



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 20-03

October 13, 2020

Petition of Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities for approval by the Department of Public Utilities, pursuant to G.L. c. 164, § 96, of the acquisition of Blackstone Gas Company.

APPEARANCES: Cheryl M. Kimball, Esq.
Daniel P. Venora, Esq.
Steven Frias, Esq.
Keegan Werlin LLP
99 High Street, Suite 2900
Boston, Massachusetts 02110

FOR: LIBERTY UTILITIES (NEW ENGLAND NATURAL
GAS COMPANY) CORP. d/b/a LIBERTY UTILITIES
Petitioner

Maura Healey, Attorney General
Commonwealth of Massachusetts

By: Donald Boecke
Jo Ann Bodemer
Assistant Attorneys General

Office of Ratepayer Advocacy
One Ashburton Place
Boston, Massachusetts 02108

Intervenor

Rachel Graham Evans, Esq.
Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114

FOR: DEPARTMENT OF ENERGY RESOURCES
Intervenor

Jerrold Oppenheim, Esq.

57 Middle Street

Gloucester, Mass. 01930

FOR: LOW-INCOME WEATHERIZATION AND FUEL
ASSISTANCE PROGRAM NETWORK

Intervenor

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I. INTRODUCTION

On January 15, 2020, Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities (“Liberty Utilities” or “Company”), pursuant to G.L. c. 164, § 96 (“Section 96”), submitted a petition (“Petition”) to the Department of Public Utilities (“Department”) for approval of the acquisition of the operations, gas-system assets, and customer base of Blackstone Gas Company (“Blackstone Gas”). As part of the filing, Liberty Utilities requested that the Department, in approving the subject transaction, confirm that the franchise rights and obligations currently held by Blackstone Gas shall be held by Liberty Utilities and that no separate authorization is required under G.L. c. 164, § 21 (“Section 21”). The Department docketed this matter as D.P.U. 20-03.

II. PROCEDURAL HISTORY

On January 23, 2020, the Attorney General of the Commonwealth of Massachusetts (“Attorney General”) filed a notice of intervention in this matter pursuant to G.L. c. 12, § 11E(a). On January 30, 2020, the Low-Income Weatherization and Fuel Assistance Program Network (“Network”) filed a petition to intervene in this proceeding as a full party, which the Department granted on February 4, 2020. On February 12, 2020, the Department of Energy Resources (“DOER”) filed a petition to intervene as a full party, which the Department granted on February 21, 2020. Pursuant to notice duly issued, the Department conducted a public hearing and procedural conference on March 4, 2020.

In support of Liberty Utilities’ filing, the Company sponsored the testimony of James M. Sweeney, President, East Region business group, Liberty Utilities Co., and

Vincent P. Duffy, the Company's Director of Regulatory Affairs. The Attorney General sponsored the testimony of Timothy Newhard, financial analyst with the Attorney General's Office of Ratepayer Advocacy.

On July 15, 2020, the Company, Attorney General, and Network ("Settling Parties") submitted the following documents: (1) a Joint Motion for Approval of Settlement ("Joint Motion"); (2) the associated Settlement Agreement; and (3) an Explanatory Statement.¹ In the Joint Motion, the Settling Parties request that the Department find that (1) the terms of the Settlement Agreement are reasonable and (2) implementation of the terms of the Settlement Agreement will result in an overall net benefit to customers of both Blackstone Gas and Liberty Utilities (Joint Motion at 2). As explained in further detail below, by its terms, the Settlement Agreement is deemed withdrawn, unless the Department approves the entire Settlement Agreement by October 15, 2020. No comments were filed relative to the proposed Settlement Agreement. The record consists of approximately 190 exhibits.²

¹ The Department required that any settlement be accompanied by an explanatory statement to facilitate review that included a procedural history, a section-by-Section summary of the settlement, the issues underlying the settlement and the major implications of the settlement, whether any of the issues raise policy implications, whether other pending proceedings may be affected, whether the settlement involves issues of first impression, if there is any change in treatment from a previously decided issue, and any other materials needed to evaluate the settlement. D.P.U. 20-03, Hearing Officer Memorandum (May 29, 2020).

² The Department, on its own motion, moves the following documents into the evidentiary record: (1) the Company's direct testimony and attachments supporting its initial filing; (2) the Company's responses to nine sets of information requests; (3) the Attorney General's direct testimony and supporting attachments; (4) the Attorney General's responses to one set of information requests; (5) the Joint Motion, Settlement Agreement and Explanatory Statement; and (6) and the Settling Parties'

III. DESCRIPTION OF THE PROPOSED TRANSACTION

A. The Companies

Liberty Utilities, which consists of the former New England Gas Company assets, is a local natural gas distribution company subject to the Department's jurisdiction under G.L. c. 164 (Exh. LU-JMS-1, at 6). The Company is a wholly owned subsidiary of Liberty Utilities Co., which in turn is an indirect subsidiary of Algonquin Power and Utilities Corp. ("APUC") (Exh. LU-JMS-1, at 6). Liberty Utilities provides natural gas distribution service to approximately 56,500 customers in six communities located in the southeastern portion of Massachusetts, including Fall River, North Attleboro, Plainville, Swansea, Somerset, and Westport (Exh. LU-JMS-1, at 6-7). The Company's customer base consists of a mix of residential, commercial, and industrial customers (Exh. LU-JMS-1, at 7).

Blackstone Gas also is a local natural gas distribution company subject to the Department's jurisdiction under G.L. c. 164 (Exh. LU-JMS-1, at 6). Blackstone Gas serves approximately 1,900 customers in the towns of Blackstone, Bellingham, and Wrentham (Exh. LU-JMS-1, at 6). Blackstone Gas is a sole proprietorship organized as a Massachusetts corporation, and its issued and outstanding shares of stock are owned by a single stockholder, who also is the president of Blackstone Gas (Exh. LU-JMS-1, at 6).

responses to two sets of information requests regarding the proposed Settlement Agreement. Further, the Department notes that no party requested an evidentiary hearing, and we find that the evidentiary record in this docket provides an adequate basis to address the issues raised in the Settlement Agreement without the need for an adjudicatory hearing.

Blackstone Gas' customer base includes residential heating and non-heating customers and small, low-load commercial customers (Exh. LU-JMS-1, at 6).

B. The Proposed Acquisition

Pursuant to an Agreement and Plan of Merger dated October 31, 2019, Liberty Utilities will acquire the operations, gas-system assets, and customer base of Blackstone Gas through the purchase of the issued and outstanding common stock held by Blackstone Gas' sole shareholder³ for a price of \$5,500,000, plus closing adjustments⁴ (Exhs. LU-JMS-1, at 7; LU-JMS-2, at 15, 19-22, 115; DPU 2-2). Upon closing of the proposed transaction,⁵ the Blackstone Gas corporate entity will merge with and into Liberty Utilities, and the separate corporate existence of Blackstone Gas will cease to exist (Exh. LU-JMS-1, at 7, 17). Further, upon closing, Liberty Utilities will continue as the surviving corporation, with the operations, assets, and customers of Blackstone Gas consolidated into that of Liberty Utilities (Exh. LU-JMS-1, at 7, 17).

