



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 16-171

May 23, 2017

Petition of New England Power Company d/b/a National Grid for authorization and approval (1) to issue long-term debt in the principal amount of up to \$800,000,000, pursuant to G.L. c. 164, § 14; (2) for an exemption from the competitive solicitation and advertising requirements of G.L. c. 164, § 15; and (3) for an exemption from the par value requirements of G.L. c. 164, § 15A.

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## I. INTRODUCTION

On October 25, 2016, New England Power Company d/b/a National Grid (“NEP” or “Company”) filed a petition with the Department of Public Utilities (“Department”) pursuant to G.L. c. 164, § 14, requesting authorization and approval to issue long-term debt in the principal amount of up to \$800,000,000 (“Application”).<sup>1</sup> NEP also seeks exemptions from the competitive solicitation and advertising requirements of G.L. c. 164, § 15 and the par value requirements of G.L. c. 164, § 15A.

On November 9, 2016, the Attorney General of the Commonwealth of Massachusetts (“Attorney General”) filed a notice of intervention pursuant to G.L. c. 12, § 11E. No petitions for leave to intervene were filed. Pursuant to notice duly issued, the Department held public and evidentiary hearings on January 10, 2017. The evidentiary record consists of the NEP Application, 49 exhibits, and two responses to record requests. In support of its petition, the Company presented Charles V. DeRosa, Vice President and Treasurer for National Grid USA Service Company, Inc.<sup>2</sup> On January 25, 2017, the Attorney General submitted a brief (“Attorney General Brief”). The Company submitted a brief on

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<sup>1</sup> NEP is an electric company within the meaning of G.L. c. 164, § 1, and it is subject to the jurisdiction of the Department for the issuance of securities pursuant to G.L. c. 164, § 14. NEP is a wholly owned subsidiary of National Grid USA, which is a public utility holding company. Within the National Grid USA holding company system, NEP’s principal business is the provision of electric transmission service, subject to regulation by the Federal Energy Regulatory Commission (Exh. AG 1-1, at 13).

<sup>2</sup> National Grid USA Service Company, Inc. also is a wholly owned subsidiary of National Grid USA; it provides shared services to the subsidiaries within the holding company system, including treasury services.

February 1, 2017 (“Company Brief”). On February 8, 2017, the Attorney General submitted a reply letter in lieu of a reply brief, and the Company submitted its reply on February 15, 2017.

## II. DESCRIPTION OF THE PROPOSED FINANCING

### A. Long-Term Debt

NEP seeks authority to issue long-term debt in an aggregate principal amount not to exceed \$800,000,000 during the period extending three years from the date of the Department’s final Order with an option for a two-year extension (Exh. CVD-1, at 2-3). The Company plans to use the proceeds to accomplish one or more of the following: (1) to refinance short-term debt; (2) to finance NEP’s capital needs; (3) for construction of utility plant properties; (4) for reimbursement of the treasury;<sup>3</sup> (5) to fund maturing long-term debt; and (6) for other general corporate purposes (Exh. CVD-1, at 3).<sup>4</sup>

The Company proposes a maturity date for the debt instruments of greater than one year but not to exceed 30 years from the date of issuance (Exh. CVD-1, at 7). The Company also proposes to issue the long-term debt at a fixed or adjustable interest rate, which will vary based on a market index designated at the time of issuance, that will not exceed a maximum rate of seven percent (Exh. CVD-1, at 7). The Company determined its

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<sup>3</sup> The Company has indicated that “to reimburse the treasury” means to pay dividends (Tr. at 23).

<sup>4</sup> The Company has clarified that “other general corporate purposes” means restructuring of its capitalization and funding working capital (Exh. CVD-1, at 3; Tr. at 24).

proposed maximum interest rates based on historical market rates for similarly rated securities as well as future market expectations (i.e., the Company expects that the Federal Reserve will increase its funds rate) (Exh. CVD-1, at 6). NEP states that it plans to issue the long-term debt in the form of unsecured debt (Exh. CVD-1, at 9).

The Company also seeks authority to enter into various forms of indebtedness and related instruments including, but not limited to, loan agreements, indentures, supplemental indentures, promissory notes, debentures, credit agreements, participation agreements, underwriting or similar agreements, bond purchase agreements, remarketing agreements, and security agreements (Exh. CVD-1, at 3). NEP intends to issue the securities through one or more of the following methods: competitive bidding; negotiation with underwriters; negotiation directly with investors, through one or more agents; to one or more agents as a principal for resale to investors, in private or public offerings; or in connection with the establishment of loan facilities with a bank or syndicate of banks (Exh. CVD-1, at 7-8). The Company states that the debt may be issued internally to an affiliate or through third parties, in public offerings, private offerings, or private placements, and with or without investment bankers (Exh. CVD-1, at 7).

B. Exemption from Competitive Solicitation requirements of G.L. c. 164, § 15

NEP seeks an exemption from G.L. c. 164, § 15 ("Section 15") (Exh. CVD-1, at 8). Section 15 requires gas or electric companies to publicize or invite proposals for proposed debt issuances through newspaper advertisements, unless exempted by the Department as being in the public interest. G.L. c. 164, § 15. The Company states that it is in the public

interest to grant an exemption from the provision of Section 15 so that the Company has a measure of flexibility in order to enter the bond market in a timely manner (Exhs. CVD-1, at 8; DPU 1-15). NEP is not a publicly traded company, and thus does not itself make any periodic disclosure filings with the Securities and Exchange Commission (“SEC”) (Exhs. CVD-1, at 8-9; DPU 1-15). As a non-public SEC registrant, NEP contends that it would pay significantly higher cost for issuing debt than would a public SEC registrant (Exhs. CVD-1, at 8-9; DPU 1-8; DPU 1-15). The Company maintains that debt issuances through private placement, such as the SEC’s Rule 144A procedure, are less expensive than issuances made through negotiated or public offerings (Exhs. CVD-1, at 8-9; DPU 1-8; DPU 1-15).<sup>5</sup>

C. Exemption from Par Value Requirement of G.L. c. 164, § 15A

NEP seeks an exemption for the par value requirements of G.L. c. 164, § 15A (“Section 15A”), which prohibits the issuance of long-term debt at less than par value,<sup>6</sup> unless the Department finds issuing the debt at less than par value is in the public interest

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<sup>5</sup> Rule 144A, which is promulgated at 17 C.F.R. § 230.144A, is a safe harbor exemption from the registration requirements of Section 5 of the Securities Act of 1933 for private sales of certain securities to “qualified institutional buyers (“QIBs”).” A QIB includes certain entities that, in the aggregate, own and invest on a discretionary basis at least \$100 million in securities of unaffiliated issuers. 17 C.F.R. § 230.144A(a)(i). The Company states that these transactions involve the use of stand-alone documentation to place debt with QIBs, and thus do not require SEC reporting (Exh. CVD-1, at 8-9).

