settlement §§ 2.6.1.1, 2.6.1.2; Exh. DPU-ES 2-3). The actual level of the writedown will be determined based on the final Closing figures, calculated as of the Closing date<sup>23</sup> (Exh. DPU-ES 2-2). The Settlement includes two rate base resets during the eight-year rate plan, which would occur on November 1, 2024 and November 1, 2027 (Settlement §§ 2.6.1, 2.6.2). The two rate base resets adjust distribution rates to account for capital additions (including the roll-in of GSEP capital additions), depreciation expense, property taxes, and return on rate base for capital additions placed into service through December 31, 2023, for the first rate base reset occurring on November 1, 2024, and through December 31, 2026, for the second rate base reset occurring on November 1, 2027 (Settlement § 2.6).

EGMA must submit all capital project documentation for projects completed between Closing and December 31, 2023 to the Department, the Attorney General, and DOER, and bears the burden of demonstrating that all projects included in rate base were prudently

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<sup>22</sup> As of December 31, 2019, Bay State had incurred approximately \$258 million in capital expenditures in response to the September 13, 2018 Incident. Bay State Gas Company 2019 Annual Return to the Department at 6, Note 2.

<sup>23</sup> Based on Bay State's illustrative rate base calculation of approximately \$1.132 billion as of December 31, 2019, the required rate base reduction to reach the negotiated \$995 million rate base in the Settlement would be approximately \$137 million (Exhs. JP-DPH-1, at 19; JP-DPH-2; DPU-ES 2-2).

incurred (Settlement §§ 2.6.1.6, 2.6.2.2). The changes to base distribution rates associated with the rate base resets are to be collected through volumetric charges and to be assigned to each rate class by the percentage of volumetric base revenue generated from the effective base rates using the prior calendar year normalized sales volumes (Settlement §§ 2.6.1.7, 2.6.2.5). The revenue requirement adjustments related to the rate base resets, excluding the revenue requirement associated with GSEP capital projects, shall be capped at seven percent of EGMA's most recent calendar year total firm delivery revenues at the time of filing, plus imputed cost of gas revenues for sales and transportation customers (Settlement §§ 2.6.1.8, 2.6.2.6). Any deferred amount may be recovered in the following year through the Local Distribution Adjustment Clause ("LDAC") (Settlement §§ 2.6.1.8, 2.6.2.6).<sup>24</sup>

#### 5. Rate Base Offset

As noted above, Bay State's ADIT balances that exist as of the date of the Closing must remain with NiSource (Exhs. JP-DPH-1, at 19-20; DPU-ES 2-1). Instead, the tax basis of the acquired Bay State assets will be "stepped up" to their fair market value as of the acquisition date as required by the Internal Revenue Code (Exh. DPU-ES 2-1). This "step up" in tax basis will create new ADIT liability balances that will accumulate over time on EGMA's books (Exh. DPU-ES 2-1).

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<sup>24</sup> The LDAC is the tariff that sets forth the terms by which a gas company may recover distribution-related costs such as energy efficiency, environmental response, Attorney General consultants, residential assistance, and the GSEP through its Local Distribution Adjustment Factor.

In an effort to mitigate any harm to EGMA's customers from the resulting increase in base rates that would otherwise occur from the loss of Bay State's ADIT, the Settlement provides that EGMA create a RBO for use in applicable ratemaking proceedings for 20 years following the Closing (i.e., through 2040) (Settlement § 2.5 & App. 3). The RBO is to be recorded as a liability and is to be calculated by EGMA using rate base-related ADIT information to be provided by NiSource<sup>25</sup> (Settlement §§ 2.5.1, 2.5.2). The RBO is to be amortized on a straight-line basis over 20 years, booked to Account 425, and is not be incorporated in the calculation of EGMA's utility operating income (Settlement § 2.5.3). Any new ADIT associated with the "stepped-up basis" arising from the transaction is to be deducted from the RBO in any year during the amortization period (Settlement § 2.5.4; Exhs. DPU-ES 3-9; DPU-ES 3-10).

#### 6. Distribution Base Rate Freeze

The Settlement states that, aside from the two distribution rate increases and the two rate base reset provisions described above, EGMA would be prohibited from filing for an increase or redesign of distribution base rates in a base-rate petition under G.L. c. 164, § 94 for rates effective prior to November 1, 2028 (Settlement §§ 2.4.5, 2.4.5.1, 2.4.5.3). The Settling Parties further agree that any new reconciling rate mechanism, other than those that may be established as a result of the Department's ongoing proceedings into (1) the recovery

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<sup>25</sup> The RBO amortization schedule, including the apportionment of RBO among distribution-related rate base, GSEP, and EGMA's peaking assets, will be provided to the Department in final form within 45 days of Closing (Settlement § 2.5.3).

of costs associated with the COVID-19 pandemic in Policies and Practices for Electric and Gas Companies Regarding Customer Assistance and Ratemaking Measures in Connection to the State of Emergency Regarding the Novel Coronavirus (COVID-19) Pandemic,

D.P.U. 20-58, (2) fee-free credit/debit transactions in Customer Bill Payment Alternatives for Gas and Electric Distribution Companies, D.P.U. 19-71, or (3) other recovery allowed by new Massachusetts statutory provisions mandating operating expenses, shall be considered a distribution rate increase and thus not allowed to become effective prior to November 1, 2028 (Settlement §§ 2.4.5.1, 2.4.5.2).

7. Low Income Discount

The discount for Bay State low-income customer classes is currently set at 25 percent of the total residential gas bill (Settlement § 2.3). The Settlement stipulates that if the Department approves a change to the low-income discount rate in NSTAR Gas Company, D.P.U. 19-120, then the discount for Bay State low-income customers will be set to match the rate set for NSTAR Gas customers, effective November 1, 2021<sup>26</sup> (Settlement §§ 2.3.2, 2.3.3.).

8. Exogenous Adjustments

According to the Settlement, during the Rate Plan period, EGMA is eligible to adjust distribution rates to account for the costs of exogenous events that occur after the approval of the Settlement (Settlement § 2.7). The Settling Parties agree that in order for EGMA to

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<sup>26</sup> NSTAR Gas is proposing to increase the current low-income discount rate for its low-income customers to 30 percent (Settlement § 2.3.1).

recover costs of an exogenous event, the criteria established for exogenous events in Boston Gas Company, D.P.U. 96-50 (1996), must be met, unless the Department establishes new criteria in D.P.U. 19-120 (Settlement § 2.7). The cost of an exogenous event must reach a threshold equal to EGMA's total operating revenues multiplied by a factor of 0.001253 (Settlement § 2.7).

#### 9. Earnings Sharing Mechanism

The Settling Parties agree to an Earnings Sharing Mechanism as part of the Rate Plan (Settlement § 2.8). As originally agreed to in D.P.U. 18-45, the Earnings Sharing Mechanism would split all earnings exceeding 230 basis points above the approved ROE, with 75 percent shared with customers and the remaining 25 percent to EGMA (Settlement § 2.8.1).

#### C. Comprehensive Safety Assessment and Implementation Plan

The Settlement requires Eversource and EGMA to conduct a Comprehensive Safety Assessment & Implementation Plan ("Safety Assessment") to thoroughly evaluate the safety and condition of the EGMA system following the Closing of the Transaction (Settlement § 2.2 & App. 1; Explanatory Statement at 10). Specifically, the Safety Assessment would accomplish the thorough investigation, evaluation, and review of all aspects of EGMA's operation including the following: gas supply; the Bay State LNG and LPG facilities; gate stations and district regulators; pipeline safety practices, standards, and procedures; leak surveys and preventive maintenance; training and operator qualification practices; engineering and design; construction; leak management; safety management systems; integrity of maps,

records, and operating data; gas operations tooling and safety equipment; meters; compliance work backlog; and safety culture practices (Settlement § 2.2.1; Explanatory Statement at 10).

The Settlement further requires that, no later than September 1, 2021, EGMA would file with the Department for review and approval and make publicly available an in-depth and thorough statement of findings, work plans, and associated capital budget that result from the development and implementation of the Safety Assessment (Settlement § 2.2.2; Explanatory Statement at 10). Thereafter, EGMA would file progress reports at six-month intervals through the expiration date of the Settlement (i.e., October 31, 2028) on the implementation of the Safety Assessment findings as well as plans to address any previously unidentified safety-related issues on the EGMA distribution system (Settlement § 2.2.4; Explanatory Statement at 10-11). As part of the Safety Assessment, EGMA would evaluate its GSEP and limit its GSEP replacement work to no more than an average of 45 miles of main per year between 2021 and 2024 (Settlement § 2.2.3; App. 1, at 5). As part of its annual capital budget, EGMA would produce an annual capital forecast that includes expenditure targets with a limited contingency deadband to account for reasonably expected variation from the target for the years 2021 through 2026 (Settlement § 2.2.2.2).

The Settling Parties assert that the Safety Assessment, as well as the work plans that are developed based on the findings and the periodic progress reports, will provide the Department and stakeholders with a transparent lens to review the work being done, thus assuring that EGMA customers are benefitting from improved safety and reliability on the EGMA distribution system, beginning with the Closing of the Transaction Agreement

(Explanatory Statement at 11). Under this multi-disciplinary approach, according to the Settling Parties, EGMA will be able to efficiently and effectively identify and address any safety or reliability deficiencies on the distribution system, providing EGMA customers with real-time benefits Agreement (Explanatory Statement at 11).