³ Specifically, Liberty Utilities will acquire 418 shares of common stock, at a par value of \$25.00 per share (Exh. LU-JMS-1, at 7).

⁴ The closing adjustments relate to the actual amount of working capital at closing, which will either increase or decrease the final acquisition price (Exhs. LU-JMS-1, at 7; DPU 2-2).

⁵ The Company anticipated closing the acquisition within 30 days of approval by the Department and Liberty Utilities' regional board of directors (Exh. DPU 3-6). The Company states that as a Delaware corporation, it is not required to obtain shareholder approval of the proposed acquisition (Exhs. LU-JMS-1, at 19; DPU 1-10).

Regarding Blackstone Gas customers post-acquisition, nearly all will take service under the same rate schedules and terms of service as all other Liberty Utilities customers,⁶ with a limited exception applying to a subset of low-use customers on the Blackstone Gas system who will continue to be assessed the current Blackstone Gas customer charge (Exh. LU-VPD-1, at 12-13). Blackstone Gas' operations employees will become employees within the Liberty Utilities organization (Exh. LU-JMS-1, at 17-18). Finally, as part of its filing, Liberty Utilities proposed to treat Blackstone Gas' assets as a \$5,500,000 addition to Liberty Utilities' plant in service, to be rolled into rate base in the Company's next base distribution rate case (Exhs. LU-JMS-1, at 16; LU-VPD-1, at 14-15).

IV. DESCRIPTION OF THE PROPOSED SETTLEMENT AGREEMENT

A. Introduction

According to the Settlement Agreement, the Settling Parties agree that the Company's proposed acquisition of Blackstone Gas, as submitted to the Department for approval, is

⁶ Liberty Utilities and Blackstone Gas have similar residential rate classes, consisting of the following: Rate R-1, non-heating; Rate R-2, low-income non-heating; Rate R-3, heating; and Rate R-4, low-income heating (Exh. LU-VPD-1, at 6-7). Thus, Blackstone Gas residential customers will be assigned to Liberty Utilities' rate classes based on the corresponding Liberty Utilities tariff definitions (Exh. LU-VPD-1, at 6-7). Further, Blackstone Gas' single commercial and industrial ("C&I") rate class (Rate G-1) and its School Rate Schedule (Rate S-1), will be assigned to a Liberty Utilities rate class using a volume data set for the calendar year 2018 (Exh. LU-VPD-1, at 7). Thus, Blackstone Gas' C&I customers will be assigned to Liberty Utilities' rate classes as follows: Rate G-41, low volume low load factor; Rate G-42, medium volume low load factor; Rate G-51, low volume high load factor; and Rate G-52, medium volume high low factor (Exh. LU-VPD-1, at 7). The S-1 customers will be assigned to Liberty Utilities' rate class G-42 (Exh. LU-VPD-1, at 7).

consistent with the public interest as required by Section 96 (Settlement Agreement, § 2.1.1). Further, the Settling Parties agree that upon closing of the transaction to acquire Blackstone Gas, Liberty Utilities will continue to be subject to the same obligations that were respectively held by each of those companies prior to the acquisition, and that further action, pursuant to Section 21, is not required to consummate the proposed transaction (Settlement Agreement, § 2.1.1).

B. Organizational Structure

The Settlement Agreement provides that the proposed acquisition will result in no changes to Liberty Utilities' organizational structure (Settlement Agreement, § 1.5). The Settling Parties agree that seven of the nine current employees of Blackstone Gas are operations employees who will become employees within the Liberty Utilities organization (Settlement Agreement, § 1.5). The two individuals who will not join Liberty Utilities are management employees who elected to withdraw upon closing (Settlement Agreement, § 1.5).

C. Transfer of Blackstone Gas Customers to Liberty Utilities' Rate Classes

The Settlement Agreement provides that upon its approval, Liberty Utilities shall be authorized to transfer Blackstone Gas customers into comparable and equivalent customer rate classes established under existing, currently effective Liberty Utilities rate tariffs as early as possible, with three exceptions (Settlement Agreement, § 2.2.1). First, the Company will maintain the current existing separate Gas Adjustment Factors ("GAFs") for the existing customers of Blackstone Gas and Liberty Utilities until the Department has an opportunity to

review and approve the consolidation of the GAFs in a separate future proceeding (Settlement Agreement, § 2.2.2).

Second, the Gas System Enhancement Plan (“GSEP”) costs for Liberty Utilities customers shall not be recoverable from any current Blackstone Gas customer through Liberty Utilities’ GSEP factor for a period of at least ten years from the date of the subject acquisition closing, and after that, only upon Department approval in a base distribution rate proceeding filed pursuant to G.L. c. 164, § 94 (“Section 94”) (Settlement Agreement, § 2.2.3). Third, of the 1,911 Blackstone Gas customers that will become customers of Liberty Utilities, approximately 140 low-use customers would experience a rate increase under the Company’s rate tariffs at the current customer charge associated with the respective tariffs (Settlement Agreement, § 2.2.4). Thus, the Settlement Agreement provides that, to mitigate the impact on these affected customers, the Company will hold the customer charge at the current Blackstone Gas level for the low-use customers transferring to Liberty Utilities rate classes R-1, G-41, and G-51 (Settlement Agreement, § 2.2.4).⁷ The Settlement Agreement further provides that this arrangement will remain in place until the Company’s next base distribution rate case (Settlement Agreement, § 2.2.6).

⁷ The Settlement Agreement provides that upon its approval, the Company will submit a compliance filing, including tariffs applicable to customers in rate classes R-1, G-41, and G-51 that will indicate that these customers will be billed as Liberty Utilities customers for all rate components other than the customer charge (Settlement Agreement, § 2.2.6).

The Settlement Agreement also provides that Blackstone Gas customers taking service on two low-income rate classes (i.e., rate classes R-2 and R-4), will receive the benefit of an increase in the low-income discount rate once those customers are transitioned onto the Liberty Utilities rate schedules (Settlement Agreement, § 2.2.5).⁸

D. Distribution Rate Freeze

The Settlement Agreement provides that upon its approval, Liberty Utilities shall not seek a base distribution rate increase pursuant to Section 94 to become effective before November 1, 2022 (Settlement Agreement, § 2.3.1).⁹ Further, the Settlement Agreement provides that upon closing of the subject acquisition, Blackstone Gas shall cease to exist and shall be ineligible to request future base rate changes except as a consolidated part of any Liberty Utilities base distribution rate proceeding (Settlement Agreement, § 2.3.1).