<sup>6</sup> Par value or face value is stated value of the debt security at the time of the issuance, and is the amount to be paid by the borrower to the security holder at maturity. See, e.g., Evans v. Tillman, 38 S.C. 238, 17 S.E. 49, 53 (1893) (dissenting opinion).

(Exh. CVD-1, at 8). G.L. c. 164, § 15A. NEP contends that underwriters of the new debt may wish to receive their compensation at a discount from the face value (Exh. CVD-1, at 8). In addition, the Company contends that the exemption is in the public interest because it offers the flexibility to adjust the face value of debt securities to reflect the final pricing of the security, including a discount to the face value of a particular security (Application, ¶ 6). The Company states that each issuance of new debt will be sold at a price not less than 95 percent or more than 100 percent of its principal amount (Exh. CVD-1, at 8).

### III. PLANT AND CAPITAL BALANCES OF THE COMPANY

As of March 31, 2016, NEP reported a total utility plant balance of \$2,904,386,348 (Exhs. CVD-2; AG 1-2, Att. at 6, line 4). After removing \$204,319,376 in construction work in progress (“CWIP”) and \$456,476,845 in accumulated depreciation, the Company’s utility plant in service balance as of that date was \$2,243,590,127 (Exh. AG 1-2, Att. at 6, lines 3, 5).<sup>7</sup>

As of March 31, 2016, the Company reported that its total capitalization consisted of: (1) \$371,850,000 in long-term debt; (2) \$1,111,700 in preferred stock; and (3) common equity of \$1,040,397,898 (Exh. AG 1-2, Att. at 8, lines 2, 3, 18).<sup>8</sup> NEP’s common equity

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<sup>7</sup> Total utility plant balance of \$2,904,386,348 - \$204,319,376 in CWIP - \$456,476,845 in accumulated depreciation = \$2,243,590,127 (Exh. AG 1-2, Att. at 6, lines 2, 4, 5).

<sup>8</sup> The Company’s proposed common equity calculation is as follows: \$72,397,920 in common stock + \$802,509,599 in other paid-in capital + \$164,547,594 in retained earnings + \$942,785 in accumulated other comprehensive income = \$1,040,397,898 in common equity (see Exh. AG 1-2, Att. at 8, lines 2, 7, 11, 15).

balance consisted of: (1) \$72,397,920 in common stock; (2) \$802,509,599 in other paid-in capital; (3) \$164,547,594 in retained earnings; and (4) \$942,785 in accumulated other comprehensive income (Exh. AG 1-2, Att. at 8, lines 2, 7, 11, 15).

During the proceedings, the Company provided an analysis of its updated capital structure (Exh. DPU 1-2, Att.). As of September 30, 2016, the Company reports a debt-equity ratio of approximately 33.1 percent debt, and 66.8 percent equity (Exh. DPU 1-2, Att.). This calculation is based on a capitalization consisting of \$371,850,000 in long-term debt, \$1,112,000 in preferred stock, and \$751,477,000 in common equity<sup>9</sup> (Exh. DPU 1-2, Att.; Tr. at 37).

#### IV. STANDARD OF REVIEW

##### A. Securities Issuance

To approve the issuance of stock, bonds, coupon notes, or other types of long-term indebtedness by an electric or gas company,<sup>10</sup> the Department must determine that the proposed issuance meets two tests. First, the Department must assess whether the proposed issuance is reasonably necessary to accomplish some legitimate purpose in meeting a company's service obligations, pursuant to G.L. c. 164, § 14. Fitchburg Gas and Electric Light Company v. Department of Public Utilities, 395 Mass. 836, 841-842 (1985) ("Fitchburg II"), citing Fitchburg Gas and Electric Light Company v. Department of Public

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<sup>9</sup> The common equity balance excludes account entries associated with "goodwill" and "other comprehensive income" (Exh. DPU 1-2, Att.).

<sup>10</sup> Long-term refers to periods of more than one year from the date of issuance. G.L. c. 164, § 14.



Utilities, 394 Mass. 671, 678 (1985) (“Fitchburg I”). Second, the Department must determine whether the company meets the net plant test. Colonial Gas Company, D.P.U. 84-96, at 5-8 (1984); see also Milford Water Company, D.P.U. 91-257, at 5 (1992); Edgartown Water Company, D.P.U. 90-274, at 5-7 (1990); Barnstable Water Company, D.P.U. 90-273, at 6-8 (1990).<sup>11</sup>

The Supreme Judicial Court has found that, for the purposes of G.L. c. 164, § 14, reasonably necessary means “reasonably necessary for the accomplishment of some purpose having to do with the obligations of the company to the public and its ability to carry out those obligations with the greatest possible efficiency.” Fitchburg II at 842, citing Lowell Gas Light Company v. Department of Public Utilities, 319 Mass. 46, 52 (1946) (“Lowell Gas”). In cases where no issue has been raised about the reasonableness of management decisions regarding the requested financing, the Department limits its G.L. c. 164, § 14 review to a determination of reasonableness of the company’s proposed use of the proceeds of a securities issuance. Canal Electric Company, et al., D.P.U. 84-152, at 20 (1985); see, e.g., Colonial Gas Company, D.P.U. 90-50, at 6-7 (1990). The Fitchburg I, Fitchburg II, and Lowell Gas cases also established that the burden of proving that an issuance is

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<sup>11</sup> The net plant test is derived from G.L. c. 164, § 16, which provides the Department with authority to protect against an impairment of capital. Childs v. Krey, 199 Mass. 352, 356 (1908). Thus, when the Department approves a securities issuance under G.L. c. 164, § 14, we require a demonstration that the fair structural value of the plant and land exceeds the company’s outstanding stock and long-term debt. Colonial Gas Company, D.P.U. 84-96, at 5 (1984). When the value of such plant and land is less than the value of the company’s outstanding stock and long-term debt, the Department may prescribe conditions and requirements to make good within a reasonable time the impairment of the capital. See G.L. c. 164, § 16.

reasonably necessary rests with the company proposing the issuance, and that the Department's authority to review a proposed issuance is not limited to a perfunctory review. Fitchburg I at 678, citing Lowell Gas at 52; Fitchburg II at 842.