D. Gas Resource Portfolio

The Settling Parties agree to certain provisions regarding the EGMA gas resource portfolio in an effort to achieve gas cost savings (Settlement §§ 2.9-2.11; Explanatory Statement at 17). Pursuant to the Settlement, Eversource would undertake a comprehensive assessment to study the potential gas resource portfolio efficiencies and resulting gas cost savings that may arise due to the modified management of the EGMA gas resources or integration of the NSTAR Gas and EGMA gas resource portfolios (Settlement § 2.9). EGMA would file report results no later than September 1, 2021, and would pass any savings directly to EGMA's customers through the Cost of Gas Adjustment Clause ("CGAC")<sup>27</sup> (Settlement § 2.9). Eversource would retain its right to petition the Department for consolidation of the Gas Cost Factors or other elements of the CGAC of NSTAR Gas and EGMA at any time during the term of the Settlement but any consolidation would not take effect prior to November 1, 2022 (Settlement § 2.11). In the event that it does seek to consolidate the CGAC, Eversource states that it would propose a method to mitigate material

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<sup>27</sup> The CGAC is the tariff that sets forth the terms by which a gas company may recover for the cost to purchase and transport gas supply to Massachusetts through its Cost of Gas Adjustment Factor.

bill impacts, to the extent reasonably possible without unduly burdening any particular customer segment (Settlement § 2.11).

Following Closing, Eversource would transfer, at net book value, the LNG and LPG assets currently owned and operated by Bay State into HOPCO (Settlement § 2.10.1).

Eversource would be authorized to operate HOPCO to provide simultaneous peaking services to NSTAR Gas and EGMA, with appropriate apportionment of operating and commodity costs across all customer segments, except that HOPCO could not combine capital costs incurred in relation to the peaking assets primarily serving NSTAR Gas and primarily serving EGMA customers (Settlement § 2.10.2). HOPCO would not be prohibited from submitting a proposal to the Department to consolidate capital costs during the term of the Settlement (Settlement § 2.10.2). Within 30 days of Closing, EGMA would submit a long-term gas service agreement (“GSA”) to the Department to establish the terms and conditions of service between HOPCO and EGMA consistent with the illustrative agreement provided with the Settlement (Settlement § 2.10.3 & App. 4).

E. Service Quality Indices and Safety

Pursuant to the Settlement, EGMA would institute, track, and report on service quality metrics as approved by the Department for NSTAR Gas in the pending rate case, D.P.U. 19-120, as long as necessary data is readily available (Settlement § 2.17 & App. 5; Explanatory Statement at 19). EGMA would also develop a performance metric for leak rates and submit it to the Department for review and approval no later than March 1, 2021 (Settlement § 2.17.1; Explanatory Statement at 19). In addition, EGMA would submit the

new service quality metrics, baselines, and performance benchmarks to the Department as an addendum to the Annual Service Quality Report due March 1, 2021, for informational purposes (Settlement § 2.17.2; Explanatory Statement at 19).

The Settlement further provides that if the Division issues a notice of probable violation (“NOPV”) in relation to work performed or work processes employed on the EGMA system following the Closing, EGMA would present information to the Department on whether a probable violation is a “pre-existing condition,” meaning that the probable violation: (i) pertains to work performed, or work processes employed, prior to the date of Closing; and (ii) is not the product of any work performed or work practices undertaken by, or for, EGMA since the date of Closing (Settlement § 2.18; Explanatory Statement at 19). All other compliance aspects of the NOPV would apply to EGMA, including but not limited to, EGMA’s addressing all non-compliance issues (Settlement § 2.18; Explanatory Statement at 19; Exh. DPU-ES 1-12).

#### F. Clean Energy Initiatives

As part of the Settlement, the Settling Parties agree on a number of commitments relating to energy efficiency and clean energy initiatives (Settlement §§ 2.19-2.24). EGMA would commit to the savings goals, budgets, and Term Sheet<sup>28</sup> commitments applicable to

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<sup>28</sup> The Term Sheet is the October 19, 2018, agreement between the energy efficiency program administrators, DOER, and the Attorney General regarding the 2019-2021 goals, budgets, performance incentive pool, and other terms reflected in the three-year, statewide energy efficiency plan referred to as the Statewide Plan. 2019-2021 Three-Year Energy Efficiency Plan Order, D.P.U. 18-110, at 5, 7-8 (2019).

Bay State in the 2019-2021 Three-Year Energy Efficiency Plan, including Bay State's commitments, as well as Bay State's targeted efforts in the Merrimack Valley, approved by the Department in Bay State's 2019-2021 Three-Year Energy Efficiency Plan Order, D.P.U. 18-110 (2019) ("Three-Year Plan")<sup>29</sup> (Settlement § 2.20). Pursuant to the Settlement, Eversource agreed to hire an independent consultant to conduct a Clean Energy Business Case Analysis (Settlement § 2.19 & App. 6). The Company would submit the analysis of potential decarbonization strategies that may be implemented in relation to the reduction of greenhouse gas emissions associated with the sale and distribution of natural gas consistent with state law, no later than September 1, 2021 (Settlement § 2.19). Eversource would be responsible for all costs and expenses associated with retaining the outside consulting services, up to \$500,000 (Settlement § 2.19; Exh. DPU-ES 1-5). Eversource is not obligated to spend more than \$500,000 for the Clean Business Case Analysis, but in the event that costs do exceed \$500,000, Eversource would remain responsible for those costs (Exh. DPU-ES 1-5).

Furthermore, EGMA would support the commencement of a heat pump incentive program to provide targeted outreach and enhanced electrification incentives for customers in the municipalities affected by the Northampton moratorium (Settlement § 2.21). EGMA agrees to allocate \$500,000 to DOER to administer this program (Settlement § 2.21;

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<sup>29</sup> By Letter Order, the Department approved the extension of certain energy efficiency programs in the Merrimack Valley until December 31, 2020. D.P.U. 18-110, Letter Order (April 10, 2020).

Exh. DPU-ES 1-6). Additionally, EGMA plans to initiate a gas demand response program that includes up to 2,000 residential and small commercial wifi thermostats and ten medium/large commercial customers for a term of three years, starting November 1, 2021 (Settlement § 2.22). As a condition of the settlement, EGMA would spend up to \$1.0 million for this program, inclusive of all program and evaluation costs (Settlement § 2.22; Exh. DPU-ES 1-8). The program would temporarily reduce gas usage from residential and small commercial customers by changing setpoints on wifi thermostats that are connected to natural gas fired furnaces or boilers (Settlement § 2.22).

As a commitment to the settlement, EGMA would be required to make a good faith effort to increase customer enrollment in the seasonal savings program, established by Bay State within Three-Year Plan, using marketing and advertising (Settlement § 2.23). The seasonal savings program uses smart thermostats and allows any residential customer with a Nest or comparable thermostat to opt-in for participation to reduce gas usage and increase winter gas savings (Settlement § 2.23). EGMA would report participation and savings to DOER following each heating season to the extent that such data is available from the vendor (Settlement § 2.23). EGMA would spend \$250,000 in 2021 as an incremental incentive for supplemental high efficiency air-source heat pumps for residential gas heating consumers in EGMA's service territory, as determined in consultation with DOER (Settlement § 2.24). The Companies state that the budget and savings from this offering would be tracked and reported separately as part of future three-year plan annual and term reports submitted to the Department (Exh. DPU-ES 1-10).

The Settlement provides that EGMA would not seek recovery through its energy efficiency surcharge (“EES”) or other customer rates for any of the amounts committed to these Settlement-mandated clean energy initiatives to be implemented in addition to the Three-Year Plan<sup>30,31</sup> (Settlement §§ 2.19, 2.21, 2.22, 2.24; Exhs. DPU-ES 1-5; DPU-ES 1-7; DPU-ES 1-8; DPU-ES 1-10).

G. Transaction and Integration Costs

The Settling Parties estimate that the total pre-tax transaction associated with the merger would be \$15.95 million, consisting of the following: (1) \$7.5 million in investment banking costs; (2) \$1 million in purchase accounting costs; (3) \$3.95 million in legal costs; and (4) \$3.5 million in communications costs (Exh. DPU-ES 2-6). The Settling Parties also identify integration costs associated with the transaction, such as the transition of services from NiSource Corporate Service Company to Eversource Energy Service Company, reorganizing operations, consolidating information systems, and other initiatives to identify and achieve operating cost savings (Settlement § 2.12). While the Settling Parties represent that actual integration expenses will not be known until Eversource gains greater insight into the efforts and initiatives needed to transition Bay State’s business onto the Eversource

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<sup>30</sup> The Settlement states, however, that the Attorney General and DOER could agree to allow EGMA to seek recovery of part or all of the \$1 million gas demand response program through the energy efficiency budget to expand the impact of EGMA’s required contribution (Settlement § 2.22).

<sup>31</sup> For the seasonal savings program, EGMA would recover any enhanced wifi marketing and advertising costs through the EES (Exh. DPU-ES 1-9).

operating platform, they provide a preliminary integration cost estimate of \$22.27 million, consisting mostly of consulting costs, information technology costs, and customer communication costs (Exh. DPU-ES 2-7). Transaction costs would be recorded on Eversource's books and integration costs may be recorded on the books of a parent company, EGMA, or charged to EGMA by a service company (Settlement § 2.12; Exh. DPU-ES 2-4).

The Settlement permits EGMA to recover both the transaction and integration costs over an amortization period of ten years, subject to Department review and approval, and further subject to certain conditions specified in the Settlement (Settlement § 2.13). Specifically, transaction costs would be capped at \$5 million, and are not to include banker's fees (Settlement § 2.13.1). The Settlement permits EGMA to file for recovery of the annual amortization of the transaction and integration costs if it can demonstrate, by December 31, 2026, that it has achieved operating cost savings for EGMA sufficient to offset the annual amortization of transaction and integration costs as a direct result of the purchase<sup>32</sup> (Settlement § 2.13.2). Cost recovery would be achieved in a revenue-neutral manner through recovery of the annual amortization through the LDAC, with a corresponding decrease to distribution base rates through a base rate credit (Settlement § 2.13.3). At the time of EGMA's next base distribution rate case following the expiration of the Settlement, the amortization of transaction and integration costs would be moved from the LDAC into base

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<sup>32</sup> The Settling Parties represent that such a demonstration shall be made in a similar manner to the savings demonstrations provided in NSTAR Electric Company/Western Massachusetts Electric Company, D.P.U. 17-05 (2017) and NSTAR Gas Company, D.P.U. 14-150 (2015) (Settlement § 2.13.2).

distribution rates, and the base rate credit would be eliminated because all operational cost savings would by that time be incorporated within EGMA's cost of service (Settlement § 2.13.4).

