

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of

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 Opposing Exceptions

On behalf of

Strategic Power Management, LLC

Dated: July 3, 2008

Daniel P. Duthie
P.O. Box 8
Bellvale, NY 10912
845-988-0453
Fax: 845-988-0455
duthie@attglobal.net

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Introduction

Briefs on Exceptions ("BOE") were received by Strategic Power Management, LLC ("SPM") from the Department of Public Service Staff ("Staff"), Joint Petitioners, the Department of Environmental Conservation ("DEC"), Multiple Intervenors ("MI"), Nucor Steel Auburn, Inc. ("Nucor"), the Consumer Protection Board ("CPB"), the Independent Power Producers of New York ("IPPNY"), New York Assoc of Public Power ("NYAPP") and New York Rural Electric Cooperative Association ("NYRECA") and the

Greater Rochester Enterprise ("GRE"). SPM's Brief Opposing Exceptions will address each party's BOE in the above order. All parties at this point are supporting the merger, albeit with varying degrees of preconditions, except Staff and the ALJ. Staff does offer some alternatives that provide the Commission with a way of conditioning the merger in a manner that would enable Iberdrola to make unfettered use of its vast expertise in wind generation while mitigating Vertical Market Power ("VMP") concerns.

This case appears to have attracted more attention than any previous merger in New York utility history. The publicity has placed first the Staff, then the Judge and now the Commission in the cross hairs of public opinion that cannot fathom why this deal is not in the public interest¹. Iberdrola is one of the

1 SPM, while recognizing the good intentions of those who support this merger, regrets that some of that support has morphed into attacks on the Staff, the ALJ and this Commission. Certain public officials who may have their own agenda have conveniently forgotten that the Staff and the ALJ are long-term true and dedicated servants of the public who have only the best interests of the NYSEG and RG&E ratepayers at heart. As discussed in briefs to the ALJ, determining what is in the public interest is a difficult question as this record attests and admits of many perspectives, all of which are important. So it is really a weighing of those perspectives that this Commission must decide. It is now even more difficult for the Commission to appear to be rendering an impartial and independent decision because of the singularly effective (and SPM would argue counterproductive) public relations campaign initiated by the Joint Petitioners which has turned up the heat on the cauldron of public opinion. Putting aside these

best managed companies in the world with over 100 years of expertise running utility and energy operations all over the world. It is financially sound with higher credit ratings than Energy East. Unlike the National Grid - KeySpan merger, this acquisition is funded with 100% equity which has already been raised. Iberdrola is a long term player in utilities and energy, especially renewables. Its commitment to employee training and relations is exemplary and underscores the long term nature of its business focus.

In this case, Iberdrola has made enormous commitments and concessions, yet the Rec Dec inexplicably treats these benefits as inconsequential. This merger brings a jolt of economic development to Upstate NY. Investors around the world are watching what New York will do. So far based on the behavior of Energy East share prices, investors are not impressed. By this stage of a utility merger the stock price should be much closer to the transaction price. On July 2, 2008, EAS closed at \$24.99. This is \$3.51 or 12.3% below the transaction price. This says there is a significant amount of uncertainty as to

unfortunate slights, as this Commission must, reveals a transaction that has substantial qualitative and quantitative benefits and is without any doubt in the public interest after accepting the numerous conditions and concessions agreed to by the Joint Petitioners. And those conditions and concessions are largely attributable to Staff's dogged insistence on protecting the ratepayers. SPM duffs its hat to Staff in respect, if not in total agreement.

whether this merger will be consummated. Business investors do not like uncertainty and the handling of this merger so far does not inspire great confidence in New York as a good place to invest since it is so unpredictable. This Commission now has the opportunity and the responsibility to inspire confidence in this great State as a place to invest and do business.