Regarding the net plant test, a company is required to present evidence showing that its net utility plant (e.g., utility plant in service less accumulated depreciation, contributions in aid of construction, CWIP, and goodwill) is equal to or in excess of its total capitalization. Aquarion Water Company of Massachusetts, D.P.U. 11-55, at 12, 28-29 (2011); Southern Union Company, D.T.E. 01-32, at 10-11 (2001); D.P.U. 84-96, at 5, 8. The Department's definition of total capitalization is the sum of long-term debt, preferred stock, common stock, and premiums on common stock outstanding. D.P.U. 11-55, at 28-29; D.P.U. 84-96, at 5.<sup>12</sup> Where issues concerning the prudence of a company's capital financing have not been raised or adjudicated in a proceeding, the Department's decision does not represent a determination that any specific project is economically beneficial to the company or to its customers. See, e.g., Boston Gas Company, D.P.U. 95-66, at 7 (1995). Further, the Department's approval of a securities issuance in a G.L. c. 164, § 14 proceeding may not in any way be construed as a ruling on the appropriate ratemaking treatment to be accorded any costs associated with the proposed financing. See, e.g., D.P.U. 95-66, at 7.

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<sup>12</sup> For purposes of the net plant test, the Department excludes retained earnings from the calculation of total capitalization. D.P.U. 11-55, at 28 n.29; Southern Union Company, D.T.E. 04-36, at 9-10 (2004). In addition, premiums on common stock are treated as common stock. The Berkshire Gas Company, D.T.E. 03-89, at 23 (2004).

B. Exemption from G.L. c. 164, §§ 15 & 15A

Pursuant to Section 15, an electric or gas company offering long-term bonds or notes in excess of \$1,000,000 in face amount payable at periods of more than five years after the date thereof must invite purchase proposals through newspaper advertisements. The Department may grant an exemption from this advertising requirement if the Department finds that an exemption is in the public interest. G.L. c. 164, § 15. The Department has found it in the public interest to grant an exemption from the advertising requirement where there has been a measure of competition in private placement. See, e.g., The Berkshire Gas Company, D.P.U. 89-12, at 11 (1989); Eastern Edison Company, D.P.U. 88-127, at 11-12 (1988); Western Massachusetts Electric Company, D.P.U. 88-32, at 5 (1988). The Department also has found that it is in the public interest to grant a company an exemption from the advertising requirement when a measure of flexibility is necessary in order for a company to enter the bond market in a timely manner. See, e.g., Western Massachusetts Electric Company, D.P.U. 88-32, at 5 (1988). However, Section 15 requires advertising as the general rule, and waiver cannot be automatic, but must be justified whenever requested. Bay State Gas Company, D.T.E. 02-73, at 14 (2002).

Pursuant to Section 15A, a company is required to sell long-term bonds, debentures, notes, or other evidence of indebtedness at no less than the par value or face amount unless sale at less than par value is found by the Department to be in the public interest. See, e.g., Boston Edison Company, D.P.U. 91-47, at 13 (1991). The Department has found that it is in the public interest to grant an exemption from the par value requirement where market

conditions make it difficult at times for a company to price a particular issue at par value and simultaneously offer an acceptable interest rate to prospective buyers. Bay State Gas Company, D.P.U. 91-25, at 9 (1991). The Department also has found that it is in the public interest to authorize the issuance of debt securities below par value where this technique offers a company enhanced flexibility in entering the market quickly to take advantage of prevailing interest rates, particularly if this benefits the company's ratepayers in the form of lower interest rates and a lower cost of capital. D.P.U. 91-25, at 9; see also Boston Gas Company, D.P.U. 92-127, at 8 (1992); Boston Edison Company, D.P.U. 91-47, at 12-13 (1991). If the Department authorizes a company to issue debt securities at less than par value, the Department may establish the method by which the company is required to amortize any discount.<sup>13</sup> G.L. c. 164, § 15A; see, e.g., Boston Gas Company, D.P.U. 92-127, at 8; Boston Edison Company, D.P.U. 91-47, at 15.

## V. POSITIONS OF THE PARTIES

### A. Attorney General

#### 1. Issuance of Debt to Unnamed Affiliate

The Attorney General argues that the Department should reject the Company's request to issue the proposed debt to unspecified affiliates (Attorney General Brief at 4). According to the Attorney General, Department regulations require evidence that any affiliate services are priced at no more than market value (Attorney General Brief 4). The Attorney General

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<sup>13</sup> The discount is the difference between the par value of a bond, note, or other debt security and the actual issue price when the actual issue price is less than par value.

claims that the Company has not provided any evidence that allows the Department to determine the reasonableness of its request to issue the debt to some affiliate and its conformance with the Department regulations (Attorney General Brief at 5). The Attorney General argues that not only has the Company not provided a copy of the proposed debt agreement that it would enter into with an affiliate, it has not provided the name of the affiliate to which it would issue debt or the terms of the proposed debt (Attorney General Brief at 5, citing Tr. at 21). The Attorney General contends that without any evidence demonstrating the appropriateness of an issuance to some affiliate, the Department should deny the Company's request to issue the proposed debt to an affiliate (Attorney General Brief at 5).

2. Issuance of Debt within Two Years

The Attorney General argues that the Department should order the Company to issue the proposed debt as soon as possible to take advantage of the current low interest rates (Attorney General Brief at 5). According to the Attorney General, the Company's common equity ratio that it uses to set rates is over 64 percent, which is substantially higher than the average common equity ratio that the Department uses in analyzing electric distribution companies (Attorney General Brief at 5-6). The Attorney General contends that issuing this debt should bring the Company's equity ratio more in line with those of other electric utilities, lower the cost of capital that the Company uses to set transmission rates, and bring rate relief to its customers through the formula rates that it files with ISO-New England (Attorney General Brief at 6).

Further, the Attorney General argues that the Department should order the Company to issue the proposed debt within the next two years to assure the financing is economic and still appropriate (Attorney General Brief at 6). The Attorney General contends that interest rates are at historic lows and are expected to increase, so locking in lower rates at this time would appear prudent (Attorney General Brief at 6). According to the Attorney General, the Department has typically found that a two-year period after the issuance of the order is reasonable and sufficient for a utility to give it flexibility to manage the bond issuance in the most economical and prudent manner (Attorney General Brief at 6). Finally, the Attorney General argues that because recent history has demonstrated significant events can affect interest rates, security markets, tax policies, corporate investments, and corporate structures, the Department's approval of what appears reasonable based on what is known today may become inappropriate in the future (Attorney General Brief at 7). Therefore, the Attorney General contends that the Department should limit the approved issuance to two years from the date of the Order in this case (Attorney General Brief at 7).