⁸ The Settlement Agreement notes that as of March 31, 2020, there were 116 Blackstone Gas low-income customers, and that rate class R-2 received a 14-percent low-income discount, while rate class R-4 received a 15.8-percent discount (Settlement Agreement, § 2.2.5). The Settlement Agreement further notes that Liberty Utilities' low-income discount rate is 25 percent (Settlement Agreement, § 2.2.5).

⁹ Pursuant to the Settlement Agreement, the creation of any new reconciling rate recovery factor shall be deemed a base distribution rate increase and, therefore, may not become effective before November 1, 2022, unless mandated by statute (Settlement Agreement, § 2.3.2). The Settlement Agreement provides that this rate freeze provision is not intended to apply to any reconciling rate recovery factor in existence as of the effective date of the Settlement Agreement (Settlement Agreement, § 2.3.2). Further, the Settlement Agreement provides that this provision shall not preclude Liberty Utilities from implementing ratemaking mechanisms approved by the Department for all Massachusetts investor-owned local distribution gas companies to address impacts of the COVID-19 pandemic (Settlement Agreement, § 2.3.2).

E. Cost Reductions

The Settlement Agreement provides that Liberty Utilities customers should experience economic benefits from the proposed transaction resulting from an overall expansion of the customer base, thus spreading the Company's cost of service over a greater number of customers, which, all else equal, will serve to mitigate cost pressures going forward (Settlement Agreement, § 1.6). Further, pursuant to the Settlement Agreement, the Company asserts that it will achieve operating cost reductions for labor and labor-related costs, as well as the elimination of outside vendor costs estimated at \$475,000, annually (Settlement Agreement, § 2.4.3).

F. Ratemaking Considerations

The Settlement Agreement provides that, at the time of Liberty Utilities' next base distribution rate proceeding, the Company shall be authorized to submit a unified cost of service for the consolidated customer base of Liberty Utilities and Blackstone Gas customers (Settlement Agreement, § 2.4.1).¹⁰ Further, pursuant to the Settlement Agreement, Liberty Utilities shall be eligible to incorporate Blackstone Gas' original, historical-cost plant-in-service and other routine rate base components existing on its books of account at the end of the test year, into the respective books of account for Liberty Utilities for ratemaking

¹⁰ Pursuant to the Settlement Agreement, at the time of Liberty Utilities' next base distribution rate proceeding, Blackstone Gas customers will be fully integrated into the Company's system and all rate mechanisms encompassed within its tariffs will be applicable to Blackstone Gas customers as part of the Liberty Utilities' customer base, with the exception of the GSEP-related costs noted above (Settlement Agreement, § 2.4.1).

purposes (Settlement Agreement, § 2.4.2). The Settlement Agreement notes that Liberty Utilities has accepted this rate base computation in accordance with Department ratemaking practice, although it differs from the recovery of rate base indicated in the Agreement and Plan of Merger dated October 31, 2019 (Settlement Agreement, § 2.4.2 & n.1).

In addition, at the time of Liberty Utilities' next base distribution rate proceeding, the Settlement Agreement provides that the Company shall be eligible to include an expense line item of \$252,719 in the unified cost of service, representing the recovery of acquisition-related costs (Settlement Agreement, § 2.4.4).¹¹ Further, pursuant to the Settlement Agreement, the Company shall be eligible to propose to recover acquisition-related integration costs upon a showing that actual operating and maintenance cost reductions were equal to or greater than the sum of (a) \$252,719, and (b) the amount of the amortization of the acquisition-related integration costs over a ten-year period on a straight-line basis (Settlement Agreement, § 2.4.5). The Settlement Agreement also provides that the Company shall not be eligible to recover transaction costs, which the Settlement Agreement states are the costs incurred to enter into the Agreement and Plan of Merger and obtain Department approval of the transaction (Settlement Agreement, § 2.4.5).

¹¹ According to the Settlement Agreement, this expense item shall be included in base rates and recovered by Liberty Utilities as a revenue requirement component in the total amount of \$252,719 over a 30-year period, starting with the implementation of new base rates approved by the Department in the future base distribution rate proceeding (Settlement Agreement, § 2.4.4).

G. Energy Efficiency

The Settlement Agreement provides that Liberty Utilities will assume responsibility from Boston Gas Company d/b/a National Grid (“National Grid”) for providing gas energy efficiency services to Blackstone Gas customers at an administratively feasible date after closing (Settlement Agreement, § 2.5.1).¹² According to the Settlement Agreement, Liberty Utilities will transfer Blackstone Gas customers to the Company’s existing energy efficiency tracking system; will develop and conduct a mailing to all Blackstone Gas customers introducing Liberty Utilities and marketing the energy efficiency rebates and all program offers; will update content and components on MassSave.com; and will take steps to tailor offerings to Blackstone Gas customers to the extent possible (Settlement Agreement, § 2.5.1).

H. Other Settlement Terms

The Settlement Agreement states that (1) it shall not constitute an admission by any party that any allegation or contention in this proceeding is true or false; (2) it establishes no principles and, except as to those issues resolved by approval of this Settlement Agreement, shall not foreclose any party from making any contention in any future proceedings; and (3) the entry of an Order by the Department approving the Settlement Agreement shall not in any respect constitute a determination by the Department as to the merits of any other issue raised in this proceeding, except as specified in the Settlement Agreement to accomplish the

¹² Under a service agreement approved by the Department, effective January 1, 2016, National Grid provides gas energy efficiency services to Blackstone Gas customers (Exh. LU-JMS-1, at 28). Blackstone Gas Company, Boston Gas Company, Colonial Gas Company, D.P.U. 15-79 (2015).

customer benefit intended by this Settlement Agreement (Settlement Agreement, §§ 3.1, 3.2). The Settlement Agreement provides that the Settling Parties agree that the content of settlement negotiations, including work papers and documents produced in connection with the Settlement Agreement, is confidential (Settlement Agreement, § 3.3). The Settlement Agreement also states that all offers of settlement are without prejudice to the position of any party or participant presenting such offer or participating in such discussion and that the content of settlement negotiations are not to be used in any manner with these or other proceedings involving the parties to this Settlement Agreement (Settlement Agreement, § 3.3).

The Settlement Agreement provides that its provisions are not severable and that the Settlement Agreement is conditioned on approval in full by the Department, as well as the provision of accurate and truthful information by the Company during the settlement negotiation process (Settlement Agreement, § 3.4). Further, the Settlement Agreement provides that if it is not approved by the Department in its entirety by October 15, 2020, the Settlement Agreement filing shall be deemed to be withdrawn and shall not constitute a part of the record in any proceeding or used for any other purpose (Settlement Agreement, § 3.5).