Staff

1. Vertical Market Power

While continuing to recommend complete divestiture of all generation as the best cure for the potential exercise² of vertical market power ("VMP"), Staff offers the Commission a few interesting ideas that would allow Iberdrola to continue with its development and ownership of wind power in New York. SPM applauds Staff's approach to provide alternatives that would satisfy the public interest and meet Iberdrola's goal of investing at least \$2 billion³ in renewable generating assets in

2 There are presently no affiliated wind generation interconnected with NYSEG and RG&E. Staff's concern therefore is with the three wind projects that amount to 166 MW that are proposed at present to be interconnected to NYSEG's transmission system.

3 Although the Rec Dec invited the parties to comment on the \$100 million commitment in the March 14, 2008 Partial Acceptance and the \$2 billion (or was it \$10 billion) post record promise, the Joint Petitioners were eerily silent in their BOE. This silence adds heft to the Staff and CPB recommendations to create

New York. SPM also supports Staff's "PBA incentive" tied to that investment as a means of conferring tangible ratepayer benefits. Staff has planted the seeds of a real win-win outcome.

SPM has shown in its BOE that the exercise of vertical market power by wind generation owned by affiliated T&D is only an extreme and fanciful academic possibility, not a realistic probability. Customers are well protected in view of the fact that the NYISO controls all transmission outage scheduling and interconnections. NYSEG and RG&E, by transferring control of their transmission assets to the NYISO, have eliminated the only real ability of these T&D utilities to exercise VMP. It was also shown in SPM's BOE that the size of the wind power injections are so small as to defy market moving potential except in the downward direction. The amount of I-Cap credited to wind is only one-tenth nameplate rating in the summer which is truly *de minimis*, i.e., 16.6 MWs. There was no evidence presented in the literature or even anecdotes that link wind power to vertical market power abuse. Finally, the market monitoring and FERC enforcement mechanisms are so compelling as to virtually preclude the exercise VMP to injure customers.

an enforceable commitment via discounted PBAs (as will be discussed later).

Notwithstanding, SPM will accept for the sake of argument, Staff's VMP concerns to determine whether its alternative recommendations mitigate potential VMP. Staff suggests that the following alternatives should be explored further:

- a. procedural and process remedies, e.g., monitoring; and
- b. long-term contracts

Staff also suggests that these alternatives are

based on the assumption - which Staff opposes - that the importance of wind generation outweighs vertical market power risks. As such, the measures will be based on a conditional exemption of Iberdrola's wind generation from the VMP Policy Statement, rather than the pretense that wind facility ownership cannot create VMP concerns.

Staff BOE, page 21.

- a. Procedural and Process Remedies

The procedure that Staff recommends in which SPM concurs is to deal with each proposed wind generation project on a case by case basis, whether it is an exempt QF (<80 MWs) or a non-exempt project (>80 MW). In the case of a QF project, Staff observes that Iberdrola would have to set up a Section 66-c(3) corporation which requires Commission approval. It is during that approval process VMP concerns can be addressed. If it is found that there are VMP issues that cannot be adequately mitigated then the Commission could withhold its approval for the formation of the required corporation.

For non-exempt projects, Staff observes that a Certificate of Public Convenience and Necessity is required pursuant to Section 68 of the Public Service Law ("PSL"). Staff further observes that such a review of the public interest can include the consideration of VMP issues.

Thus, VMP issues can be addressed on a case by case basis as the current Policy Statement envisions. SPM understands that Iberdrola will comply with all requirements that are applicable to similarly situated entities. This alternative Staff recommendation from a procedural perspective appears to be a satisfactory resolution of VMP for purposes of granting merger approval, especially since Iberdrola affiliates do not presently own any wind generation interconnected to NYSEG or RGE transmission systems. SPM recommends that the Commission adopt Staff's approach which is simply an acknowledgement that VMP issues are important but may not be present or can be mitigated for wind power projects without the draconian and heavy handed regulatory remedy of divestiture.