B. Company

1. Issuance of Debt to Affiliates

The Company argues that it included the ability to issue debt to an affiliate in its petition to maintain the flexibility to access the most efficient markets at the time that it seeks to issue debt (Company Brief at 17). The Company contends that internal funding may be less expensive, and it may be appropriate for smaller, shorter-term issuances where an equivalent public or private deal may be less economical (Company Brief at 17, citing

Exh. AG 1-9). NEP claims that the Attorney General's recommendation eliminates this flexibility, thus potentially increasing the cost of the issuances in the event that the Company is not able to pursue a more economically sound issuance with an affiliate (Company Brief at 17-18).

The Company maintains that the Attorney General's argument is based on incorrect assumptions. According to NEP, the Company's witness at the evidentiary hearing indicated that the likely affiliate to which it would issue debt would be NEP's parent company, National Grid USA (Company Brief at 18, citing Tr. at 21). Further, the Company contends that it had not provided a proposed debt agreement with an affiliate because there are no such agreements in place (Company Brief at 18, citing Tr. at 21-22). Therefore, the Company claims that the Attorney General's argument that the Department will be unable to determine whether the Company's request to issue debt to an affiliate is reasonable is fundamentally flawed (Company Brief at 18).

The Company argues that, in the event that it does determine that issuance to an affiliate is the most appropriate form of issuance, its compliance filing to the Department following the issuance will indicate that the debt was issued to an affiliate (Company Brief at 18). NEP maintains that the Department would in no way be constrained from seeking additional information as to the terms of the affiliate transaction in order to ensure compliance with Department regulations (Company Brief at 19). Thus, the Company contends that the Attorney General's allegations are unfounded and that the Department

should reject the Attorney General's recommendation to prohibit affiliate transactions (Company Brief at 19).

2. Issuance of Debt within Two Years

The Company argues that the Attorney General has not presented a witness or other record evidence demonstrating that the Company's proposal is deficient or inconsistent with market practices or expectations (Company Brief at 20). According to NEP, the Attorney General is proffering inaccurate arguments that are not supported by record evidence or expert testimony (Company Brief at 20).

The Company contends that under the law, the Department is authorized to determine whether the proposed issuances are reasonably necessary, and that the Company has demonstrated, through record evidence, that the proposed issuances are reasonably necessary for the Company to accomplish some legitimate purpose in meeting its service obligations consistent with the Department's standard of review (Company Brief at 20). The Company claims that it has demonstrated that those purposes, such as refinancing short-term debt, financing capital needs, and constructing utility plant and property, will arise over a series of years (Company Brief at 20, citing Exhs. DPU 1-4; DPU 1-5; DPU 1-7; AG 1-10; RR-DPU-1; Tr. at 17-18, 22-24, 28-29). The Company argues that it included the three-year period to issue, subject to a two-year extension, in order to maintain flexibility to issue debt to accomplish legitimate utility purposes as those purposes arrive (Company Brief at 20-21).

The Company contends that the Attorney General mistakenly considers NEP, which has its principal business of providing electric transmission service that is regulated by the



Federal Energy Regulatory Commission (“FERC”), to be analogous to traditional electric distribution companies in Massachusetts that are regulated by the Department (Company Brief at 21). The Company argues that the Attorney General relies on this incorrect comparison to conclude that NEP’s capital structure should be the same as electric distribution companies in Massachusetts (Company Brief at 21, citing Tr. at 14-15, 40-42).

NEP argues that the Attorney General has not presented any evidence that the Company’s equity ratio is inconsistent with the standards of FERC or that authorizes the Department to review and set the Company’s overall rate of return (Company Brief at 22). The Company contends that the appropriate venue to raise those concerns is before FERC (Company Brief at 22). Nonetheless, the Company maintains that it has demonstrated that its equity ratio is appropriate and developed consistent with FERC standards and precedent (Company Brief at 22).

a. Exemption from G.L. c. 164, §§ 15 and 15A<sup>14</sup>

The Company argues that due to the volatility of the financial markets, the Company must be able to take full advantage of the flexibility offered by negotiated transactions of private offerings, and therefore an exemption from the competitive solicitation and advertising requirements in Section 15 is in the public interest (Company Brief, at 24-25, citing Exhs. CVD-1, at 7-8; DPU 1-8; DPU 1-9; DPU 1-15; Tr., at 24-27). The Company notes that, in the past, the Department has found that granting an exemption from the advertising requirements is in the public interest where (1) there has been a measure of

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<sup>14</sup> The Attorney General does not address Sections 15 or 15A on brief.

competition in private placement, and (2) a measure of flexibility is necessary in order for a company to enter the bond market in a timely manner (Company Brief at 23, citing The Berkshire Gas Company, D.T.E. 98-129, at 7 (1999); Boston Edison Company, D.T.E. 00-62, at 11 (2000); NSTAR Electric Company, D.P.U. 13-133, at 29-30 (2013); D.P.U. 15-01, at 8; D.P.U. 15-127, at 16-18; D.P.U. 15-144, at 9). The Company also notes that the Department has determined that the benefits of a competitive solicitation process for customers can be duplicated through the negotiated public offering process without the additional cost and time associated with a competitive solicitation process (Company Brief at 23, citing D.P.U. 15-144, at 9; D.P.U. 15-127, at 16-18; D.P.U. 13-133, at 29-30; Boston Edison Company, D.T.E. 03-129, at 19-20 (2004). As a result, the Company notes that the Department has recognized that negotiated transactions can benefit customers and are more appropriate than competitive bid transactions, especially during periods of fluctuating securities markets (Company Brief at 23-24, citing D.P.U. 15-127, at 18; D.P.U. 15-01, at 13-14; D.P.U. 13-133, at 29-30; Boston Edison Company, D.P.U. 92-253-A (1993). The Company argues that it has demonstrated in these proceedings the clear disadvantages of pursuing a competitive bid, as opposed to a negotiated offering, and the advantages of a private offering over public (Company Brief at 24, citing Exhs. CVD-1, at 7-8; DPU 1-8; DPU 1-9; DPU 1-15; Tr. at 24-27).

## VI. ANALYSIS AND FINDINGS

### A. Issuance of Long-Term Debt

#### 1. Reasonable Necessity of Issuance

NEP proposes to issue and sell one or more long-term debt securities in an aggregate principal amount not to exceed \$800,000,000 during the period extending three years from the date of the Department's final order with an option for a two-year extension, for the purpose of: (1) refinancing short-term debt; (2) financing NEP's capital needs; (3) constructing utility plant properties; (4) reimbursing the treasury; (5) funding maturing debt; and (6) implementing other general corporate purposes (Exh. CVD-1, at 3). The Company argues that it has demonstrated that the issuance of \$800,000,000 in long-term debt is reasonably necessary to meet its service obligations pursuant to G.L. c. 164, § 14 (Company Brief at 13).