#### H. Post-Closing Operations

The Settlement provides that the actual transaction costs by account shall be provided to the Department in the form of a compliance filing made within 90 days of the Closing (Settlement § 2.14). The Settlement further provides that the actual integration costs by account shall be provided to the Department in the form of a compliance filing made within 60 days following the end of each calendar year through December 31, 2026 (Settlement § 2.15). Finally, the Settlement provides that in the event of a facility closing or layoff of employees by EGMA during the first three years of the Settlement, EGMA is to provide 30 days' advance notice of such action to the Attorney General and to DOER<sup>33</sup> (Settlement § 2.16).

#### I. Termination of Bay State Proceedings

Pursuant to the Settlement, Bay State takes responsibility for the September 13, 2018 Incident and does not contest facts in the record sufficient to support the Department's investigations into pipeline safety and emergency response in D.P.U. 19-140 and D.P.U. 19-141 (Settlement § 2.25.1). Upon the date of Closing, all pending actions, claims

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<sup>33</sup> The Settling Parties represent that nothing in this Settlement, including this provision, shall be interpreted to abridge any collective bargaining rights regarding reductions to work force (Settlement § 2.16).

and investigations, lawsuits, or other legal or administrative proceedings against NiSource, Bay State, and their affiliates, and all of their respective directors, officers, employees, agents, and representatives under the jurisdiction of the Department (including the pending investigations in D.P.U. 19-140 and D.P.U. 19-141) would be considered settled, resolved, and terminated (Settlement § 2.25.2; Explanatory Statement at 20). In addition, all future actions, claims and investigations, lawsuits or other legal or administrative proceedings against those same companies and individuals relating to the September 13, 2018 Incident under the jurisdiction of the Department would be considered settled, resolved, and terminated (Settlement § 2.25.2; Explanatory Statement at 20). The Settlement would also resolve all outstanding pipeline safety enforcement and compliance matters against Bay State as set forth in the Consent Order executed by Bay State and the Division and filed in D.P.U. 19-140 and D.P.U. 20-59 on August 14, 2020 (Settlement § 2.25.3; Explanatory Statement at 20; Consent Order). Upon Closing, Eversource and EGMA would be responsible for confirming or achieving compliance with all provisions of the Consent Order, and EGMA shall report on the status of such compliance action, and prioritization of any incomplete compliance items, as part of the Safety Assessment due to the Department on or before September 1, 2021 (Settlement § 2.2.5; Explanatory Statement at 20; Exh. DPU-ES 3-11).

Further, the Settling Parties agree that, upon the date of Closing, the Settlement would constitute receipt from the Attorney General of an agreement: (i) to terminate with prejudice all pending actions, claims, lawsuits, investigations, or proceedings under the

jurisdiction of the Attorney General against Bay State and its affiliates relating to, arising out of, or in connection with the September 13, 2018 Incident; and (ii) not to commence any new action, claim, lawsuit, investigation, or proceeding against Bay State and its affiliates relating to, arising out of, or in connection with, the September 13, 2018 Incident (Settlement § 2.26; Explanatory Statement at 20-21).

In lieu of penalties, NiSource would pay \$56 million to fund the establishment of an “Energy Relief Fund” comprising two components: the “Merrimack Valley Renewal Fund” and the “Arrearage Forgiveness Fund” (Settlement §§ 2.27, 2.28; Explanatory Statement at 7, 21).<sup>34</sup> Of this \$56 million, at least \$41 million would be apportioned to the Merrimack Valley Renewal Fund, to be jointly developed and administered by the Attorney General and DOER, and up to \$15 million would be apportioned to the Arrearage Forgiveness Fund, to be jointly administered by the Attorney General and Eversource (Settlement § 2.28.1; Explanatory Statement at 7, 21-22). The Merrimack Valley Renewal Fund would be directed toward energy efficiency and clean energy measures for the benefit of residents, businesses, and municipal governments within the City of Lawrence, the Town of Andover, and the Town of North Andover (Settlement § 2.28.3; Explanatory Statement at 8, 22). These programs include grants for energy efficiency and clean energy projects within the affected municipalities and a new incentive program for housing upgrades and barrier mitigation to enable energy efficiency, incremental energy efficiency

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<sup>34</sup> Eversource shall withhold NiSource’s \$56 million payment in lieu of penalties from the Closing payment (Explanatory Statement at 7).

measures, and electrification. Additionally, the Merrimack Valley Renewal Fund includes a competitive grant for development of a geothermal district<sup>35</sup> (Settlement § 2.28.3; Explanatory Statement at 22; Exh. DPU-ES 3-2). The Arrearage Forgiveness Fund would benefit all R2 and R4 customers taking service from EGMA within the three Bay State service areas: Springfield, Brockton, and Greater Lawrence (Settlement § 2.28.4; Explanatory Statement at 8, 22). By November 30, 2020, Eversource would issue credits from the Arrearage Forgiveness Fund to residential low-income customers in the amount equal to the customer's respective arrearage balance on June 30, 2020, and EGMA would apply this credit to the accounts of all active EGMA R2 and R4 customers having an outstanding balance for natural gas service as of June 30, 2020 (Settlement § 2.28.4; Explanatory Statement at 8, 22-23). Further, EGMA would file a report with the Department, the Attorney General, and DOER no later than January 1, 2021, detailing the disposition of the Arrearage Forgiveness Fund (Settlement § 2.28.5).

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<sup>35</sup> According to Eversource, the geothermal district included as part of the Merrimack Valley Renewal Fund would be developed and administered by DOER and the Attorney General, in consultation with the city of Lawrence, the towns of Andover and North Andover, the Network, local community organizations, and the Energy Efficiency Advisory Council (Settlement § 2.28.3; Exhs. DPU-ES 3-1; DPU-ES 3-2; GWL 1-1). In its base distribution rate case, NSTAR Gas has also proposed a geothermal demonstration project that, according to the company, would allow it to test the logistical viability and business model impacts of a utility-run geothermal distribution network (Settlement § 2.28.3; Exh. DPU-ES 3-2). Eversource does not expect that there would be operational/experiential overlap between NSTAR Gas's proposed geothermal demonstration project in D.P.U. 19-120 and the geothermal project grant opportunity administered by the Attorney General and DOER, as described in the Settlement § 2.28.3 (Exh. DPU-ES 3-2).

## V. COMMENTS ON THE SETTLEMENTS

The Department received comments from three from intervenors in this proceeding, Groundwork Lawrence, CLF, and LIUNA. Groundwork Lawrence provided filed written comments in this proceeding, and CLF and LIUNA provided comments at the public hearing held August 25, 2020. The Town of Longmeadow also filed written comments in this proceeding following discovery.

In its comments, Groundwork Lawrence states that while it is happy that Bay State will no longer be operating in Massachusetts, residents of the Town of Lawrence remain skeptical regarding whether another gas distribution company will be effective in ensuring safety for customers<sup>36</sup> (Comments of Groundwork Lawrence at 2). It further stated that the Merrimack Valley Renewal Fund will be an important resource for recovery and resiliency but that the affected municipalities have different housing and business environments that require different strategies from the Attorney General and DOER. Groundwork Lawrence argues that processes and procedures must be put into place to ensure an equitable distribution across the affected municipalities (Comments of Groundwork Lawrence at 2). Groundwork Lawrence requested four changes to the Settlement: (1) require the Attorney General to dedicate resources to protecting tenants that may be evicted or priced out of their homes because of housing updates made by landlords through a Merrimack Valley Renewal Fund initiative; (2) amend the Municipal Clean or Energy Efficiency initiative to specifically

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<sup>36</sup> This concern was also shared by a number of the comments provided by members of the public.

include climate resiliency projects on municipal owned land; (3) amend the Public Affordable Housing Energy Efficiency initiative to allow for Community Development Corporations and Community Action Agencies/Programs nonprofit organizations to apply for funding; and (4) clarify whether there will be a cap on administrative costs for the Removing Energy Efficiency Barriers and Increased Access to Efficient and Clean Energy for Low and Moderate Income Residential and Multi-unit Housing program within DOER and how much money will go towards projects and infrastructure within municipalities (Comments of Groundwork Lawrence at 2-3).

CLF states that this proceeding presents a unique and timely opportunity to address pressing issues concerning the Commonwealth's climate goals and identified ongoing Massachusetts greenhouse gas emissions targets and a recent petition filed by the Attorney General regarding the future of the gas industry in Massachusetts<sup>37</sup> (Tr. Vol. A at 49). CLF states that the Proposed Transaction is a major transaction that would double the number of natural gas customers served by Eversource in Massachusetts and stems from the September 13, 2018 Incident (Tr. Vol. A at 51). In its comments, CLF notes that the explosions disproportionately impacted environmental justice communities in Lawrence that already suffered from declining infrastructure and lack of access to resources (Tr. Vol. A at 51). CLF encourages the Department to require the Settling Parties to draft a long-term

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<sup>37</sup> On June 4, 2020, the Attorney General filed a petition requesting that the Department initiate an investigation to assess the future of local gas distribution company operations and planning given the statewide limit of net-zero greenhouse gas emissions by 2050. The Attorney General's petition is included in docket D.P.U. 20-80.

plan for review and approval by the Department, which would address how Eversource intends to mitigate environmental and economic consequences of the September 13, 2018 Incident and how Eversource would modify its assets and operations to further Massachusetts's climate change goals (Tr. Vol. A at 51-52).