The Settlement Agreement provides that, from time to time during the term of the Settlement Agreement, the Attorney General may request in writing that the Company respond to informal information requests pursuant to G.L. c. 12, § 11E(c) regarding any matter related to the Settlement Agreement, the filing or subsequent compliance filings and rates, charges or tariffs, and that the Company shall answer these information requests in a

reasonably prompt manner, not to exceed 21 calendar days from issuance (Settlement Agreement, § 3.6). Further, according to the Settlement Agreement, nothing in the Settlement Agreement shall be construed to limit the Attorney General's right to petition the Department for a review of the Company under G.L. c. 164, § 93 or otherwise under law or regulation, for a review of the Company for any reason (Settlement Agreement, § 3.7).

The Settlement Agreement also provides that settlement of this proceeding does not establish any precedent or principles of law for use or application in any other proceeding before the Department, any court of law, administrative agency, or any other adjudicatory body (Settlement Agreement, § 3.7). Finally, the Settlement Agreement provides that it shall be governed by Massachusetts law and not the law of some other state; that it shall be effective upon approval by the Department, regardless of any pending appeals or motions for reconsideration, clarification, or recalculation; and that the obligations imposed in each article shall expire on that date stated therein, if any (Settlement Agreement, § 3.8).

V. STANDARDS 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 has amended Section 96(b), (c) to require the 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.¹³

¹³ 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.

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 7-9.¹⁴ 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.

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,

¹⁴ 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.

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 7-9.¹⁵

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, 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.

VI. ANALYSIS AND FINDINGS

A. Introduction

The Department fully supports the use of settlement negotiations as a means through which a company can satisfy its obligation to provide safe, reliable, least-cost utility service

¹⁵ 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.

to ratepayers. See Integrated Resource Planning, D.P.U. 94-162, at 18 (1995). In considering the proposed acquisition, as recast in the proposed Settlement Agreement, and in light of the standard of review above, the Department's analysis will focus on the following factors: (1) potential rate changes at the time of the transaction, if any; (2) long-term strategies that will assure a reliable, cost-effective gas delivery system; (3) any anticipated interruptions in service, other factors that may negatively impact customer service, and any effects on the quality of service; (4) resulting net savings of the proposed acquisition; (5) fairness of the distribution of resulting benefits between shareholders and ratepayers; (6) societal costs and effect on economic development; and (7) the financial integrity of the post-acquisition entities.

B. Specific Acquisition Issues

1. Potential Rates Changes

In considering whether a proposed acquisition is consistent with the public interest, the Department must consider "potential rate changes, if any." Section 96(b), (c). The Settlement Agreement contains several provisions that will impact rates.

First, Blackstone Gas customers will be transferred into comparable and equivalent customer rate classes established under existing, currently effective Liberty Utilities rate tariffs, with three exceptions (Settlement Agreement, §§ 2.2.1, § 2.2.5). These exceptions are that (1) separate GAFs will remain in place for existing Blackstone Gas and Liberty Utilities customers until the Department has an opportunity to review and approve the

consolidation of the GAFs in a separate future proceeding;¹⁶ (2) Liberty Utilities will not recover GSEP-related costs from existing Blackstone Gas customers through a GSEP factor for a period of at least ten years from the date of the subject acquisition closing, and after that, the GSEP factor would apply to Blackstone customers only upon Department approval in a base distribution rate proceeding filed pursuant to Section 94; and (3) the Company will hold the customer charge at the current Blackstone Gas level for the low-use customers transferring to Liberty Utilities rate classes R-1, G-41 and G-51 (Settlement Agreement, §§ 2.2.2, 2.2.3, 2.2.4).

The Department finds that the transfer of Blackstone Gas customers into comparable and equivalent Liberty Utilities customer rate classes, subject to the exceptions set forth above, will result in a base distribution rate decrease for all Blackstone Gas customers in all rate classes (Exhs. LU-JMS-1, at 25, 29; LU-VPD-1, at 9-14; LU-VPD-3; LU-VPD-4; DPU 4-4; DPU 4-5; AG 1-29, Att.). Further, although Blackstone Gas customers' existing GAF will remain in place and those customers will not bear any of Liberty Utilities' GSEP costs for some time, Liberty Utilities customers nevertheless likely will benefit from additional revenues and an overall expansion of the customer base, thus spreading the

¹⁶ Liberty Utilities states that separate GAFs are appropriate because the Company and Blackstone Gas are each served by a different interstate natural gas pipeline (Liberty Utilities is served by Algonquin Gas Transmission, LLC and Blackstone Gas is served by Tennessee Gas Pipeline, LLC) with separate delivery points, and they have separate forecast and supply plans approved by the Department (Exh. DPU 2-21). Liberty Utilities states that over time it will assess whether there is value for customers in consolidating the GAFs (Exh. DPU 2-21).

Company's cost of service over a greater number of customers (Exhs. LU-JMS-1, at 22; LU-VPD-1, at 9, 14; LU-VPD-5; DPU 3-2). Additionally, to the extent that reconciliation factors operating outside of base rates are charged to Blackstone Gas customers under Liberty Utilities' rate tariffs, those factors will be reduced for all existing Liberty Utilities customers (Exhs. DPU 3-2; DPU 3-3).

Second, the Settlement Agreement provides for a base distribution rate freeze applicable to all existing Blackstone Gas and Liberty Utilities customers, during which the Company cannot seek a base distribution rate increase pursuant to Section 94 to become effective before November 1, 2022 (Settlement Agreement, § 2.3.1). In the absence of a base distribution rate freeze, we cannot know today the precise timing of any filing by Liberty Utilities for a base distribution rate increase, whether the Department would grant any rate increase, and if so, the amount of any such increase.¹⁷ Thus, the savings associated with the proposed rate freeze cannot be determined with any level of precision. It stands to reason, however, that ratepayers will benefit from the certainty of no increases in base rates until November 1, 2022, at the earliest, when compared to the possibility of a base distribution rate increase occurring during that time period. See UIL Holdings Corporation

¹⁷ The Company's last base distribution rate increase was granted in 2016 as part of a settlement. Liberty Utilities (New England Natural Gas Company) Corp., D.P.U. 15-75 (2015). Pursuant to Section 94, the Company may file for a general increase in rates and is required to submit rate schedules in intervals no longer than ten years. In its initial filing, prior to submission of the proposed Settlement Agreement, the Company noted that it expected to file a base distribution rate proceeding within the next five years (Exh. LU-JMS-1, at 15).

and Iberdrola USA, Inc., D.P.U. 15-26, at 20 (2015); New England Gas Company,

D.P.U. 13-07-A at 42 (2013); D.T.E. 98-31, at 16 & n.22.¹⁸

Third, the Settlement Agreement contains additional provisions designed to produce no adverse changes in rates at the time of closing. Specifically, the Settlement Agreement provides that the Company shall not be eligible to recover any transaction costs associated with the proposed acquisition (Settlement Agreement, § 2.4.5). Further, and as discussed in more detail in Section VI.B.4 below, the Settlement Agreement postpones the recovery of certain acquisition costs and the potential recovery of certain acquisition-related integration costs until the Company's next base distribution rate proceeding. In addition, the Settlement Agreement does not provide for the recovery of goodwill (Exh. DPU-SP 2-1).¹⁹ The