The Department has found that issuing long-term debt securities to pay down short-term debt is a legitimate utility purpose under G.L. c. 164, § 14. Massachusetts Electric Company, D.P.U. 15-144, at 11 (2016); Blackstone Gas Company, D.T.E. 03-65, at 4 (2003). The Department has found that applying the proceeds from financing to acquire or maintain a balanced capital structure to be a legitimate utility purpose. D.P.U. 15-144, at 11; D.P.U. 11-78/D.P.U. 11-79, at 20-21; Massachusetts Electric Company, D.P.U. 09-41, at 12-13 (2009). The Department has found that the expansion or replacement of a utility plant is a legitimate utility purpose as contemplated by G.L. c. 164, § 14. The Department has found that proceeds from the issuance and sale of securities under

G.L. c. 164, § 14 may be used to pay cash dividends to a parent company. Specifically, the Department has found that such dividend payments as part of a company's strategy to maintain and optimize its capital structure is a legitimate utility purpose. Massachusetts Electric Company, D.P.U. 09-41, at 12 (2009); D.P.U. 15-144, at 2, 11-12.<sup>15</sup> However, in finding that payment of cash dividends (reimbursement of the treasury) is a legitimate utility purpose, the Department has emphasized that such finding in no way signals that companies would be allowed to issue long-term debt for the sole purpose of financing cash dividend payments. D.P.U. 09-41, at 12-13; D.P.U. 15-144, n.14. We affirm this policy regarding the issuance of long-term debt and the payment of cash dividends. The Department has found that the replacement of maturing long-term debt is a legitimate utility purpose as contemplated by G.L. c. 164, § 14. D.P.U. 15-01, at 8-9; Bay State Gas Company, D.P.U. 13-129, at 2, 9-10 (2013); Boston Gas Company/Colonial Gas Company, D.P.U. 11-78/D.P.U. 11-79, at 20-21 (2011). The Department has also found that issuing securities to fund general working capital requirements is a legitimate utility purpose. D.P.U. 15-144, at 12; Western Massachusetts Electric Company, D.P.U. 15-127, at 12 (2015). Because NEP's stated purposes of issuing said debt are consistent with these cited purposes, the Department concludes that the Company's proposed issuance of long-term debt

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<sup>15</sup> The Department has found that the issuance of common stock for the payment of stock dividends is a legitimate utility purpose under G.L. c. 164, §§ 11, 14. Southern Union Company, D.T.E. 05-38, at 9 (2005); Southern Union Company, D.T.E. 04-14, at 9-10 (2004). The Department has found that the issuance of common stock to fund a company's dividend reinvestment and stock purchase plan is a legitimate utility purpose under G.L. c. 164, § 14. Fall River Gas Company, D.P.U. 97-76, at 8-9 (1997); Bay State Gas Company, D.P.U. 91-170, at 10 (1991)

securities in an aggregate principal amount of \$800,000,000 is reasonably necessary to accomplish a legitimate purpose in meeting the Company's service obligations in accordance with G.L. c. 164, § 14.

2. Net Plant Test

The Department requires companies to demonstrate that their net utility plant equals or exceeds their total capitalization, thereby supporting the additional amount of financing, pursuant to G.L. c. 164, § 16. D.P.U. 84-96, at 5. The purpose of the net plant test is both to protect ratepayers from excessive rates associated with overcapitalization and to assure creditors of a utility that the company has sufficient tangible assets to cover its liabilities. Boston Gas Company, D.T.E. 03-40, at 321 (2003), citing Report of the Department of Public Utilities Relative to the Capitalization of Gas and Electric Companies, Senate Document No. 315, at 8-15 (January 1922); Colonial Gas Company, D.P.U. 1247-A at 7 (1982). Under the net plant test, a company must present evidence showing that its net utility plant (utility plant in service less accumulated depreciation), and excluding CIAC, CWIP, and goodwill, is equal to or greater than its total capitalization (the sum of long-term debt, preferred stock, and common stock outstanding). D.P.U. 11-55, at 12, 28-29, D.T.E. 01-32, at 10-11; D.P.U. 84-96, at 5, 8.

Based on its utility plant and related account balances as of March 31, 2016, NEP calculates the plant component of the net plant test as follows. NEP reports total utility plant of \$2,904,386,348 (Exhs. CVD-2; AG 1-2 Att., at 6, line 4). NEP excludes \$456,476,845

in accumulated depreciation, \$204,319,376 in CWIP, and \$337,614,334 in net goodwill,<sup>16</sup> arriving at capitalizable plant of \$1,905,975,793 (Exhs. CVD-2; AG 1-2, Att. at 6 (lines 3, 5), and 34 (lines 12 and 32)). In addition, NEP removed \$7,947,461 in plant held for future use to arrive at its final calculation of net capitalizable plant of \$1,898,028,332 (Exhs. CVD-2; DPU 1-14 Att.). The Department finds that NEP has correctly calculated its net plant for purposes of the net plant test.

The Company calculates the capitalization component of the net plant test as follows. NEP reports total capitalization of \$910,254,885 consisting of: (1) \$371,850,000 in long-term debt; (2) \$1,111,700 in preferred stock; and (3) \$537,293,185 in common equity (Exhs. CVD 2; AG 1-2, Att. at 8, lines 2, 18).<sup>17</sup> For purposes of the net plant test, NEP's common equity balance is the sum of \$72,397,920 in common stock and \$802,509,599 in other paid-in capital, from which it removed \$337,614,334 in goodwill (Exhs. CVD-2; AG 1-2, Att. at 8 (lines 2 and 7) and 34 (lines 12 and 32). Retained earnings and accumulated other comprehensive income are not included in the capitalization component of the net plant test. The Berkshire Gas Company, D.P.U. 12-43, at 22 (2012); Western Massachusetts Electric Company, D.T.E. 05-9, at 13 (2005); Southern Union Company, D.T.E. 04-36, at 9-10

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<sup>16</sup> The Company's calculation of net goodwill is equal to its acquisition adjustment (\$355,885,131) minus the amortization of plant acquisition adjustment (\$18,270,797) (Exh. AG 1-2, at 34, lines 12, 32; Tr. at 34).

<sup>17</sup> \$72,397,920 in common stock + \$802,509,599 in other paid-in capital + \$18,270,797 in amortization of goodwill - \$355,885,131 in goodwill = \$537,293,185 in common equity (Exh. AG 1-2, Att. at 8, lines 2, 18).

(2004), The Department finds that NEP has correctly calculated its capitalization for purposes of the net plant test.

A comparison of NEP's net utility plant of \$1,898,028,332 and total capitalization of \$910,254,885 reveals that utility plant exceeds capitalization by \$987,773,447. The Department, therefore, finds that the Company's plant investment is sufficient to support the proposed issuance of long-term debt of up to \$800,000,000.