In its comments, LIUNA states that the Settlement as written may squander the opportunity to create a safer system (Tr. Vol. A at 47). LIUNA is concerned that the Settlement fails to address labor standards for contractors performing work on the inherited EGMA system, noting that this asset sale would more than double Eversource's system (Tr. Vol. A at 47). Additionally, LIUNA identifies concerns that the lack of increased standards gives an impression to residents of the Merrimack Valley that Eversource and the Attorney General do not care about safety and economic development opportunities in the area and maintains that these issues can only be addressed through increased training, safety, and labor standards (Tr. Vol. A at 47-48). LIUNA urges the Department to reject the Settlement until it addresses proper labor and safety standards (Tr. Vol. A at 48).

The Town of Longmeadow submitted written comments regarding the Settlement after the original comment period and following discovery. In particular, the Town of Longmeadow states that EGMA must fully evaluate the Longmeadow Supply Strategy Project ("Longmeadow Project")<sup>38</sup> and that it would be ill-advised and inconsistent with a net

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<sup>38</sup> The Company states that the Longmeadow Project is a new point of delivery to be installed by Tennessee Gas Pipeline Company in the Town of Longmeadow and is intended to enhance system reliability and gas supply availability. Bay State Gas Company, D.P.U. 19-135, Petition (CMA-1) at 84 (October 30, 2019). This project was outlined by Bay State in its pending Forecast and Supply Plan proceeding,

benefits analysis to move forward with a major gas infrastructure project before completing an overall evaluation of Bay State's distribution assets and developing a sustainable energy strategy pursuant to the Settlement (Comments of Longmeadow at 2). The Town of Longmeadow urges the Settling Parties to determine that the Settlement requires an evaluation of the Longmeadow Project or the Department to find that such an evaluation is required as part of any approval of the Settlement (Comments of Longmeadow at 8).

The Department also received a number of comments from elected officials and members of the public in this proceeding. Mayor Daniel Rivera of the City of Lawrence provided comment at both public hearings in favor of the Settlement, noting that, if accepted, the Settlement would remove Bay State as the natural gas provider in the area and require Eversource to implement a comprehensive safety and reliability program. (Tr. Vol. A at 24-29; Tr. Vol. B at 24-30). Additionally, members of the public and organizations provided written comments and spoke at the public hearings identifying concerns with the Settlement and Proposed Transaction that include the safety of the natural gas system under another investor-owned utility or in general, the repairs performed by or under the oversight of Eversource following the September 13, 2018 Incident, the effect of the Proposed Transaction on decarbonization goals, the lack of transparency and short review time, hiring and training practices, and distribution rate increases. Additionally, some commenters stated

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D.P.U. 19-135, but in response to information requests in this docket the Companies stated that EGMA intended to move forward with the project because it was critically needed and the project would not be affected by the Safety Assessment required by the Settlement (Exh. TOL 1-1).

that some of the incentives agreed to in the Settlement were too small or otherwise too narrow in scope or time.

## VI. STANDARD OF REVIEW

### A. Section 96

Section 96 sets forth the Department's authority to review and approve mergers, consolidations, sales and acquisitions, and changes of control of electric, gas, water companies, and holding companies of electric or gas companies. As a condition for approval, the Department must find that the proposed transaction is "consistent with the public interest." Section 96(b), (c). For purposes of demonstrating that a Section 96 transaction is consistent with the public interest, a petitioner must show "net benefits." NSTAR/Northeast Utilities Merger, D.P.U. 10-170, Interlocutory Order on Standard of Review at 21 (March 10, 2011). Accordingly, petitioners must demonstrate that the benefits of a consolidation, merger, sale or acquisition, or change of control outweigh the costs.

D.P.U. 10-170, Interlocutory Order on Standard of Review at 21-22, 26-27

(March 10, 2011). To determine whether petitioners have satisfactorily met this burden, the Department will consider any special factors surrounding an individual proposal.

D.P.U. 10-170, Interlocutory Order on Standard of Review at 26-27 (March 10, 2011).

Historically, the Department held that various factors may be considered in determining whether a Section 96 transaction is consistent with the public interest.

Traditionally, the Department considered the following factors: (1) effect on rates; (2) effect on the quality of service; (3) resulting net savings; (4) effect on competition; (5) financial

integrity of the post-merger entity; (6) fairness of the distribution of resulting benefits between shareholders and ratepayers; (7) societal costs; (8) effect on economic development; and (9) alternatives to the merger or acquisition. Guidelines and Standards for Mergers and Acquisitions, D.P.U. 93-167-A at 7-9 (1994) (“Mergers and Acquisitions”). In 2008, the Legislature amended Section 96(b), (c) to require Department to consider, at a minimum, the following four factors: (1) potential rate changes, if any; (2) long-term strategies that will assure a reliable, cost-effective energy delivery system; (3) any anticipated interruptions in service; and (4) other factors that may negatively impact customer service.<sup>39</sup> The second statutory factor, regarding long-term strategies, is the only factor not previously included in the nine factors outlined in Mergers and Acquisitions at 7-9.<sup>40</sup> The Department continues also to consider the traditional factors, but has held that this list of factors is illustrative and not “exhaustive,” and the Department may consider other factors, or a subset of these factors, when evaluating a Section 96 proposal. Eastern Utilities Associates/New England Electric System Merger, D.T.E. 99-47, at 17-18 (2000); BEC Energy/Commonwealth Energy System Merger, D.T.E. 99-19, at 11-12 (1999); Eastern Enterprises/Colonial Gas Company Merger, D.T.E. 98-128, at 6 (1999). No one factor is controlling.

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<sup>39</sup> In 2012, the Legislature reorganized Section 96, adding new provisions and incorporating these four factors into Sections 96(b), (c). St. 2012, c. 209, § 21.

<sup>40</sup> The remaining statutory factors correspond to factors in Mergers and Acquisitions at 7-9. Specifically, the first factor in Section 96 is subsumed by the first factor in Mergers and Acquisitions, the effect of the proposed transaction on rates. The third and fourth factors delineated in Section 96 correspond to the second factor in Mergers and Acquisitions, the effect on the quality of service.

The Department's determination as to whether a proposed transaction meets the requirements of Section 96 must rest on a record that quantifies costs and benefits, to the extent such quantification can be made. D.T.E. 99-47, at 17-18. The Department also may undertake a more qualitative analysis of those aspects that are hard to measure.

D.P.U. 10-170, Interlocutory Order on Standard of Review at 27 (March 10, 2011); Mergers and Acquisitions at 7-9. A Section 96 petition cannot rest on generalities, but must instead demonstrate benefits that outweigh the costs, including the cost of any acquisition premium sought. D.P.U. 10-170, Interlocutory Order on Standard of Review at 21-22, 27 (March 10, 2011); D.T.E. 99-47, at 18; D.T.E. 99-19, at 12; D.T.E. 98-128, at 7; Bay State Gas Company/NIPSCO Acquisition Company Merger, D.T.E. 98-31, at 11 (1998); Eastern Enterprises/Essex Gas Company Merger, D.T.E. 98-27, at 10 (1998); Mergers and Acquisitions at 7-9.<sup>41</sup>

#### B. Settlements

In assessing the reasonableness of an offer of settlement, the Department reviews all available information to ensure that the settlement is consistent with Department precedent and the public interest. Fall River Gas Company, D.P.U. 96-60 (1996); Essex County Gas Company, D.P.U. 96-70 (1996); Boston Edison Company, D.P.U. 92-130-D, at 5 (1996); Bay State Gas Company, D.P.U. 95-104, at 14-15 (1995); Boston Edison Company,

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<sup>41</sup> An acquisition premium, or goodwill, is generally defined as representing the difference between the purchase price paid by a utility to acquire plant that previously had been placed into service by another entity and the net depreciated cost of the acquired plant to the previous owner. Mergers and Acquisitions at 9.

D.P.U. 88-28/88-48/89-100, at 9 (1989). A settlement among the parties does not relieve the Department of its statutory obligation to conclude its investigation with a finding that a just and reasonable outcome will result. D.P.U. 95-104, at 15; D.P.U. 88-28/88-48/89-100, at 9.

## VII. ANALYSIS AND FINDINGS

### A. Introduction

The Department will analyze the Proposed Transaction, as recast by the Settlement, under the four factors set forth in § 96, to determine whether the Settlement is consistent with the public interest. Consistent with the standard of review above, we also will consider the following factors previously established by the Department for analyzing transaction under G.L. c. 164, § 96: (1) potential rate changes at the time of the transaction, if any; (2) resulting net savings of the proposed acquisition; (3) distribution of resulting benefits between shareholders and ratepayers; (4) long-term strategies that will assure a reliable, cost-effective gas delivery system; (5) any anticipated interruptions in service, other factors that may negatively impact customer service, and any effects on the quality of service; (6) societal costs and effect on economic development; and (7) the financial integrity of the post-acquisition entities. Additionally, the Department will analyze the Settling Parties' request that we terminate the Bay State proceedings.

B. Section 96 Acquisition Issues

1. Potential Rate Changes

a. Distribution Rate Increases

The Settling Parties do not propose any rate changes at the close of the transaction (Explanatory Statement at 9; Exh. JP-SA-1, at 17). EGMA will be operated as a regulated gas distribution company subject to the Department's jurisdiction and oversight, including those related to future rate changes. Accordingly, the Department's approval of the Settlement will not impact the rates of customers in the existing service territory of Bay State at the close of the transaction.

