

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 07-M-0906 - Joint Petition of Iberdrola, S.A., Energy East Corporation, RGS Energy Group, Inc., Green Acquisition Capital, Inc., New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation for Approval of the Acquisition of Energy East Corporation by Iberdrola, S.A.

**BRIEF ON EXCEPTIONS**

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**Summary and Statement of the Case**

The New York Association of Public Power (“NYAPP”) and the New York State Rural Electric Cooperative Association (“NYSRECA”) continue to support the merger.

The primary purpose for NYAPP and NYSRECA’s participation in this case was to seek improved reliability. As discussed in the testimony and related exhibits provided by witnesses’ Moyle, Rinell and Starheim (Tr. 81-105 and Exhibits 1-5), there is a history of inadequate consideration by New York State Electric & Gas Corporation (“NYSEG”) of the critical reliability needs of the customers of the four electric cooperatives and the Village of Sherburne. Alternative means of resolving these issues were uniformly ignored by NYSEG in the past.

**Argument**

As noted in NYAPP and NYSRECA’s earlier briefs in this proceeding, the concessions made by Iberdrola through the Partial Acceptance Document (Tr. 577-588 and Exhibit 50 (JPP-9)) sets forth a procedure to initiate protocols for service restoration, communications, a transmission study and treatment of the thousands of customers

impacted by outages within the municipal or cooperative systems on an equivalent basis to outages on the NYSEG system, etc. *See also* Initial Post-Hearing Brief of NYAPP and NYSRECA, April 11, 2008.

In the Recommended Decision (“RD”), Judge Epstein minimizes the import of these concessions within a PSL §70 analysis: “the public benefit of addressing the reliability problems is insubstantial because the implicit promise to remedy those problems appears unenforceable should the parties’ efforts fail. . . .” RD at 57. The Judge goes on to state: “it is within the range of litigated outcomes likely to result if the cooperatives were to pursue a formal complaint before the Commission; and even if the concession is a benefit, it is not attributable to the transaction because, as petitioners themselves point out, the cooperatives’ underlying reliability complaints involve only matters unrelated to the transaction.” *Id.* In fact, NYSRECA and NYAPP represent small electric cooperatives and municipal electric utilities with limited means. In a perfect world, unlimited resources would permit the filing of a complaint and a multi-year effort to force an unwilling company to comply. That is simply not the available option in the context of the world in which we live. Should the merger fail and/or the companies fail to live up to the commitments made in the Partial Acceptance Document, then NYAPP and NYSRECA may be forced to file a complaint before this Commission and the Federal Energy Regulatory Commission. Our hope is that this would not be necessary. For the first time, we have a set of written commitments in the Partial Acceptance Document. This is a step in the right direction.

In addition, it is certainly arguable that the reliability complaints are related to the transaction. NYSEG has pursued a multi-year effort to reduce costs and

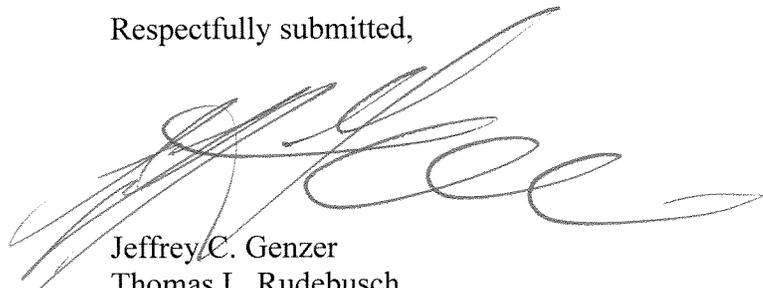
reduce the number of facilities providing reliability services in rural areas. As noted in the testimony of the witnesses of NYAPP and NYSRECA, the NYSEG response times to outages has increased. NYAPP and NYSRECA hope that the infusion of new capital and a commitment by Iberdrola will improve this situation. If progress is not made, NYAPP and NYSRECA have reserved all options to pursue these reliability complaints.

Also, the Judge cites the T&D problems experienced by NYAPP and NYSRECA members as evidence of the need for divestiture, because of the inherent problems associated with grid access. *See* RD at 67-68. While NYAPP and NYSRECA do not dispute the problems their members are obviously experiencing, they believe the merger has the potential to markedly improve the present service inadequacies.

**Conclusion**

For the foregoing reasons, NYAPP and NYSRECA offer these exceptions to the RD and recommend the Commission approve the merger.

Respectfully submitted,



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