¹⁸ The Department notes that consistent with other rate freezes approved by the Department, the base rate freeze here applies only to base distribution rates. See, e.g., Fitchburg Gas and Electric Light Company (Electric Division), D.P.U. 19-130, at 8, 15-16 (April 17, 2020); Fitchburg Electric Light Company (Gas Division), D.P.U. 19-131, at 6, 14-15 (February 28, 2020); NSTAR/Northeast Utilities Merger, D.P.U. 10-170-B at 40 (2012); Fall River Gas Company/Southern Union Company Merger, D.T.E. 00-25, at 4 (2000); North Attleboro Gas Company/Providence Energy Company/Southern Union Company, D.T.E. 00-26, at 4 (2000); D.T.E. 99-47, at 4; D.T.E. 99-19, at 13; D.T.E. 98-128, at 8; D.T.E. 98-31, at 12; D.T.E. 98-27, at 10. Thus, there are reconciling components of ratepayers' bills that will not remain fixed at their current charge during the rate freeze period. Because these reconciling mechanisms recover costs on a dollar-for-dollar basis, they will increase or decrease from one year to the next.

¹⁹ In a business combination transaction such as this, the difference between the purchase price paid by a utility to acquire plant that previously had been placed into service and the net depreciated cost of the acquired plant to the previous owner is treated as an acquisition premium and recorded as goodwill. Mergers and Acquisitions at 9.

Department finds that these provisions ensure that, at the time of closing, any potential rate changes will benefit Blackstone Gas and Liberty Utilities customers.

2. Long-Term Strategies

In considering whether a proposed acquisition 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), (c). In this regard, the Department has noted that activities and commitments that advance clean energy development and address climate change are important components of this Section 96 factor. NSTAR/Northeast Utilities Merger, D.P.U. 10-170-B at 76-77 (2012).

Neither the Settlement Agreement nor the record supporting the proposed acquisition directly address clean energy development or climate change. Rather, the Company emphasizes its positive service quality record and maintains that its strong financial profile and operating expertise will ensure consistent and adequate capital investments necessary to ensure the safe and reliable performance of the Blackstone Gas system (Exh. LU-JMS-1, at 27-28, 35). Further, the Company points to anticipated improvements in energy-efficiency offerings to Blackstone Gas customers (Exhs. LU-JMS-1, at 35; DPU 1-18). In this regard, the Settlement Agreement states that Liberty Utilities will assume responsibility from National Grid for providing gas energy efficiency services to Blackstone Gas customers (Settlement Agreement, § 2.5.1). The Company states that it will develop a mutually agreed-upon plan and timeline in collaboration with National Grid to ensure a seamless transition of providing gas energy efficiency services to Blackstone Gas customers

(Exh. AG 1-19). Liberty Utilities states that this change in administration will allow the Company to provide Blackstone Gas customers with robust integrated energy efficiency offerings that are tailored more specifically to their needs (Exhs. LU-JMS-1, at 28, 35; AG 1-19; Settlement Agreement, § 2.5.1).

During the course of this proceeding, Liberty Utilities noted that preliminary discussions with National Grid personnel had taken place, but that the Company had not yet formulated a plan and timeline to transfer responsibility for providing gas energy efficiency services to Blackstone Gas customers because “it is dependent upon the approval and timing of this transaction” (Exhs. DPU 1-13; AG 1-19). The Settlement Agreement provides no definitive plan or timeline, but simply notes that Liberty Utilities would assume responsibility for providing such services “at an administratively feasible date after closing” (Settlement Agreement, § 2.5.1). The Department finds that it is reasonable and appropriate for the Company to assume responsibility for providing gas energy efficiency services to Blackstone Gas customers. We expect the Company to finalize a plan to transfer responsibility from National Grid as expeditiously as possible following the close of the acquisition, so that the Company is able to incorporate Blackstone Gas customers into its upcoming three-year energy efficiency plan for the 2022-2024 term (Exh. DPU 3-5).

Based on the above considerations, the Department finds that the Company has sufficiently demonstrated that it is committed to long-term strategies that will ensure a reliable, cost effective energy delivery system for Blackstone Gas customers.

3. Customer Service/Service Quality

In determining whether the Settlement Agreement is consistent with the public interest, the Department must consider “anticipated interruptions in service,” as well as “other factors that may negatively impact customer service.” Section 96(b), (c). The Department also may consider any effects on the quality of service. Mergers and Acquisitions at 7-8. The Department recognizes the importance of maintaining service quality standards, especially when an acquisition results in a merger of companies and such merger (and the resultant economies of scale realized to achieve cost savings) could result in service quality degradation. Boston Gas Company/Essex Gas Company, D.P.U. 09-139, at 23 (2000); D.T.E. 98-27, at 33 n.27.

Liberty Utilities intends to take a number of steps to address customer service/service quality and to promote public safety, including the following: (1) upgrading its SCADA program to connect to the Blackstone Gas distribution system;²⁰ (2) transferring Blackstone Gas customers to the Company’s information and billing system;²¹ (3) providing Blackstone

²⁰ SCADA refers to a supervisory control and data acquisition computer and telemetry system that provides for the operation, control, and optimization of a gas company’s distribution system. Liberty Utilities estimates that it will take approximately four months to integrate the Blackstone Gas distribution system into the Company’s SCADA system (Exh. DPU 1-12).

²¹ Liberty Utilities states that it intends to have Blackstone Gas’ existing office staff continue to handle customer calls and in-person customer interactions with Blackstone Gas customers until those customers are converted to the Company’s systems (Exh. AG 1-28). Liberty Utilities expects to have Blackstone Gas customers transferred to the Company’s information and billing system within 60 days of the closing on the acquisition (Exh. DPU 1-15).

Gas customers with a broader range of customer service options and integrated energy efficiency offerings; (4) exposing Blackstone Gas employees to technology-based safety enhancements and a robust and regimented safety culture; and (5) organizing community-based events and fostering working relationships with local emergency response personnel (Exhs. LU-JMS-1, at 19-20, 28-29; DPU 1-11; DPU 1-14; DPU 3-7; DPU 6-2; AG 1-19; AG 1-21; AG 1-25; AG 1-26; AG 1-28). The Department recognizes that both Liberty Utilities and Blackstone Gas have positive service quality track records, and we expect that Liberty Utilities will take all steps necessary to ensure that customers will continue to experience a high level of service reliability post-acquisition (Exh. LU-JMS-1, at 27).