Staff then goes on to state that an additional process remedy is necessary "to prevent Iberdrola from discouraging competitors seeking to interconnect in the NYSEG and RG&E service territories." Staff BOE at page 23. Staff's proposed solution is to establish an independent transmission planning

function. This independent planning analyst would conduct a study every three years to determine what upgrades and reinforcements are needed to interconnect all proposed wind projects. The study would address transmission additions that would "increase transfer capacity between adjoining states and regions, to prevent the 'line that isn't built' from escaping detection." Staff BOE at page 24.

SPM is not opposed to Staff's recommendation, but suggests that there already exists a long standing sub-committee to the NYISO's Operating Committee know as the Transmission Planning Advisory Sub-committee ("TPAS") that should be consulted first. It may be that that committee is undertaking the studies that Staff believes are needed. If not, then such work can be requested of TPAS. This way there are a group of dedicated transmission planners who have wrestled with such issues since the inception of the NYISO in 1999. That institutional knowledge and background should not be ignored while another independent analyst "re-invents the wheel."

Staff correctly states:

In order to achieve its wind generation development goals, New York must remain inviting to all wind developers, and should not be seen as favoring Iberdrola. The procedural and process remedies Staff proposes above could affirm to competitors of Iberdrola that they will receive fair treatment in New York and that Iberdrola will not be favored in interconnecting its projects.

Staff BOE at 24-25. Or looking at it from Iberdrola's perspective, this approach leaves Iberdrola in a position where it is not being discriminated against simply because it owns Energy East. Surely, this is a far more sensible outcome and leaves New York "inviting to all wind developers".

b. Contractual Conditions

Staff, also recommends contractual measures to further mitigate "harms that would attend Iberdrola's ownership of both wind generation and NYSEG and RG&E." Staff BOE at 25. Staff envisions these contracts structured as "contracts for differences (CFD)" with a minimum term of 10 years. Staff explains that CFDs are "financial devices that sets the prices that will be received for the generation independently of the market prices by providing for payments that balance to a pre-determined level the revenues generators receive from the NYISO." Id. Staff goes on to state that

[t]his exercise of market power is particularly pernicious, because market prices in general would increase, affecting all of the generation that ratepayers eventually purchase at market prices. Weakening the link between the market price and the price Iberdrola would receive for its generation mitigates the incentive to some extent.

Id. at 26. However, Staff does not explain how projects bidding in at zero will increase and not decrease market prices. Again, Staff's VMP concerns are more theoretical and speculative than

real. SPM urges the Commission to carefully review Staff's alternative mitigation measures. These measures are unnecessary in SPM's view under all of the facts and circumstances present. Furthermore, the Commission need not impose any conditions now because it is better to review the specific facts of a given project on a case by case basis so any mitigation measures can be tailored to the specific concerns of each project.

Linking PBAs to Iberdrola's Investment Commitment

Staff views Iberdrola's public commitment to invest \$2 billion in wind generation in New York unenforceable and since the offer cannot be enforced "the benefit is consequently ephemeral." Staff proposes for the Commission to consider "tying the level of wind generation investment to the level of PBA adjustments required in this proceeding, with PBAs increasing if Iberdrola fails to make its promised investment." Staff BOE at pages 36-37.

This is an interesting proposal because it enables Iberdrola to monetize in rates the value of its affiliate's investment in wind power. According to Staff, the Commission could value the \$2 billion investment as the equivalent of \$200 million of PBAs. As the wind generation investment is made the PBA account would be reduced on a pro rata basis to zero if the entire 1000 MW of the Investment plan were completed. If no

additional investment was made then the full \$200 million of PBAs would be reflected to reduce customers' rates. If SPM understands Staff's position, it appears to offer the following outcome for NYSEG and RG&E:

Staff Recommended and ALJ Accepted PBAs	\$646.4 million
Joint Petitioners Unilateral Concession	<u>(\$201.6 million)</u>
Balance to be Considered in Rate Cases	\$444.8 million
Wind Generation Investment PBA Credit	<u>(\$200.0 million)</u>
Remaining PBAs for Rate Case Analysis	\$244.8 million ⁰

The first step from a rate perspective is to make the \$201.6 million reduction permanent as soon after the merger closes as that can be arranged. If after 5 years Iberdrola has not invested \$2 billion then NYSEG and RG&E ratepayers would get a \$200 million PBA benefit. If the \$2 billion investment is made then that would constitute the requisite benefit and no further rate credits would be necessary. Investment between zero and \$2 billion would have a pro rata effect on the PBA adjustment.