### 3. Maximum Interest Rate

The Company proposes that the long-term debt securities would carry either a fixed or adjustable interest rate, not to exceed seven percent per annum, to be determined based on market conditions at the time of issuance (Exh. CVD-1, at 6-7). In determining the requested interest rates, the Company considered current market rates for similarly rated securities and historical rates, and it included a measure of flexibility to address changing market conditions and volatile markets (Exh. CVD-1, at 6-7).

The Department recognizes that the potential for financial market volatility requires the allowance of a measure of flexibility in setting maximum interest rates for long-term debt securities. Massachusetts Electric Company, D.T.E. 04-51, at 13 (2004); Boston Edison Company, D.T.E. 03-129, at 16-17 (2004); The Berkshire Gas Company, D.T.E. 03-89, at 26 (2004). In the case of adjustable-rate debt, the Department has recognized that the maximum interest rate must be sufficient to allow the interest rate to vary over the life of the debt instrument without undue risk to the investor. D.T.E. 04-51, at 13-14; D.T.E. 03-129, at 17-18; Boston Edison Company, D.P.U. 89-44, at 4-5 (1989). The Department has

reviewed NEP's analysis and finds that a maximum interest rate of seven-percent per annum for the issuance of long-term, fixed-rate or adjustable-rate, debt securities is consistent with the public interest.

B. Exemption from G.L. c. 164, §§ 15 and 15A

The solicitation process prescribed by Section 15 is highly proscriptive. The statute, first enacted in 1919,<sup>18</sup> requires that gas and electric companies seeking to sell bonds, notes, debentures, or other evidences of indebtedness with a maturity of more than five years advertise proposals for the purchase of the specific securities to be offered in two or more local newspapers where the company maintains its principal business office, as well as in two or more Boston newspapers. G.L. c. 164, § 15. The Department has long recognized that today's financial markets do not operate as they did in 1919, and that newspaper advertising is an inefficient way to attract investor interest. D.P.U. 09-41, at 23; D.T.E. 05-9, at 20-21. In this case, NEP has demonstrated that investors currently rely on means other than newspaper advertising to identify potential investments, and that competitive solicitation has been largely supplanted by other placement means, such as negotiated public offerings (Exhs. CVD-1, at 7-8; DPU 1-9; DPU 1-15; Tr. at 24-28).

Moreover, because NEP is not a publicly traded company, and does not itself make any periodic disclosure filings with the SEC, it would be required to pay significantly higher costs for issuing debt than would a public SEC registrant (Exh. DPU 1-15). Under these conditions, pursuing a competitive solicitation as opposed to a negotiated or private offering

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<sup>18</sup> St. 1919, c. 104, § 1.



could result in higher costs to the Company, and ultimately to its customers (Exhs. CVD-1, at 7-8; DPU 1-8; DPU 1-9; DPU 1-15; Tr. at 24-27). The Department finds that the Company has shown that a newspaper solicitation process could adversely affect investor interest, ultimately impairing the financial benefits available to ratepayers under the negotiated offering process. Fitchburg Gas and Electric Company, D.T.E. 01-43, at 8 (2001); New England Power Company, D.T.E. 00-53, at 10 (2000). In this case, it is appropriate to allow the Company the flexibility offered by the negotiated offering process in order to facilitate the Company's access to the capital markets and to reduce issuance costs and interest rate expense. The Department finds that the Company has demonstrated that its proposed placement process is sufficient to realize the intent of Section 15 of competitive solicitation while still providing flexibility to enter the debt market quickly. Therefore, the Department finds that it is in the public interest to exempt the Company from the advertising requirements of G.L. c. 164, § 15.

NEP also requests an exemption from the par value requirements of Section 15A (Exh. CVD-1, at 8). The Company explains that issuing debt securities below par value offers a company enhanced flexibility in entering the market quickly to take advantage of the prevailing market rates (Exh. CVD 1, at 8).

The Department recognizes that the discounts from par value are a standard market device that investors rely upon to refine the price structure of a securities instrument in order to achieve a desired interest rate. See, e.g., D.P.U. 15-144, at 19; D.P.U. 13-133, at 30; Southern Union Company, D.T.E. 03-64, at 12-14 (2003); Southern Union Company,

D.T.E. 01-32, at 13 (2001); D.T.E. 00-62, at 8, 12; Boston Edison Company, D.T.E. 99-118, at 43 (1999).<sup>19</sup> The Department has found that it is in the public interest to authorize the issuance of debt securities below par value where this technique offers a company enhanced flexibility in entering the market quickly to take advantage of prevailing interest rates, particularly if this pricing strategy benefits the company's ratepayers in the form of lower interest rates and a lower cost of capital. D.P.U. 15-144, at 10; D.P.U. 15-127, at 19-21; D.P.U. 13-133, at 30; Boston Edison Company, D.T.E. 03-129, at 20-21 (2004); D.T.E. 01-32, at 8 (2001); Boston Gas Company, D.P.U. 92-127, at 8 (1992); Boston Edison Company, D.P.U. 91-47, at 12-13 (1991). Moreover, discounts provide companies with increased flexibility in timing debt issuances in the market (Exh. CVD-1, at 8). This increased flexibility translates into an ability to issue debt securities in a timely manner to take advantage of favorable market conditions. D.T.E. 03-64, at 13; D.T.E. 00-62, at 8, 12. Therefore, the Department finds that it is in the public interest to exempt the Company from the par value requirements of Section 15A. Consistent with the requirements of Section 15A, the Company is directed to amortize the amount of any discount from the par value over the life of the new issuance series on a straight-line basis.<sup>20</sup> D.T.E. 00-62, at 12.

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<sup>19</sup> In the public market, debt securities are priced in increments of 0.01 percent, and issued at interest rates set at increments of either 0.05 percent or 0.125 percent. D.P.U. 15-127, at 20. Consequently, the face value of a security is often discounted by a small amount to recognize the finer pricing points.

<sup>20</sup> The Company has requested that the debt issuance costs be deferred and amortized

C. Issuance of Long-Term Debt to an Affiliated Company

The Department has general supervision of dealings between jurisdictional gas and electric companies and an affiliated company, as defined by G.L. c. 164, § 85. G.L. c. 164, § 76A. For purposes of G.L. c. 164, § 76A, an affiliated company means

...any corporation, society, trust, association, partnership or individual (a) controlling a company subject to this chapter, either directly, by ownership of a majority of its voting stock or of such minority thereof as to give it substantial control of such company, or indirectly, by ownership of such a majority or minority of the voting stock of another corporation or association so controlling such company; or (b) so controlled by a corporation, society, trust, association, partnership or individual controlling as aforesaid, directly or indirectly, a company subject to this chapter; or (c) standing in such a relation to a company subject to this chapter that there is an absence of equal bargaining power between the corporation, society, trust, association, partnership or individual and the company so subject, in respect to their dealings and transactions.