Section 2.4 of the Settlement provides for an increase of \$32.8 million in the distribution component of EGMA's rates on November 1, 2021, which will be partially offset by the roll-in of \$19.8 million in revenues currently being recovered through the GSEP and TIRF, as well as a six-month tax credit of approximately \$6.7 million (Settlement § 2.4.2.1). The \$32.8 million represents an approximate 13.6 percent increase to base distribution rates from the current rates in effect, with no rate class receiving an increase greater than 119 percent of the system total increase, and annual total bill impacts to rate classes are all estimated to be below three percent (Exh. DPU-ES 4-1, Att. a (Rev.)).<sup>42</sup> A second distribution rate increase of \$10 million will take effect on November 1, 2022 (Settlement

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<sup>42</sup> The Company's bill impacts are estimated using 2017 test year billing determinants because the rate increase is based on the test year established in D.P.U. 18-45 (Exh. DPU-ES 4-1).

§ 2.4.2.4). This second increase represents an approximate 2.5 percent increase to the base distribution rates that would be in effect as of November 1, 2021, with no rate class receiving an increase greater than 117 percent of the system total increase, and total annual bill impacts to rate classes are all estimated to be two percent or less (Exh. DPU-ES 4-1, Att. b (Rev.)).<sup>43</sup> These increases are in lieu of EGMA filing a general rate case in the early part of 2021 that would have sought a distribution rate increase of approximately \$56 million (Explanatory Statement at 5; Exh. JP-DPH-1, at 12-13, 15). While the Department has not conducted a thorough review to determine the amount of the claimed \$56 million revenue deficiency that meets our standards for recovery in base distribution rates, we find that the increase to rates under the Settlement is less than the increase that would occur had EGMA filed a general rate case in 2021. Therefore, the evidence supports a finding that the rate adjustments proposed within the Settlement are consistent with the public interest and result in just and reasonable rates.<sup>44</sup>

b. Low-Income Discount

As noted above, NSTAR Gas is seeking a low-income discount rate of 30 percent in its pending base distribution rate case, D.P.U. 19-120 (Settlement § 2.3). The Settlement

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<sup>43</sup> The Company's bill impacts are estimated using 2017 test year billing determinants because the rate increase is based on the test year established in D.P.U. 18-45 (Exh. DPU-ES 4-1).

<sup>44</sup> The Department relies extensively on the detailed analysis of the D.P.U. 18-45 settlement agreement offered by the Settling Parties in support of their proposal (Settlement at App. 2).

Agreement specifies that the low-income discount amount for EGMA will be the same as the low-income discount approved by the Department in NSTAR Gas's pending base distribution rate case, D.P.U. 19-120 (Settlement § 2.3). The Department finds that this is an appropriate stipulation in the Settlement to increase consistency in our policy on the level of the low-income discount across distribution. See NSTAR Gas Company, D.P.U. 14-150 (2015).

c. Rate Base Offset

The Department has long considered ADIT as an offset to rate base. Essex County Gas Company, D.P.U. 87-59, at 63 (1987); AT&T Communications of New England, D.P.U. 85-137, at 31 (1985); Boston Edison Company, D.P.U. 1350, at 42-43 (1983); Boston Edison Company, D.P.U. 18200, at 33-34 (1975). While the Settling Parties contend that the harm to customers of losing the "historical ADIT" is offset with "new ADIT," the RBO's design does little in the way of mitigating this harm.

As conceded by the Companies, EGMA's future ADIT accruals will affect both the actual level and term of the RBO. By way of example using the illustrative RBO amortization schedule provided in the Settlement, if EGMA's rate base-related ADIT were to increase each year by \$5.95 million, the RBO would be eliminated in 2033, rather than in 2040 as presented in the Settlement<sup>45</sup> (Exh. DPU-ES 3-10 & Att.). Similarly, an annual

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<sup>45</sup> The \$5.95 million is approximately equal to 25 percent of Bay State's liberalized depreciation-related ADIT booked to Account 268 during 2019, and thus constitutes a conservative estimate of annual ADIT accruals. Bay State Gas Company 2019 Annual Return at 36. The actual level of future ADIT accruals is unknown.

increase of \$2.38 million (i.e., Bay State's total increase in ADIT associated with liberalized depreciation booked to Account 268 during 2019) in rate base-related ADIT would eliminate the RBO by 2026 (see Exh. DPU-ES 3-10, Att.). Under any scenario where rate base-eligible ADIT increases, the value of the RBO is reduced. Consequently, contrary to the Companies' claims that the RBO holds customers neutral to the loss of Bay State's ADIT, the RBO only partially compensates customers.

The loss of ADIT from the Settlement will not result in an immediate effect on rates, so ratepayers are not immediately exposed to a rate change upon the Closing of the transaction. Further, customers are likely to receive at least some portion of the benefit of the RBO during the term of the Settlement. While customers can experience some future rate impact resulting from the loss of ADIT, this loss of ADIT is but one factor that we balance against other considerations in evaluating the Settlement in its entirety. See New England Gas Company et al., D.P.U. 13-07-A at 49 (2013).

d. Rate Base Resets

The Settlement establishes that upon the closing, EGMA will have a rate base of \$995 million (Settlement § 2.6.1.1). The Settlement's \$995 million is the product of settlement negotiations and includes a downward adjustment to the balance of plant in service that will be applied entirely to the capital assets booked by Bay State as a result of the September 13, 2018 Incident (Settlement § 2.6.1.2). Because rate base components, such as plant investment and accumulated depreciation, vary on a daily basis, the actual amount of

the required writedown<sup>46</sup> will not be known until the closing.<sup>47</sup> The required writedown will in all certainty not be equal to the capital additions made in response to the September 13, 2018 Incident.<sup>48</sup>

The Settlement resolves a number of issues associated with the prudence of Bay State's capital additions. As an initial matter, the underlying prudence of Bay State's non-GSEP plant additions have not been fully examined since Bay State Gas Company, D.P.U. 13-75 (2014). Moreover, approval of Bay State's GSEP factors have been deferred in the wake of issues arising from the September 13, 2018 Incident.<sup>49</sup> Bay State Gas

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<sup>46</sup> The Department notes that Section 2.6.1.2. describes a downward adjustment being made to plant in service. This Order refers to the terms writedown and writeoff to describe different elements of the Settlement's proposed downward adjustment. A writedown describes a reduction in the value of an asset and a writeoff describes removing the value of an asset from the books (see Exhs. DPU-ES 2-3; DPU-ES 4-5).

<sup>47</sup> For example, Bay State's calculated rate base was \$1,106,397,111 as of June 30, 2020, allowing for the elimination of ADIT and its replacement with the RBO calculated and trued up in accordance with Section 2.5 of the Settlement (Exh. DPU-ES 4-6, Att.). Consequently, if the transaction had taken place on June 30, 2020, a writedown of \$111,397,111 would have been required to obtain the Settlement's \$995,000,000 rate base as of closing.

<sup>48</sup> There were approximately \$258 million in capital costs associated with the September 13, 2018 Incident, while the estimated writedown is approximately \$111 million (Settlement § 2.6.1.3; Exh. DPU-ES 4-6, Att.). Bay State Gas Company 2019 Annual Return to the Department at 6.

<sup>49</sup> Under the Settlement, EGMA is responsible for demonstrating the prudence of GSEP capital additions made during 2018, 2019, and 2020 that have been completed prior to closing, as well as a third-party verification of rate base at closing (Settlement § 2.6.1.3).

Company, D.P.U. 19-GREC-05, at 15-16 (2019).<sup>50</sup> Despite these unresolved issues, Eversource will be investing significant efforts into integrating Bay State's system into the Eversource structure (Exh. JP-WJA/PMC-1, at 12-50). The Department is persuaded that, in this situation, the Settlement's treatment of unresolved issues around Bay State's legacy rate base is reasonable.

The Companies represent that this writedown of rate base would be recorded on EGMA's financial books and regulatory books (Exh. DPU-ES 2-3). Under the Financial Accounting Standards Board's Accounting Standards Codification 980-360, if it becomes probable that a portion of the pipeline replacement cost will not be recoverable through customer rates and an amount can be reasonably estimated, Bay State would be required to reduce its regulated plant balance for the amount of the probable disallowance and record an associated charge to earnings for financial reporting purposes. Bay State Gas Company 2019 Annual Return to the Department, Att. Form 10-K at 118. In contrast, gas plant instruction 2(C) of the Department's Uniform System of Accounts for Gas Companies provides as follows:

No adjustment of any plant accounts shall be made on the basis of any appraised value. Should the Department at any time find a certain value of the property for rate making or other purposes, such finding does not warrant changing the books of account (unless specifically so directed). The detailed gas plant accounts (301 to 399, inclusive) are intended to show at all times the

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<sup>50</sup> The Department's review of Bay State's 2018 and 2019 GSEP projects is pending in Bay State's 2019 GSEP reconciliation filing, D.P.U. 20-GREC-05, with an expected Order issuance date of October 30, 2020.

cost to the company of its existing property less such credits as may have been made on account of property abandoned, sold, reconstructed or converted.

220 CMR 50.00, Basis of Charges to Gas Plant Accounts; see also Bay State Gas Company, D.P.U. 13-75, at 119 n.82 (2014).

The Companies represent that the asset writeoff that will occur at Closing, as well as its proposed accounting treatment, is essential to the Settlement, and that alternative accounting treatments (i.e., booking the writeoff to a miscellaneous plant account) would not achieve the results intended by the Settlement (Exh. DPU-ES 4-5). While the Settlement's proposed accounting treatment appears to be inconsistent with Instruction 2 of the Department's Uniform System of Accounts for Gas Companies, Instruction 2(C) provides the Department with some flexibility in its application. 220 CMR 50. The proposed asset writeoff outlined in section 2.6.1.2 of the Settlement provides the most definitive way of ensuring that capital expenditures, to the extent they are part of the downward adjustment are permanently excluded from recovery. Therefore, the Department accepts the Settlement's proposed accounting treatment of the asset writeoff. In doing so, we emphasize that our approval here carries no precedential value; approving a settlement that departs in some way from an enunciated Department policy may be appropriate in order to accommodate the balancing of multiple factors and issues in seeking a result that is in the public interest. Boston Edison Company/Cambridge Electric Light Company/Commonwealth Electric Company/NSTAR Gas Company, D.T.E. 05-85, at 30 (2005).