Revenue Adjustments

Staff urges the Commission to decide a number of revenue issues, such as NYSEG over-earnings, NYSEG standby rate

deferral, RG&E storm costs, RG&E security cost deferral, the RG&E VYC deferral, software costs, NYSEG gas pension expense, return on equity, and gas cost incentive mechanisms. SPM disagrees with Staff in that these issues should be deferred to the rate cases required by the Rec Dec. Selective adjudication of these issues in isolation from the rate case is ill-advised since the Commission should really see the total package of appropriate rate making adjustments in the context of a full blown rate case. On the other hand, if the Commission wants to settle these issues now it certainly has the right to do so, but it should leave implementation to the rate cases.

Revenue Decoupling

SPM agrees with Staff that RDM should be addressed in the rate cases because a successful RDM, among other factors, is dependent on accurate sales forecasts for NYSEG and RG&E.

Retail Access Issues

Staff recommends that the billing credit issue for customers taking service from ESCOs should be resolved in the rate cases. Staff further recommends that the unbundling process for RG&E should be completed and NYSEG and RG&E should adopt ESCO referral programs for implementation in the rate cases. With respect to advanced meter infrastructure ("AMI"),

Staff recommends that NYSEG and RG&E proposal in install AMI be considered outside of the rate cases. These issues are to be considered, according to Staff, in the ongoing development of the AMI policy. Low-income program funding should be increased and RG&E should initiate such a program for its electric customers. Here, again, Staff recommends the details be considered in the rate cases. Finally, Staff proposes that both companies address their economic development programs and provide more detail on the outreach and education programs in the rate cases.

SPM has no objection to these sensible recommendations from Staff.

Joint Petitioners

Joint Petitioners' BOE attacks the Rec Dec with overwhelming logic and precedent. The Joint Petitioners set forth 27 Exceptions to the REC DEC starting with the Standard of Review (3 Exceptions), Benefits (5 Exceptions), Vertical Market Power (3 Exceptions), Financial Risks and Protections (9 Exceptions), Positive Benefit Adjustments (5 Exceptions), Rate Matters (1 Exception) and ESCO Collaborative (1 Exception). Coincidentally the Joint Petitioners set forth 27 Financial Conditions that "they are willing to agree to as conditions to

the Commission's approval of the Proposed Transaction."

Attachment 2 to the Joint Petitioners' BOE.

Standard of Review

SPM agrees in general that the Rec Dec applied an inappropriate legal standard, but disagrees with the Joint Petitioners that "positive net benefits" are required to the extent that such benefits must involve rate reductions. As the Commission has recently re-affirmed there is no such requirement under the identically worded Sections 70 (electric and gas) and 89-h (water) of the PSL⁴. Nevertheless, the Joint Petitioners have agreed to \$201.6 million in PBAs that will reduce rates by approximately 4.4% so there is no point in further debating the legal standard in this case. The Joint Petitioners have met even the more extreme interpretation that somehow the public interest standard for electric and gas utility mergers can only be met with such tangible benefits.

⁴Case 06-W-1367, Joint Petition for a Declaratory Ruling Disclaiming Jurisdiction or, in the Alternative, for approval of the Merger of Gaz de France SA and Suez SA, and the simultaneous Initial Public Offering of shares of Suez Environment, ORDER AUTHORIZING REORGANIZATION AND ASSOCIATED TRANSACTIONS (Issued and Effective June 25, 2008).