G.L. c. 164, § 85.<sup>21</sup> In the exercise of our authority over dealings with affiliated companies, the Department finds that is appropriate to determine whether specific conditions are required

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over the life of the debt (Exh. DPU 1-10). The Company's proposed accounting treatment is not inconsistent with Department precedent. See The Berkshire Gas Company, D.P.U. 90-121, at 159-160 (1990); Boston Edison Company, D.P.U. 86-71, at 16 (1986). In addressing the Company's proposed accounting treatment of debt issuance costs, the Department makes no finding on the ratemaking treatment or prudence of these costs.

<sup>21</sup> As a result of possible economic advantages of arrangements between jurisdictional operating companies and affiliated companies within a holding company system, a special commission of the Massachusetts Legislature issued its "Report of the Special Commission on Conduct and Control of Public Utilities" in March 1930. House Document No. 1200. As a result of this Report, the Legislature enacted statutes designed to confer on the Department powers to regulate directly affiliate-operating company contracts: St. 1930, c. 395 (G.L. c. 164, § 85); St. 1930, c. 396

for the issuance of long-term debt pursuant to G.L. c. 164, § 14, by a gas or electric company to an affiliated company. The Attorney General proposes that the Department restrict NEP from issuing any long-term debt to an affiliated company, arguing that the Company has failed to justify the propriety of such issuances, and that such issuances would be in violation of the Department's affiliated transactions regulations in 220 C.M.R. § 12.04(3) (Attorney General Brief at 5). In considering any conditions for the issuance of long-term debt by NEP to an affiliated company, the Department will not apply 220 C.M.R. § 12.04(3). The Department's regulations at 220 C.M.R. § 12.00 et seq., "Standards of Conduct For Distribution Companies and Their Affiliates," apply to distribution companies under the Department's jurisdiction. 220 C.M.R. § 12.01(2). For purposes of these regulations, a distribution company is "a natural gas local distribution company or Electric Company that provides distribution services under the Department's jurisdiction." 220 C.M.R. § 12.01(2). As stated above, NEP provides electric transmission service. Pertinent definitions provide:

"Transmission," the delivery of power over lines that operate at a voltage level typically equal to or greater than 69,000 volts from generating facilities across interconnected high voltage lines to where it enters a distribution system.

"Transmission company," a company engaging in the transmission of electricity or owning, operating or controlling transmission facilities; provided, however, that a transmission company shall provide transmission service to all generation companies, municipal lighting plants, suppliers and load aggregators

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(G.L. c. 164, § 94B). See 45 Harv. L. Rev. 729, n.3 (1932); 49 Harv. L. Rev. 957, 986 & n.126 (1935).

in the commonwealth, whether affiliated or not, on comparable, nondiscriminatory prices and terms, under federal law and regulation.

G.L. c. 164, § 1. Further, for definitional purposes, the Department notes that NEP is not a distribution company pursuant to § 1.

“Distribution,” the delivery of electricity over lines which operate at a voltage level typically equal to or greater than 110 volts and less than 69,000 volts to an end-use customer within the commonwealth. The distribution of electricity shall be subject to the jurisdiction of the department of public utilities.

“Distribution company,” a company engaging in the distribution of electricity or owning, operating or controlling distribution facilities; provided, however, that a distribution company shall not include any entity which owns or operates plant or equipment used to produce electricity, steam and chilled water, or an affiliate engaged solely in the provision of such electricity, steam and chilled water, where the electricity produced by such entity or its affiliate is primarily for the benefit of hospitals and non-profit educational institutions, and where such plant or equipment was in operation before January 1, 1986.

G.L. c. 164, § 1.

Based on these definitions and the purpose of 220 C.M.R. § 12.00 et seq., the Department need not apply the provisions of 220 C.M.R. 12.04(3) to NEP in the issuance of long-term debt to an affiliated company. We do, however, exercise our authority over the issuance pursuant to G.L. c. 164, § 76A.

In examining dealings with affiliated companies under G.L. c. 164, § 76A, the Department seeks to protect against financial and accounting abuse. Regarding the issuance of long-term debt by a jurisdictional utility to an affiliated company, the terms and conditions of the issuance shall be consistent with safe and sound financing practice. That is, the affiliated company may not exploit the affiliate relationship to benefit from terms and conditions that are materially more advantageous to the interests of affiliated company than

terms and conditions that the jurisdictional utility could expect to obtain in the financial markets. In this instance, if NEP issues long-term debt to an affiliate under the authority granted herein, NEP shall include as part of the compliance filing specified in Section VI.E below an “officer’s certificate” to include the following representations: (1) that the officer is a duly appointed officer of the Company; (2) that the officer is authorized to file the certificate; (3) that based on reasonable efforts, the Company could not secure a debt issuance on comparable or more favorable terms than the debt issuance to the affiliated company; and (4) that the foregoing is true, accurate, and complete.

1. Term of Financing Plan

NEP seeks Department authorization to issue the proposed debt from time to time over an initial period of three years, with an option for a two-year extension to be provided contingent upon a demonstration by the Company that (a) it continues to maintain a sufficient balance of total capitalizable plant against which to issue the debt securities, and (b) the purpose of the issuances continues to serve a legitimate utility purpose (Exhs. CVD-1, at 3; AG 1-10). The Attorney General contends that the Company should be directed to issue the proposed \$800,000,000 in long-term debt as quickly as possible in order to reduce its common equity ratio (Attorney General Brief at 5-6).

Under G.L. c. 164, § 14, the Department must determine whether the amount and purpose of a proposed issuance are necessary to meet a company’s service obligations. In addition, the Department finds that, in determining the general question of the reasonable necessity of the securities issuance, we may examine other material covenant components of

the issuance including, but not limited to, the period of a financing plan. We find support for this authority in the Supreme Judicial Court's interpretation and discussion of the Department's authority under G.L. c. 164, § 14. For example, the Department's broad investigative powers can be applied to financing petitions under G.L. c. 164, § 14.

Fitchburg I, at 680. The Department has a range of discretion in exercising its authority under G.L. c. 164, § 14. Fitchburg I, at 680. As stated above, reasonably necessary means "reasonably necessary for the accomplishment of some purpose having to do with the obligations of the company to the public and its ability to carry out those obligations **with the greatest possible efficiency.**" Fitchburg II at 842, citing Lowell Gas at 52 (emphasis supplied). The Department's function is the protection of public interests and not the promotion of private interests. Lowell Gas at 52. The Department can adjust the rights and responsibilities of a petitioner under G.L. c. 164, § 14 based on reasonable conditions of an appropriate character. Fitchburg II at 853. The Department's authority is not limited to a perfunctory review of the proposed financing. Fitchburg I, at 680 at 678.