The Department notes that plant investment associated with the September 13, 2018 Incident that remains in EGMA's \$995 million rate base as of closing or its plant investment

accounts, cannot affect rates until the Settlement's first rate base reset scheduled to take place on November 1, 2024, when EGMA will be eligible to reset all of the components of its rate base for capital additions completed between January 1, 2018 and December 31, 2023 (Settlement § 2.6.1). The Department will review the components of the first rate base reset to determine what assets placed in service after December 31, 2017, are outside of the \$995 million rate base agreed to through this Settlement.

Finally, the Department notes additional transparency is needed regarding the proposed writeoff. The Settlement excludes over \$100 million of plant in service from EGMA's balance sheets based on the information provided in annual returns to the Department, and that writeoff requires more documentation.<sup>51</sup> In order to ensure accounting and regulatory transparency, EGMA is directed to memorialize the writeoff on page 6 of its annual returns to the Department. As part of this requirement, EGMA shall report on an account-by-account basis the date and amount of both the gross plant and any associated accumulated depreciation being written off.

e. Revenue Decoupling

The Settlement's provisions regarding Benchmark Revenues Per Customer and revenue target components of Bay State's current RDM are also consistent with Department precedent. On November 1, 2021, EGMA shall adjust the Benchmark Revenue Per Customer targets associated with its RDM to incorporate all of Bay State's customers in

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<sup>51</sup> Settlement provisions cannot restrict the Department's exercise of its statutory duty to the public interest. D.P.U. 10-170-B at 66-67; D.T.E. 99-47, at 21 n.20.

existence as of December 31, 2017, into the RDM and to incorporate the revenue target established in the first distribution base rate increase. EGMA shall further adjust the Benchmark Revenue Per Customer targets associated with the RDM to incorporate the revenue target established in the second distribution base rate increase on November 1, 2022. Moreover, EGMA will update Benchmark Revenue Per Customer targets under the EGMA RDM to reflect EGMA's updated base distribution revenue inclusive of the revenue requirement for the First Rate Base Reset and Second Rate Base Reset (Settlement §§ 2.6.1.5, 2.6.2.4). In view of the fact that EGMA will have no previous rate cases to make reference to in its RDM tariff, EGMA shall, as part of the September 17, 2021 tariffs to be filed to institute the November 1, 2021 base distribution rate change, revise its RDM tariff such that the basis of the Benchmark Revenue Per Customer and revenue targets are provided within the RDM tariff.

2. Net Savings and Benefits

a. Introduction

In reviewing a proposed acquisition, one of the factors the Department considers is the resulting net savings, if any. In this regard, the "Department's review... must be based on whether the figures proposed by the [p]etitioners are reasonable estimates."

D.T.E. 99-47, at 47, 50. Projections of future events can be judged in terms of whether they are substantiated by past experience and supported by logical reasoning founded on sound theory. Boston Gas Company/Essex Gas Company, D.P.U. 09-139, at 19-20 (2010); National Grid/Keyspan Corporation, D.P.U. 07-30, at 27 (2010); D.T.E. 99-47, at 50.

b. Rate Freeze

The Settlement includes a rate freeze until November 1, 2028, aside from the two distribution rate increases and the two rate base resets (Settlement § 2.4.5). The Companies' net benefit analysis assumes that Bay State would have filed for base rate relief every three years, based on historically filing every two to three years (Exh. JP-DPH-1, at 33-34). Provided that the settlement in D.P.U. 18-45 called for a rate freeze from November 1, 2018 until March 1, 2021, the Department accepts this assumption for the purposes of calculating the net savings analysis (Settlement § 2.4.5; Exh. JP-DPH-4 (Supp.)). As explained above, the Department has not thoroughly investigated EGMA's use of \$56 million revenue deficiency as the avoided rate case increase amount on March 1, 2021 (Exh. JP-DPH-1, at 15, 34-35). However, the Department relies extensively on the detailed analysis of the D.P.U. 18-45 settlement agreement offered by the Settling Parties in support of their proposal (Settlement at App. 2). Based on a revenue deficiency of \$56 million and assumptions made for future rate case increases during the rate freeze period, the Companies calculate that the rate freeze will avoid a total of \$876 million in rate case increases during the rate freeze period (Exh. JP-DPH-4 (Supp.), at 1). This avoided rate increase amount is significant and it outweighs any uncertainties in the assumption of a \$56 million revenue deficiency. Based on the analysis in the D.P.U. 18-45 settlement agreement and supplemented by the Department's investigation in this proceeding, the Department finds that the rate freeze provides a net benefit to customers, even after accounting for the distribution

rate increases and rate base resets (Exhs. JP-DPH-4 (Supp.); DPU-ES 2-5; DPU-ES 4-3; DPU-ES 4-4).

c. Transaction and Integration Costs

The Department has recognized that transaction costs may accompany a merger or acquisition, and that these costs may be recovered in rates provided that the public interest standard of Section 96 is satisfied. D.T.E. 99-47, at 36; D.T.E. 99-19, at 37; D.T.E. 98-27, at 52-53. In order for the Department to recognize the opportunity to recover merger-related costs, the petitioner must demonstrate that savings related to the merger are at least equal to the costs of the merger. D.T.E. 99-47, at 47; D.T.E. 99-19, at 68; D.T.E. 98-27, at 8-10. Projections of future events are not subject to the same standards of measurement and evaluation that the Department uses in a rate case; rather, they can be judged in terms of whether they are substantiated by past experience and supported by logical reasoning founded on solid theory. D.T.E. 99-47, at 50.

In the instant matter, the Companies' expected transaction costs of \$15.95 million include banker fees, regulatory expenses, and customer communications costs (Exh. DPU-ES 2-6). The Settlement eliminates investment bankers' fees from the recoverable level of transaction costs and caps the remaining transaction costs at \$5 million (Settlement § 2.13.1). Although integration costs cannot be identified with specificity at this time, the Settling Parties provide a general estimate of \$22.27 million, which we consider to be sufficiently reliable for purposes of evaluating the Settlement (Exh. DPU-ES 2-7). The Settlement conditions cost recovery on EGMA achievement of operational cost savings in an

amount sufficient to offset all or a portion of the transaction and integration costs have been achieved by December 31, 2026 (Settlement § 2.13.2).

The Department finds that the transaction and integration cost provisions of the Settlement are consistent with our precedent and the public interest. EGMA may seek recovery of the merger-related transaction and integration costs from its customers after 2026, provided that merger-related benefits are proven to the Department to be equal to or greater than any portion of the acquisition premium proposed to be included in base rates by December 31, 2026. At such time that EGMA seeks recovery through rates, they must show quantifiable benefits and be able to demonstrate, so as to warrant a reasonable conclusion, that such benefits are the result of the merger. This demonstration of merger-related benefits must be developed and maintained by EGMA on an on-going basis during the term of the Settlement and, if warranted, thereafter until EGMA files their request for recovery of the transaction and integration costs. The Settling Parties represent that this demonstration will follow the same approaches taken in NSTAR Electric Company/Western Massachusetts Electric Company, D.P.U. 17-05 (2017) and D.P.U. 14-150 (Settlement § 2.13.2). The Department holds the Settling Parties to this representation, and places EGMA on notice that we expect it to present such documentation of merger-related savings as part of the demonstration of benefits that justify costs. D.T.E. 98-27, at 10; Mergers and Acquisitions at 7.

d. Other Net Savings and Benefits

EGMA anticipates annual operations and maintenance (“O&M”) savings of approximately \$40 million by 2030 (Exhs. JP-DPH-1, at 39; JP-DPH-4 Supp.). These calculated savings represent the difference between the level of O&M under a status quo scenario as compared to the level of O&M under EGMA ownership assuming a 15 percent savings on projected 2030 O&M costs (Exhs. JP-DPH-1, at 39; JP-DPH-4 (Supp.) at 1, 5). Additionally, EGMA calculates approximately \$2 million in annual savings from gas portfolio consolidation, which would reduce gas supply costs and optimize gas resources (Exhs. JP-DPH-1, at 27-29; JP-DPH-4 (Supp.) at 1). These cost savings would be passed to customers directly through the CGAC as reduced costs (Exh. JP-DPH-1, at 29). Accordingly, the Department finds EGMA’s estimate of \$40 million in projected annual O&M savings and \$2 million in projected annual gas portfolio consolidation savings to be reasonable and adequately supported.

e. Conclusion

Based on these considerations, we conclude that the Settlement will result in net savings to ratepayers. However, we direct EGMA to explore any and all additional measures that provide the opportunity to maximize efficiencies, minimize costs, and pass on resulting savings to customers.

3. Distribution of Resulting Savings and Benefits

One of the factors the Department may consider in determining whether a proposed acquisition is consistent with the public interest is whether the acquisition’s resulting benefits

are fairly distributed between the shareholders and ratepayers. D.T.E. 98-128, at 85; Mergers and Acquisitions at 8. We find that approval of the Settlement will provide customers with rate-related savings and benefits over the term of the Settlement's rate plan. Customers will benefit from the Settlement's enhanced safety and environmental sustainability provisions, including the potential for decarbonization strategies to reduce greenhouse gas emissions associated with natural gas, and programs to be funded by the \$56 million payment in lieu of penalty. In turn, we expect that Eversource will benefit from its ownership of Bay State's assets. Finally, and perhaps most significantly, EGMA has the opportunity to restore the confidence of the customers of Bay State in the safety and reliability of the natural gas system. Based on these considerations, we conclude that the benefits of this transaction are fairly distributed between ratepayers and shareholders.