Benefits

As the Joint Petitioners point out, the Rec Dec almost completely negates the various and substantial benefits that this transaction will bring to New York and the customers of NYSEG and RG&E. Nothing is made in the Rec Dec of the substantial and immediate rate concessions. The Rec Dec can find no value in the voluntary divestiture of the fossil units (both regulated and unregulated) and the ratepayers benefits that will follow. The Rec Dec dismisses the \$100 million commitment for the development of wind generation. The Rec Dec does not see the value in Iberdrola's superior credit rating. And the Rec Dec sees no value in making available international best practices to NYSEG and RG&E. Each of these benefits alone is sufficient to meet the public interest standard, but together constitute a basket of benefits that is overwhelmingly and undeniably in the public interest.

Yet the ephemeral risks that are conjured by Staff are treated as if they will all come to pass. And the substantial mitigation concessions made to date by the Joint Petitioners are, like the benefits, ignored or marginalized in the Rec Dec. It is hard to identify a Rec Dec so lacking in objective balance, so internally inconsistent and so illogical. Its conclusions on the benefits of this transaction are arbitrary

and capricious. There is no substantial evidence in this record to support the Rec Dec's conclusions on benefits. SPM hopes that the Commission when it reviews this case does so with objectivity and reference to its precedents, in context, and with plain old-fashioned common sense.

Vertical Market Power

SPM discussed the utter lack of any opportunity to exercise vertical market power by wind generation in its BOE and will not reiterate those points here. Suffice it to say that the Joint Petitioners have made the case and the record is well established with the expert testimony of Dr. William Hieronymus that VMP is not an issue. Not one of the other commissions approving this transaction saw the VMP bogeymen that Staff has invented and the Rec Dec uncritically accepts. If VMP was part of Staff's litigation strategy, then it paid off in the form of the Joint Petitioners' rate concessions. So it had that level of value to the ratepayers.

The proposed divestiture of the fully depreciated hydroelectric generating facilities is decidedly not in the public interest. As the Joint Petitioners have shown in Attachment 1 to their BOE, it would raise rates by over \$50 million dollars on average per year. Since the downside is quantified, where is the counter balancing upside? There is not

even a qualitative expression of benefit other than the Rec Dec assumes this is in keeping with Commission desire to separate all generation from T&D.

Financial Risks and Protections

At this point, there is very little day light between the Rec Dec and Joint Petitioners. The Joint Petitioners make a good point that the conditions should be commensurate with the risks. A measure should not be adopted on the basis of whether it is burdensome, but rather if it addresses and mitigates a real, not speculative, risk.

Positive Benefit Adjustments

The Rec Dec's defense of the Staff litigation position on PBAs is extraordinarily illogical. The Joint Petitioners' BOE does a good job of pointing out the inconsistencies and lack of logic that is required to "support" the Staff position. The proxy benefit analysis falls apart when looked at critically and with an eye cast on Commission precedent. What are alleged as "benefits" are actually costs - shareholder premium; professional fees; change in control payments, etc. So if the proxy benefits are overstated then so are the "associated" PBAs.

The asset sale comparison is as weak a comparable as is the proxy theory. SPM will not reiterate its discussion of this point which can be found at pages 24 to 26 of its BOE.

The synergy merger benefit comparisons are also overstated as demonstrated quite clearly in the Joint Petitioners BOE at pages 74 to 84.

Rate Matters

The Joint Petitioners urge the Commission to reject immediate rate cases for all four operating divisions. The Joint Petitioners argue that the next rate cases for NYSEG and RG&E should be staggered in view of the "resource burden on all parties." JP BOE at 85. Staff attempts to address this by proposing less than full rate case quality filings. SPM is not sure how much Staff's proposal would lessen the burden, but staggered full blown rate cases gives all parties an opportunity to understand the level of rates that are appropriate, along with sorting out the revenue requirement impacts associated with PBAs, ROE, revenue decoupling, changes in ESCO programs, etc.