The Company has demonstrated that it intends to expend the proceeds of the debt issuances for legitimate utility purposes over an extended period of time, allowing for a reasonable range of future financial needs (Exhs. CVD-1, at 5; DPU 1-4; DPU 1-7; Tr. at 28-29). The Department has approved financing petitions under G.L. c. 164, § 14 that are part of a plan extending over a period of time. A survey of some of the Department's approvals shows that a typical financing plan extends approximately two years.

D.P.U. 15-144, at 23; D.P.U. 15-139, at 16; Western Massachusetts Electric Company,

D.P.U. 10-64, at 38 (2011); Boston Edison Company, D.P.U. 92-253-A at 23 (1993).

However, the Department has approved the issuance of securities under plans extending more than two years. The Berkshire Gas Company, D.T.E. 03-89 (2004) (term of approximately three years with Order issued February 18, 2004, with authorization for issuance through January 31, 2007); Southern Union Company, D.T.E. 02-27 (2002) (Order issued June 14, 2002, authorizing stock dividend issuances for 2002, 2003, and 2004).

Except in extraordinary circumstances, the Department, in reviewing financing applications, will defer to the management decisions of the utility. Canal Electric Company et al., D.P.U. 84-152, at 20 (1985). Based on the Department's treatment of the length of a financing plan identified above, we find that a three-year period for NEP's proposed long-term debt issuance is not extraordinary. Thus, the Department defers to the Company's business judgment concerning the use of a three-year term to fulfill its financing plan for the issuance of the long-term debt. However, we do not extend such deference to the Company's request for an option for a two-year extension of its financing plan beyond the initial three-year term. Our review of Department financing Orders does not disclose any instance where the Department has approved a long-term debt issuance under a five-year plan. Also, we are not aware of the Department's pre-approving an extension of a financing term. Thus, the Department considers extraordinary NEP's proposal for an option to exercise a two-year extension of its initial three-year financing plan term.

The Department has approved extensions to financing plan terms pursuant to post-authorization motions setting forth specific circumstances warranting a limited extension.



NSTAR Electric Company, D.P.U. 07-43-A (2008 (one-year extension to an approximate 17-month financing plan); Western Massachusetts Electric Company, D.P.U. 10-64-A (2012) (one-year extension to an approximate 23-month financing plan). These Department-approved extensions were not pre-approved extension options for the companies, and the extended terms of the financing plans did not approach the aggregate five-year length of NEP's proposed financing plan. The Department finds that there may be sufficient changes in circumstances over the next five years to warrant a new consideration of such elements of a financing as the amount, the purpose, the types of securities, the Company's plant and capital balances, and the conditions of the financial market. Therefore, the Department does not approve NEP's request for an option for a two-year extension to its financing plan. The Department finds that a three-year financing plan term from the date of this Order allows NEP sufficient flexibility to meet its stated financing needs.

D. Compliance Filing

Consistent with Department practice and NEP's representations, the Department requires that NEP report to the Department and to the Attorney General within 30 days of any issuance hereunder, the following information: (a) the name of the lender, and the relationship to NEP if the lender is an affiliated company; (b) the principal amount; (c) the maturity; (d) the yield; (e) reference to any index; (f) whether priced at par; (g) any optional prepayment; and (h) a description of how the interest rate and the term were determined. Additionally, if the lender is an affiliated company, NEP shall file an officer's certificate as explained above.

VII. ORDER

Accordingly, after notice, hearing, and due consideration, the Department:

VOTES: That the issuance and sale by New England Power Company d/b/a National Grid, from time to time during the period extending three years from the date this Order, of long-term debt securities in an aggregate principal amount not to exceed \$800,000,000 is reasonably necessary for the purposes for which such issuance has been authorized including refinancing short-term debt, financing capital expenditures, constructing utility plant properties, reimbursing the treasury, funding maturing debt, and for general corporate purposes; and further

VOTES: That the issuance and sale by New England Power Company d/b/a National Grid, from time to time during the period extending three years from the date this Order, of long-term debt securities in an aggregate principal amount not to exceed \$800,000,000, at less than par value, is in the public interest, and such issuance and sale shall be exempt from the provisions of G.L. c. 164, § 15A, and that if a security is sold at less than par value, it is in the public interest to amortize the discount from par value over the life of the new issuance series on a straight-line basis; and it is

ORDERED: That the issuance and sale by New England Power Company d/b/a National Grid, during the period extending three years from the date this Order, in an aggregate principal amount not to exceed \$800,000,000 is reasonably necessary for the purposes for which such issuance is authorized; and it is

FURTHER ORDERED: That such authorized long-term debt securities issued by New England Power Company d/b/a National Grid shall carry a fixed interest rate not to exceed seven percent per annum, or an adjustable interest rate to vary with a market index designated at the time of issue, but that will not exceed seven percent per annum; and it is

FURTHER ORDERED: That New England Power Company d/b/a National Grid's issuance and sale from time to time, during the period extending three years from the date this Order, of long-term debt securities in an aggregate principal amount not to exceed \$800,000,000, without complying with the advertising and competitive solicitation provisions of G.L. c. 164, § 15, is in the public interest, and that such issuance and sale shall be exempt from the provisions of G.L. c. 164, § 15; and it is

FURTHER ORDERED: That the issuance and sale by New England Power Company d/b/a National Grid, during the period extending three years from the date this Order, of long-term debt securities in an aggregate principal amount not to exceed \$800,000,000, at less than par value pursuant to G.L. c. 164, § 15A, is in the public interest, and that if a security is sold at less than par value, it is in the public interest to amortize the discount from par value over the life of the new insurance series on a straight-line basis; and it is

FURTHER ORDERED: That the net proceeds from the sale of all such securities shall be used for the purposes as set forth herein; and it is

FURTHER ORDERED: That New England Power Company d/b/a National Grid shall within 30 days of any issuance hereunder provide the Department and the Attorney General with a report of such issuance as provided herein; and it is

FURTHER ORDERED: That New England Power Company d/b/a National Grid shall comply with all other directives contained in this Order; and it is

FURTHER ORDERED: That the Secretary of the Department shall within three business days of the issuance of this Order cause a certified copy of this Order to be filed with the Secretary of the Commonwealth.

By Order of the Department,

/s/  
Angela M. O'Connor, Chairman

/s/  
Jolette A. Westbrook, Commissioner

/s/  
Robert E. Hayden, Commissioner

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