#### 4. Long-Term Strategies

In determining whether the Settlement is consistent with the public interest, the Department must consider "long term strategies that will assure a reliable, cost effective energy delivery system." Section 96(b). As part of this Section 96 factor, the Department has considered activities and commitments that advance clean energy development and address climate change as important components of this Section 96 factor. D.P.U. 17-05, at 40; D.P.U. 10-170-B at 76-77.

In its testimony, Eversource maintains that it has a strong financial profile, operating expertise, and local presence that will allow it to maintain a safe and reliable system through consistent and sufficient investment of capital (Exhs. JP-WJA/PMC-1, at 51; JP-DPH-1,

at 52). Eversource states that it will commit to the following long-term strategies for reliable and cost-effective service: (1) assessing and improving operational practices; (2) assessing the long-term capital work requirements and resource needs through the Safety Assessment<sup>52,53</sup>; and (3) implementing new service quality metrics following the transaction (Exh. JP-WJA/PMC-1, at 51).

Additionally, the Settlement proposes a number of clean energy initiatives, which are described in further detail in Section IV.F of this Order (Settlement §§ 2.19-2.24). In particular, EGMA has committed to maintaining Bay State's savings goals, budgets, and Term Sheet commitments pursuant to its Three-Year Plan. EGMA has also committed to additional heat pump incentives.

Based on the above, the Department finds that Eversource and EGMA are committed to efforts to assure a reliable and cost-effective energy delivery system for Bay State customers.

#### 5. Effect on Service Quality

As part of our Section 96 review, we next look at the potential impact of the Settlement on quality of service, any anticipated interruptions of service, and any other factors that may adversely impact customer service. The Department recognizes the

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<sup>52</sup> The Department reserves the right to allow its Pipeline Safety Director to include items in the Safety Assessment.

<sup>53</sup> The Department encourages EGMA to evaluate all proposed projects as part of the Safety Assessment and to work with the affected municipalities, such as the Town of Longmeadow.

importance of maintaining service quality, particularly when the merger of entities and the resultant efforts to achieve cost savings can potentially lead to service quality degradation.

D.P.U. 10-170-B at 73; D.P.U. 09-139, at 23.

Pursuant to the Settlement, EGMA will implement, track, and report the service quality metrics to be approved by the Department in the pending NSTAR Gas distribution base rate case, D.P.U. 19-120, as long as the necessary data is readily available. EGMA will also develop a performance metric for leakage that will be applied with capital upgrades made between 2021 through 2028 (Settlement § 2.17.1). Eversource maintains that the transition is intended to be seamless for Bay State customers (Exh. JP-WJA/PMC-1, at 63). The Department finds that Eversource and EGMA provided sufficient evidence that there will be no negative effects on service quality and that there will potentially be positive effects on service quality.

Further, the Department finds that there are unlikely to be interruptions in service as a result of the Settlement. There is nothing in the evidentiary record that suggests the Settlement would contribute to interruptions in service for Bay State's customers. Also, the financial integrity provisions discussed in more detail in Section VII.B(7) and the commitments to offer to hire current Bay State employees in good standing would tend to provide measures to control against interruptions in service (Exh. JP-SA-2, at 60). Therefore, we find that there is nothing in the evidentiary record that demonstrates the Settlement would result in interruptions for Bay State's customers.

6. Societal Cost and Effect on Economic Development

In considering whether the Settlement is consistent with the public interest, the Department may consider the resulting societal costs and effect on economic development, if any. Mergers and Acquisitions at 7-9; D.P.U. 13-07-A at 91. The Department also has held that proponents of mergers and consolidations must demonstrate that they have a plan for minimizing the effect of job displacement on employees. D.T.E. 98-27, at 44.

As described in more detail in Section III.C(3), Eversource will offer employment to all Bay State business employees that are actively employed or on an approved leave of absence and in good standing (Exh. JP-SA-2, at 60; JP-DPH-1, at 49-51). Based on a review of Settlement, the Department finds that the Companies have a plan for minimizing the effect of any job displacements on employees. In addition to a plan to minimize employee displacement, the Companies stated that Eversource is implementing a training and testing plan specific to EGMA employees that will seek to qualify EGMA employees in the Eversource Operator Qualification Program and identify any differences between legacy procedures and standards and Eversource procedures and standards (Exh. LIUNA-ES 1-35). This training and testing plan also demonstrates that EGMA intends to support employees during the transition period.

Additionally, as part of the Settlement, Eversource and EGMA will implement a number of energy efficiency and clean energy initiatives that may have positive economic and societal impacts. Specifically, EGMA will implement additional heat pump incentives and a gas demand response program and make a good faith effort to increase enrollment in a

seasonal savings program (Settlement §§ 2.21-2.24). With a significant part of the \$56 million payment in lieu of penalties required by the Settlement, the Attorney General and DOER will design and administrate programs that include a grant for energy efficiency and clean energy projects in Lawrence, Andover, and North Andover, a geothermal microgrid project, and programs aimed at low-income customers (Settlement § 2.28.3). While the Attorney General and DOER are still developing the exact details of the Merrimack Valley Renewal Fund, the Companies have stated that an overarching goal for the Merrimack Valley Renewal Fund is to foster local workforce development initiatives and training (Exh. GWL 1-1). Additionally, the Attorney General and EGMA will jointly administer an Arrearage Management Program benefiting Bay State customers with outstanding balances as of June 30, 2020 (Settlement § 2.28.4).

Based on the foregoing considerations, the Department finds that there are likely to be positive societal and economic impacts if the Settlement is approved.

#### 7. Financial Integrity of the Post-Acquisition Entity

The financial integrity of a company may be one of the factors that the Department considers in evaluating a merger or acquisition petition. D.P.U. 10-170-B at 104; D.T.E. 98-128, at 83; D.T.E. 98-31, at 48. This evaluation of financial integrity must take into consideration both that of the company being acquired and the acquiring company itself. D.P.U. 10-170-B at 104-105; D.P.U. 98-31, at 48-49; see Community Utilities/Resort Supply, D.P.U. 16380, at 2-5 (1970) (merger rejected because Department found that the financial viability of both the acquiring company and the to-be-acquired company were in

question). Therefore, the Department will evaluate the financial integrity of both Bay State and the new EGMA.

Bay State is owned by NiSource, a holding company operating seven gas and electric systems in seven states; both NiSource and Bay State have corporate credit ratings of BBB+ (Exhs. JP-DPH-1, at 48; JP-SA-1, at 4). In contrast, Eversource is a publicly traded Fortune 500 company with a corporate credit rating of A- from Standard & Poor's, representing the highest credit rating of any holding company utility listed in the Edison Energy Institute Index (Exh. JP-DPH-1, at 47). After the Proposed Transaction, EGMA will remain a wholly owned subsidiary of Yankee Energy, which in turn will remain a wholly owned subsidiary of Eversource (Exh. JP-DPH-1, at 8-9). While EGMA currently has no corporate credit rating, the high corporate credit ratings of Eversource make it likely that EGMA will receive a similarly favorable credit rating (Exh. JP-DPH-1, at 48). This favorable credit rating is particularly likely given that neither Eversource nor EGMA will assume any liabilities associated with the September 13, 2018 Incident (Exhs. JP-DPH-1, at 47; JP-SA-1, at 8; JP-SA-2, at 24). Based on these considerations, the Department finds that the proposed sale transaction will not negatively affect the financial integrity of EGMA or the other operating companies owned by Eversource.

### C. Termination of Proceedings

The Department has reviewed the Settlement and Consent Order, as well as responses to information requests, regarding the proposal to terminate all proceedings against NiSource, Bay State, and their affiliates, and all of the respective directors, officers, employees, agents

and representatives of NiSource, and Bay State, and their affiliates. The Settlement and Consent Order, taken together, provide for a \$56 million payment in lieu of penalties, \$12 million of which is specifically identified as resolving all of the compliance actions associated with D.P.U. 19-140 or otherwise pending at the Division against NiSource, Bay State, and its affiliates (Consent Order at 1-2; Settlement §§ 2.25, 2.27). As described in further detail above, this payment will be used to fund energy relief programs, including some aimed directly at customers in the service areas affected by the September 13, 2020 Incident (Settlement § 2.28). NiSource and Bay State further committed to undertake certain compliance actions, and any outstanding compliance actions after Closing will be the responsibility of Eversource and EGMA (Consent Order at Compliance Agreement; Explanatory Statement at 20; Exh. DPU-ES 3-11). After Closing, NiSource would cease natural gas distribution operations in Massachusetts (Exh. JP-SA-1, at 13).

Based on this review, the Department finds that the Settlement, as taken with the Consent Order, provides for a result that is consistent with findings that might reasonably have been made by the Department in the existing proceedings, including D.P.U. 19-140 and D.P.U. 19-141, and we find that resolution is in the public interest. Further, the payment in lieu of penalty provides funding for programs beneficial to customers that the Department could not otherwise have ordered.

#### D. Conclusion

The Department has investigated and examined the Settlement, which provided additional ratepayer, economic, financial, and public benefits. Based on our evaluation of the

Proposed Transaction and as recast by the Settlement, in light of the requirements of Section 96 and the applicable factors, the Department finds that the Proposed Transaction taken with the Settlement provides a net benefit to ratepayers. The Department further concludes that the Settlement, as combined with the Consent Order, is consistent with both applicable law and the public interest and represents a reasonable resolution of the complex issues raised by this proceeding, as well as in D.P.U. 19-140 and D.P.U. 19-141, and results in just and reasonable rates. See NSTAR Electric Company, D.T.E. 03-121, at 49 (2004). Accordingly, the Department finds that the Proposed Transaction as recast by the Settlement is consistent with the public interest and approved subject to the provisions in this Order.