Further, we note that in Blackstone Gas' most recent long-range forecast and supply plan ("F&SP"), the Department expressed concerns regarding Blackstone Gas' supply planning and lack of contingency plan in the event of a service disruption. Blackstone Gas Company, D.P.U. 18-154, at 13, 16-17 (2019). Liberty Utilities states that it is actively engaged in addressing the Department's concerns by planning to construct the necessary appurtenances located at the existing Tennessee take station to allow for supplemental gas deliveries (Exh. DPU 3-7). We expect Liberty Utilities to continue to address these concerns and to take all appropriate measures as necessary to ensure the safe, reliable, and least-cost delivery of natural gas to Blackstone Gas customers without disruption. In its next F&SP filing, the Company must report on all of its efforts to address our concerns as outlined in D.P.U. 18-154.

Based on the Company's commitments and representations, the Department finds that the proposed acquisition should be seamless to Blackstone Gas customers from a customer service/service quality standpoint. We conclude that there should be no anticipated service interruptions associated with the transaction, and no other factors that may negatively impact customer service or quality of service.

4. Net Savings

One of the factors that the Department may consider in evaluating a proposed acquisition is resulting net savings. Mergers and Acquisitions at 7-8. In reviewing estimated net savings, the Department's review "must be based on whether the figures proposed by the Petitioners are reasonable estimates." D.P.U. 10-170-B at 57; 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. D.P.U. 10-170-B at 57; D.P.U. 09-139, at 19-20; National Grid/KeySpan Corporation, D.P.U. 07-30, at 27 (2010); D.T.E. 99-47, at 50. Further, there is no requirement that projected net savings be demonstrated with a high degree of certainty, and the Department's net benefits standard does not require that net savings be substantial or sizeable. Eversource Energy and Macquarie Utilities, Inc., D.P.U. 17-115, at 28 (2017), citing D.P.U. 10-170, Interlocutory Order on Standard of Review at 27 (March 10, 2011).

In this case, Liberty Utilities did not conduct a net benefits study²² (Exhs. LU-JMS-1, at 30; DPU 2-14; DPU 2-18; AG 1-1). Nevertheless, the evidentiary record and proposed Settlement Agreement provide sufficient support to enable us to evaluate this issue. In particular, the Settlement Agreement and record provide that the proposed acquisition will result in annual payroll and benefits cost savings associated with the reduction of the Blackstone Gas workforce (i.e., the transfer to the Liberty Utilities organization of only seven of the nine Blackstone Gas employees),²³ and the elimination of accounting, legal, and consultant costs (Settlement Agreement, §§ 1.5, 2.4.3 & Appendix 1; Exhs. LU-JMS-1, at 17-18, 29-30; DPU 2-14). While the Settlement Agreement estimates these annual savings at \$475,000, a breakdown of the savings appended to the Settlement Agreement totals \$471,217 (Settlement Agreement, § 2.4.3 & Appendix 1). The overall annual cost reduction is based on recent expense amounts associated with each category of cost (Settlement Agreement, Appendix 1). Therefore, we find that annual savings of \$471,271 is substantiated by past experience and supported by logical reasoning.

²² Liberty Utilities explained that it did not perform a cost study because (1) rate benefits will occur upon closing rather than being associated with future cost reductions; and (2) it was not feasible for the Company to assess Blackstone Gas' operations for the purpose of creating cost estimates for the integration of operations on a post-closing basis (Exhs. DPU 2-18; AG 1-1). Further, the Company stated that a cost study would be cost prohibitive given Blackstone Gas' relatively small operations and its lack of financial and operating systems (Exh. DPU 2-18).

²³ The Company states that it will not need to hire additional employees beyond the seven operational employees transferring from Blackstone Gas (Exh. DPU 2-17).

Liberty Utilities also anticipates that the proposed acquisition will provide opportunities for additional efficiencies and operating cost savings over time as the Company and Blackstone Gas are integrated, which will benefit customers in the future through a cost of service that is lower than what it otherwise would be in the absence of the acquisition (Exhs. LU-JMS-1, at 30; DPU 1-16; DPU 2-14; AG 1-1). Further, the Company states that the proposed acquisition is expected to (1) mitigate future cost increases for Blackstone Gas customers in areas such as capital investment, as the Company has better access to capital; (2) provide the opportunity to implement purchasing and procurement strategies that could not be implemented by a sole proprietorship on a stand-alone basis; and (3) potentially reduce gas costs and yield operations and maintenance savings to offset cost increases that a smaller company like Blackstone Gas would consistently face (Exh. LU-JMS-1, at 30). While the Department recognizes the potential for these future savings, any such savings are speculative at this time and not included in net savings. Nevertheless, the Department expects the Company to aggressively pursue these and any other potential opportunities for additional efficiencies and operating cost savings over time, as they will benefit customers through a lower cost of service (Exhs. LU-JMS-1, at 30; DPU 2-14; AG 1-1).

In determining whether the proposed acquisition will result in net savings, the Department also considers costs associated with the transaction. Boston Gas Company/Colonial Gas Company, D.P.U. 19-69, at 11 (2019); D.P.U. 13-07-A at 80-82.

The Settlement Agreement expressly prohibits recovery of transaction costs²⁴ (Settlement Agreement, § 2.4.5). The Settlement Agreement provides that the Company, as part of its next base distribution rate proceeding, shall be eligible to include an expense line item of \$252,719 in the unified cost of service (Settlement Agreement, § 2.4.4). This amount was negotiated by the Settling Parties and represents the annual recovery of a regulatory asset²⁵ in the amount of \$2,557,877 (Exhs. DPU-SP 1-1; DPU-SP 1-2 & Atts.; DPU-SP 2-1). In turn, the regulatory asset represents the differential between the purchase price of \$5,500,000 and the historical net book value reported in Blackstone Gas' 2019 Annual Return and to be included in rate base of \$2,942,123 (Exhs. DPU-SP 1-1; DPU-SP 1-2 & Atts.). The Settling Parties note that acquisition costs that could not be quantified at the time of settlement, and that are expected to exist as of the closing date in excess of the regulatory asset, will be recorded to goodwill, but that no recovery for goodwill is provided for under the Settlement Agreement (Exhs. DPU-SP 1-1; DPU-SP 2-1). Further, in the Company's next base distribution rate proceeding, neither the regulatory asset balance nor the goodwill balance as

²⁴ Liberty Utilities anticipates only a modest level of transaction costs in the form of legal fees to develop and negotiate the purchase agreement and to obtain regulatory approval, and, notwithstanding the terms of the Settlement Agreement, the Company does not intend to seek recovery of any such transaction costs from customers (Exhs. DPU 1-2; DPU 2-14; DPU 2-15; DPU 7-1; AG 1-24).