Under the Settlement, all pending proceedings against NiSource, Bay State, and its affiliates and all of the respective directors, officers, employees, agents, and representatives of NiSource, and Bay State and their affiliates would terminate effective as of Closing. This includes all claims and investigations, lawsuits or other legal or administrative proceedings against Bay State Gas and its affiliates relating to the issues that have occurred between Settlement Agreement dated July 2, 2020 until the date of this Order. The Department notes, however, that Bay State remains subject to pipeline safety law and the Department's investigative process for any incidents from the date of this Order until the Closing. The Department has the important responsibility to enforce state and federal pipeline safety law in Massachusetts. As the operator of its system, Bay State shall remain subject to these laws, as well as G.L. c. 164, §§ 1J, 76, 85B, and 105A, for any incidents from the date of this

Order until the Closing. Consistent with the Settlement, the investigations opened in D.P.U. 19-140 and D.P.U. 19-141 are hereby resolved.

In ruling on the Settlement, the Department has exercised its regulatory authority under G.L. c. 164, §§ 96, 94, and 76. This Order whereby the Department approves the Settlement, which is an agreement among the Settling Parties, is intended to be, and shall be construed to be, a final Order issued pursuant to G.L. c. 25, § 5, and does not operate to make the Department a party to the Settlement, and does not form, and may not be construed to form, a contract binding the Department.

#### VIII. CONFIRMATION OF FRANCHISE RIGHTS

##### A. Introduction

The Companies requested that the Department confirm that EGMA will possess all of the franchise rights and obligations associated with the business of Bay State upon Closing and that no further action pursuant to G.L. c. 164, § 21 is required to close the transaction (Petition at 13).

##### B. Analysis and Findings

General Laws chapter 164, § 21, states: “[a] corporation subject to this chapter shall not, except as otherwise expressly provided, transfer its franchise, lease its works or contract with any person, association or corporation to carry on its works, without the authority of the general court.” Moreover, G.L. c. 164, § 98 states that “[t]he purchasing or consolidated

company shall except as provided in [G.L. c. 164, § 97],<sup>54</sup> have and enjoy all the powers, rights, locations, licenses, privileges and franchises, and be subject to all the duties, liabilities and restrictions, of the company selling or merged as aforesaid, so far as they are applicable to the purchasing or consolidated company” (footnote added).

The Department has determined that approval of corporate transactions pursuant to Section 96 obviates the need for separate legislative approval under G.L. c. 164, § 21 for transfer of franchise rights. New England Gas Company et al., D.P.U. 13-07-B at 11 (2014); D.T.E. 99-47, at 65-66; Haverhill Gas Company, D.P.U. 1301, at 4 (1984). The Department has stated that an action properly approved under Section 96 would not require separate authorization of the General Court because the General Court itself authorized the Department to approve such a transaction. D.P.U. 13-07-B at 11-12; D.P.U. 1301, at 5.

The Department finds that, on the effective day of the acquisition, EGMA will have and enjoy the powers, rights, locations, privileges, and franchises of Bay State consistent with the assets transferred pursuant to the Proposed Transaction and will be subject to all the associated duties, liabilities, and restrictions of Bay State. The Department finds that approval of the Proposed Transaction as recast by the Settlement pursuant to Section 96 obviates the need in this case for legislative approval under G.L. c. 164, § 21.

D.P.U. 13-07-B at 11; D.T.E. 99-47, at 65-66; D.P.U. 1301, at 4. Accordingly, the

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<sup>54</sup> General Laws chapter 164, § 97 pertains to the acquisition of a water storage reservoir or hydroelectric plant by an electric company.

Department hereby ratifies and confirms that all the franchise rights and obligations currently held by Bay State shall continue with EGMA after the acquisition.

IX. COMPLIANCE TARIFFS AND REPORTING

Under G.L. c. 164, § 94, a utility's proposed rates must be found as consistent with the public interest. One component of this standard, applicable to tariff construction, requires that a proposed tariff have sufficient detail to explain the basis for the rate to be charged for the offered service. Boston Gas Company, D.P.U. 92-259, at 47-48 (1993); Dedham Water Company, D.P.U. 13271, at 10 (1961). The Department's regulations prescribe tariff construction. For example, pursuant to 220 CMR 5.02(3)(a), each tariff or schedule shall show prominently the name of the company, firm, association, or individual responsible, together with the name of any independent agency filing the tariff or schedule and its, his, or her address. Moreover, each tariff or schedule must be designated by an individual number progressing from that last filed by the same party or in case of a new series, from Number 1 and sequentially thereafter. 220 CMR 5.02(4)(a). Therefore, to ensure compliance with Department regulations, EGMA is directed to submit, as part of its compliance filing following the Closing, tariffs that clearly identify the legal business name of the company. Additionally, EGMA is directed to number its tariffs sequentially as required by 220 CMR 5.02(4)(a), starting with Number 1.

The Settlement also provides that EGMA will make a number of compliance filings following Closing. EGMA will make the following compliance filings after Closing: (1) the actual transaction costs by account in accordance with Section 2.14 within 90 days of

Closing; (2) the actual integration costs by account in accordance with Section 2.15 within 60 days following the end of each calendar year through December 31, 2026; (3) the RBO amortization schedule in accordance with Section 2.5.3 within 45 days of Closing; (4) the long-term GSA with HOPCO in accordance with Section 2.10.3 within 30 days of Closing; (5) the third-party verification of rate base in accordance with Section 2.6.1.3<sup>55</sup>; and (6) a report detailing the disposition of the Arrearage Forgiveness Fund in accordance with Section 2.28.5 no later than January 1, 2021.

As noted in earlier sections of this Order, EGMA has also committed to several additional filings and proceedings: (1) the filing to implement first base distribution rate change in accordance with Section 2.4.2.3 no later than September 17, 2021; (2) the filing to implement the second base distribution rate change in accordance with Section 2.4.2.4 no later than September 16, 2022; (3) the capital project documentation related to the first rate base reset in accordance with Section 2.6.1.6 no later than May 1, 2024; (4) the capital project documentation related to the second rate base reset in accordance with Section 2.6.2.2 no later than May 1, 2027; (5) the Clean Energy Business Case Analysis in accordance with Section 2.19 no later than September 1, 2021; (6) the comprehensive study of potential gas resource portfolio efficiencies and resulting gas cost savings in accordance with Section 2.9 no later than September 1, 2021; (7) the proposed performance metric for leakage in

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<sup>55</sup> The Settlement does not provide a date by which EGMA must submit this third-party verification. The Department directs EGMA to provide this third-party verification by the First Rate Base Reset filing.

accordance with Section 2.17.1 no later than March 1, 2021; and (8) the new service quality metrics, baselines and performance benchmarks as an addendum to the Annual Service Quality Report in accordance with Section 2.17.2 no later than March 1, 2021.<sup>56</sup>

EGMA has also committed to submit notices to the Attorney General and DOER if certain conditions are met. In the event that EGMA will exceed the deadband established in Section 2.2.2.2 of the Settlement, it must provide notice to the Attorney General and DOER within 60 days of the end of the calendar year (Settlement § 2.2.2.3). EGMA must also provide the Attorney General and DOER 30 days' notice of any facility closing or employee layoff within the first three years of the Settlement (Settlement § 2.16).

In addition to the EGMA filings, the Attorney General and DOER will file the Memorandum of Understanding regarding the Merrimack Valley Renewal Fund within seven business days of the Department's approval of the Settlement (Settlement § 2.28.6).

X. ORDER

Accordingly, after notice, hearing, comment, and due consideration, it is

ORDERED: That pursuant to G.L. c. 164, § 96, and subject to the terms and conditions in this Order and the Settlement Agreement dated July 2, 2020, entered into and filed by Bay State Gas Company d/b/a Columbia Gas of Massachusetts, NiSource, Inc., Eversource Gas Company of Massachusetts, Eversource Energy, the Attorney General of the

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<sup>56</sup> To the extent that the Settlement requires a reporting, filing, or notification requirement that is not listed in this Section IX of the Order, EGMA remains committed to meet that requirement.

Commonwealth of Massachusetts, the Massachusetts Department of Energy Resources, and the Low-Income Weatherization and Fuel Assistance Program Network, it is hereby determined that sale of substantially all of Bay State Gas Company's assets to Eversource Energy is consistent with the public interest and is hereby APPROVED; and

FURTHER ORDERED: That the Settlement Agreement dated July 2, 2020, entered into and filed by Bay State Gas Company d/b/a Columbia Gas of Massachusetts, NiSource, Inc., Eversource Gas Company of Massachusetts, Eversource Energy, the Attorney General of the Commonwealth of Massachusetts, the Massachusetts Department of Energy Resources, and the Low-Income Weatherization and Fuel Assistance Program Network produces a reasonable result and is hereby APPROVED; and it is

FURTHER ORDERED: That upon consummation of the change of control approved herein, Eversource Gas Company of Massachusetts shall have all rights, powers and privileges, franchises, properties, real, personal, or mixed, and immunities held by such company as are necessary to engage in all the activities of a gas company in all the cities and towns in which such company was engaged immediately prior to the sale of its assets; and that further action pursuant to G.L. c. 164, § 21 is not required to consummate the change of control; and it is

FURTHER ORDERED: That a copy of the journal entries, or a schedule summarizing such entries, recording the effects of the acquisition shall be filed with the Department upon consummation of the acquisition; and it is



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