²⁵ A regulatory asset is an incurred cost for which a regulatory agency, such as the Department, allows a regulated company to record a deferral to be considered for recovery in the future. Massachusetts Electric Company/Nantucket Electric Company, D.P.U. 10-54, at 318 n.235 (2010); NSTAR Pension, D.T.E. 03-47-A at 3 n.2 (2003).

of the test year-end in that proceeding will be included in rate base²⁶ (Exh. DPU-SP 1-1, at 2; see also Settlement Agreement, § 2.4.2 & n.1). In this instance, the Department finds the Settling Parties' proposed treatment of acquisition-related costs, including the creation of a regulatory asset, to be appropriate.

As noted above, the Company also expects to incur acquisition-related integration costs associated with upgrading the SCADA equipment to connect to the Blackstone Gas distribution system and transferring Blackstone Gas customers to Liberty Utilities' energy efficiency tracking system and information and billing system²⁷ (Exhs. DPU 2-16; DPU 3-4; DPU 6-1; DPU 6-2; DPU 7-1; DPU 7-2). The proposed Settlement Agreement provides, however, that Liberty Utilities shall be eligible to propose recovery of these acquisition-related integration costs only if the Company can demonstrate that actual operating and maintenance cost reductions were achieved of equal or greater amount than the sum of (a) \$252,719, and (b) the amount of the amortization of the acquisition-related integration costs over a ten-year period on a straight-line basis (Settlement Agreement,

²⁶ The Settling Parties' agreement as to the treatment of the \$5,500,000 purchase price and the establishment of a regulatory asset differs from the Company's proposal in its initial filing. There, the Company proposed to treat Blackstone Gas' assets as a \$5,500,000 addition to Liberty Utilities' plant in service, to be rolled into rate base in the Company's next base distribution rate case (Exhs. LU-JMS-1, at 16; LU-VPD-1, at 14-15).

²⁷ The Company estimates that the upgrade of the SCADA equipment will cost approximately \$320,000, and the changes associated with transferring Blackstone Gas customers to Liberty Utilities' energy efficiency programs will cost approximately \$44,800 to \$49,800 (Exhs. DPU 2-16; DPU 3-4).

§ 2.4.5). Thus, the Settlement Agreement ensures that acquisition-related integration costs are recoverable only upon a showing of sufficient savings to offset the recovery of these costs through rates.

The Department finds that the Settling Parties have made a fair and reasonable demonstration of the costs and savings that would result from the proposed acquisition. The labor and labor-related cost reductions and the elimination of outside vendor costs are expected to be greater than the acquisition-related costs associated with the regulatory asset. Further, we find that acquisition-related integration costs are recoverable only upon a showing of sufficient savings to offset the recovery of these costs. Based on these considerations, we conclude that the proposed acquisition will result in net savings to ratepayers.

5. Distribution of Resulting 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 9. The proposed acquisition, as recast in the Settlement Agreement, provides customers with rate-related savings and benefits, including an immediate base distribution rate reduction for all Blackstone Gas customers, a rate freeze for all customers, the elimination of certain operating costs, the potential for additional efficiencies and operating cost savings over time, and a greater distribution of costs through the expansion of Liberty Utilities' customer base (Settlement Agreement, §§ 2.2.2, 2.2.3,

2.2.4, 2.3.1, 2.4.3, 2.4.5, Appendix 1; Exhs. LU-JMS-1, at 22, 25, 29-30; LU-VPD-1, at 9-14; LU-VPD-3; LU-VPD-4; LU-VPD-5; DPU 1-16; DPU 2-14; DPU 3-2; DPU 4-4; DPU 4-5; AG 1-1; AG 1-29, Att.). Further, the Company will not seek transaction costs related to the proposed acquisition, and the proposed Settlement Agreement does not provide for the recovery of goodwill (Settlement Agreement § 2.4.5; Exh. DPU-SP 2-1). To the extent that the Company seeks acquisition-related integration costs, it must demonstrate savings in excess of the costs (Settlement Agreement, § 2.4.5). Liberty Utilities will benefit from the proposed acquisition in the form of its regulated rate of return on utility operations, which will include the Blackstone Gas assets and customer additions. Based on these considerations, we conclude that the benefits of this transaction are fairly distributed between ratepayers and shareholders.

6. Societal Costs and Effect on Economic Development

Two factors that the Department may consider in determining whether a proposed acquisition is consistent with the public interest are resulting societal costs and any impact on economic development. Mergers and Acquisitions at 8. The Department's analysis of the societal costs and effect on economic development resulting from approval of a proposed transaction focuses on the public benefits and costs, and specifically looks at the impact on employment. Sheffield Water Company, D.P.U. 16-37, at 34 (2016); Plymouth Water Company, D.P.U. 13-130, at 25-26 (2013); Bay State Gas Company/Unitil Corporation, D.P.U. 08-43-A at 52 (2008). The Department has held that proponents of mergers and acquisitions must demonstrate that they have a plan for minimizing the effect of job

displacement on employees. D.P.U. 16-37, at 34; D.P.U. 13-130, at 26; D.P.U. 10-170-B at 98; D.P.U. 09-139, at 25; D.P.U. 08-43-A at 52; D.T.E. 98-27, at 44.

As noted above, the Settlement Agreement provides that the proposed acquisition will result in no changes to Liberty Utilities' organizational structure (Settlement Agreement, § 1.5). Further, seven of the nine current employees of Blackstone Gas are operations employees who will become employees within the Liberty Utilities organization (Settlement Agreement, § 1.5; Exh. LU-JMS-1, at 17-18). The remaining two individuals are management employees who elected to withdraw upon closing²⁸ (Settlement Agreement, § 1.5). The Company states that the seven Blackstone Gas employees will receive the benefits associated with joining a larger organization, including enhanced industry and safety training and greater opportunity for interaction with peers and industry professionals (Exh. LU-JMS-1, at 28-29). Based on these considerations, the Department finds there will be positive societal and economic impacts if the proposed acquisition is approved.

7. Financial Integrity of the Post-Acquisition Entity

One of the factors that the Department may consider in determining whether a proposed acquisition is consistent with the public interest is the financial integrity of the post-acquisition entity. D.P.U. 10-170-B, at 103; D.T.E. 98-128, at 83; D.T.E. 98-31, at 48; Mergers and Acquisitions at 8. This evaluation of financial integrity must take into

²⁸ In the absence of any planned changes to employee levels, facilities, and operations resulting from the proposed acquisition, the Department will not require a personnel displacement mitigation plan.

consideration both that of the company being acquired and the acquiring company itself.

D.P.U. 10-170-B at 104-105; D.T.E. 98-31, at 48-49; see Community Utilities/Resort Supply, D.P.U. 16380, at 2-5 (1970) (merger rejected because Department found financial viability of both the acquiring company and the to-be-acquired company to be in question).

As noted above, the Company is a wholly owned subsidiary of Liberty Utilities Co., which in turn is an indirect subsidiary of APUC (Exh. LU-JMS-1, at 6). Thus, as a result of the proposed acquisition, Blackstone Gas will move from a sole proprietorship to part of a larger, publicly traded company that operates as a diversified generation, transmission and distribution utility with \$10 billion of total assets (Exh. LU-JMS-1, at 31). Therefore, the proposed acquisition should provide greater access to capital markets to finance capital investments for Blackstone Gas when compared to its position as a sole proprietorship on a stand-alone basis (Exh. LU-JMS-1 at 32). Further, the proposed acquisition will have a positive impact to Liberty Utilities' customer base, thereby strengthening the Company's financial integrity by virtue of the revenues generated by the \$2.9 million rate base addition (Exhs. DPU-SP 1-1; DPU-SP 1-2). In addition, the proposed acquisition will have a positive financial impact in terms of regulatory transparency and ratemaking, as the Blackstone Gas assets will be subject to the same financial accounting practices applied to the Company's current rates (Exhs. LU-JMS-1, at 32; DPU 1-17). Based on these considerations, the Department finds that the proposed acquisition would not negatively affect the financial integrity of Blackstone Gas or Liberty Utilities and would actually provide ratepayers with a net benefit.

8. Conclusion

The Department has investigated the proposed acquisition and examined the Settlement Agreement, which recast the proposed acquisition by providing additional ratepayer benefits. Based on our evaluation of the proposed acquisition and the Settlement Agreement, in light of the requirements of Section 96 and in balancing the applicable factors, the Department finds that the proposed acquisition in concert with the Settlement Agreement provides net benefits to ratepayers. Therefore, the Department finds that the proposed acquisition is consistent with the public interest and that the Settlement Agreement results in a just and reasonable outcome. Accordingly, the Department approves the proposed acquisition as set forth in the Settlement Agreement and approves the Settlement Agreement.²⁹

VII. CONFIRMATION OF FRANCHISE RIGHTS

A. Introduction

As noted above, as part of the initial filing in this proceeding, Liberty Utilities requested that the Department, in approving the subject transaction, confirm that the franchise rights and obligations currently held by Blackstone Gas shall be held by Liberty Utilities and that no separate authorization is required under Section 21³⁰ (Petition, ¶ 17).

²⁹ This Order whereby the Department approves the Settlement Agreement, 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 Agreement, and does not form, and may not be construed to form, a contract binding the Department. D.P.U. 15-26, at 30.

³⁰ According to the Company, Blackstone Gas has a franchise right to provide service in three communities: Bellingham; Blackstone; and Millville (Exh. DPU 1-19).

Pursuant to the Settlement Agreement, the Settling Parties agree that upon closing of the transaction to acquire Blackstone Gas, Liberty Utilities will continue to be subject to the same obligations that were respectively held by each of those companies prior to the acquisition; and that further action, pursuant to Section 21, is not required to consummate the proposed transaction (Settlement Agreement, § 2.1.1).

B. Analysis and Findings

The operative statute limiting the transfer of utility franchises is found in Section 21, which 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.” The Department has determined that corporate mergers and acquisitions properly approved pursuant to Section 96 do not require separate legislative approval under Section 21 for the transfer of franchise rights since the General Court itself authorized the Department to approve Section 96 transactions. D.P.U. 10-170-B at 106-107; D.P.U. 09-139, at 33; D.T.E. 99-47, at 65; D.T.E. 98-27, at 75-76.

Section 96 provides that companies subject to Chapter 164 “may sell and convey all or substantially all of their properties to another of such companies.” In the instant case, Blackstone Gas will convey substantially all of its property (i.e., its operations, gas-system assets, and customer base) to Liberty Utilities (Exhs. LU-JMS-1, at 7, 17; LU-JMS-2, at 15, 19-22, 115). Upon closing of the proposed transaction, Liberty Utilities will continue as the surviving corporation, with the operations, gas-system assets, and customers of Blackstone

Gas consolidated into that of Liberty Utilities (Exh. LU-JMS-1, at 7, 17). Section 96 expressly provides for the type of asset sale contemplated by the proposed transaction, so long as the transaction satisfies the public interest test. D.P.U. 13-07-B at 11-18; D.P.U. 13-07-A at 128.

As noted above, the Department has long held that an action properly approved by the Department under Section 96 would not require separate authorization from the Legislature for the transfer of franchise rights. D.P.U. 13-07-B at 11-18; D.P.U. 13-07-A at 128-129. As set forth in Section VI.B above, the proposed sale of Blackstone Gas' assets satisfies the Section 96 public interest standard. Based on these considerations, we conclude that separate legislative approval of the transfer of Blackstone Gas' franchise to Liberty Utilities is not required.

Accordingly, the Department finds that upon the consummation of the sale of Blackstone Gas' assets, Liberty Utilities shall have all the rights, powers, privileges, franchises, properties, real, personal, or mixed, and immunities held by Blackstone Gas as are necessary to engage in all the activities of a gas company in all the cities and towns in which Blackstone Gas was engaged in immediately prior to the sale of its assets; and that further action pursuant to Section 21 is not required to consummate the sale of Blackstone Gas' assets to Liberty Utilities.³¹

³¹ Blackstone Gas is directed to file a 2020 Annual Return for the period of January 1, 2020, through the date of closing on the acquisition.

VIII. ORDER

Accordingly, after due notice, hearing, and 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 15, 2020, entered into and filed by Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities, the Attorney General of the Commonwealth of Massachusetts, and the Low-Income Weatherization and Fuel Assistance Program Network, it is hereby determined that the acquisition of Blackstone Gas Company by Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities is consistent with the public interest and is hereby **APPROVED**; and it is

FURTHER ORDERED: That the Settlement Agreement dated July 15, 2020, entered into and filed by Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities, the Attorney General of the Commonwealth of Massachusetts, and the Low-Income Weatherization and Fuel Assistance Program Network produces a just and reasonable outcome and is hereby **APPROVED**; and it is

FURTHER ORDERED: That upon consummation of the change of control approved herein, Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities, shall have all rights, powers and privileges, franchises, properties, real, personal, or mixed, and immunities held by Blackstone Gas Company as are necessary to engage in all the activities of a gas company in all the cities and towns in which Blackstone Gas Company was

engaged immediately prior to the acquisition; and that further action pursuant to G.L. c. 164, § 21 is not required to consummate the acquisition; 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

FURTHER ORDERED: That upon consummation of the change of control approved herein, Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities shall submit a compliance filing, including tariffs consistent with the terms of the Settlement Agreement; and it is

FURTHER ORDERED: That Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities, the Attorney General of the Commonwealth of Massachusetts, and the Low-Income Weatherization and Fuel Assistance Program Network shall comply with all directives contained in this Order.

By Order of the Department,

/s/

Matthew H. Nelson, Chair

/s/

Robert E. Hayden, Commissioner

/s/

Cecile M. Fraser, Commissioner

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