Multiple Intervenors

MI supports the merger and most of the conditions recommended in the Rec Dec. MI excepts to the Rec Dec's failure to recommend, as proposed by Staff, stringent electric and gas

reliability, service quality and safety performance standards. MI excepts to the overall conclusion of the Rec Dec to disapprove the merger and urges the Commission to approve the transaction in such a way to address VMP by requiring the divestiture of fossil generation, but not the divestiture of wind or hydroelectric generation. MI, unlike the Rec Dec, finds that Iberdrola's financial strength is a benefit. MI also wants a "hold harmless" condition that will insulate customers from the higher cost of capital associated with a credit rating downgrade. SPM finds this condition to be a worthy goal, but does not know how one determines a downgrade is the "responsibility" of management or the Commission. Nonetheless, the Commission is required to set just and reasonable rates to enable the utilities to attract capital. In this regard, such a condition as MI seeks may actually harm ratepayers by depriving the companies of cash flow to support borrowings needed for capital investment.

Consumer Protection Board

The CPB, the State's consumer watchdog excepts to the Rec Dec's complete divestiture position. "That recommendation does not give proper consideration to the fact that the Commission's policy [on VMP] does not prohibit such generation, but is rather

a presumption against such generation that may be rebutted."

CPB BOE at page 4. The CPB concludes as follows:

The CPB continues to recommend that the Commission refrain from imposing any blanket restrictions on the development of wind generation by Iberdrola's affiliates. Instead, Iberdrola should be provided the opportunity to demonstrate that ownership of generation in Energy East's service territory would not create a realistic opportunity to interfere with competitive markets to the detriment of consumers. Iberdrola would have the burden of proof on this matter. We also urge the Commission to recognize, as it did when it established its vertical market power policy in 1998, that market power may be mitigated through vigilant and effective oversight and regulation.

Id. at 6-7.

CPB also sees the retention of the hydroelectric generation as a customer benefit since these facilities "provide electricity at rates far below market prices." Id. at 7. CPB also argues that there is no evidence in the market to support the notion that these run of the river, intermittent generating sources have exercised market power or otherwise interfered with the development of a competitive wholesale market. Id. Finally, CPB argues that Iberdrola's post hearing commitment to invest \$2 billion in wind projects is an unprecedented level of investment in clean energy. This investment would help the economy. CPB, like Staff, also sees a linkage with rate relief and the failure to make the promised investment.

Department of Environmental Conservation

The DEC also supports the merger because it finds that it is in the public interest and furthers the State's energy policy. DEC sees the many benefits that will flow from this merger and excepts to the Judge's rejection of these benefits. DEC also considers the Rec Dec to be at odds with the State's energy policy and finds that there is ample mitigation for VMP on this record.

Independent Power Producers of New York

The Rec Dec adopted IPPNY's position on VMP - no interconnection of any affiliated generation with NYSEG or RG&E transmission. Even IPPNY, whose members' commercial interests are at stake, could not credibly take the Staff position and ban all generation affiliated with Iberdrola from New York. IPPNY does not want wind generation to depress the wholesale market that its members sell into. So its position should be rejected since maintaining high market prices is not in the public interest which is the consequence of its position.

Furthermore, there is nothing in the record that purports to show the effect of the exercise of VMP. There is no

discussion of how VMP could be exercised and what are the consequences of that exercise.

IPPNY spends far too much time attacking SPM's VMP mitigation proposals contained in its Reply Brief to Judge Epstein. These proposals were offered in the spirit of providing some ideas for the ALJ and the parties to consider as an alternate to the positions of Staff and IPPNY which are deal breakers from Iberdrola's perspective.

The ALJ efficiently summarized the proposals:

A second issue is that SPM offers three alternative proposals for divestiture of wind generation. (1) The Iberdrola affiliate (Renewables) could enter a long-term contract with NYSEG or RG&E for each wind project at a fixed per-kWh rate (subject to operating and maintenance expense adjustments) calculated to compensate investors for the special risks of wind investment; the rate would be negotiated or determined by the Commission for individual projects in the permit process; the rate would be offered to other developers unaffiliated with Iberdrola, unless they opted for a market based rate; and the non-Iberdrola developers could interconnect with petitioners' T&D grids under the supervision of a "special monitor" or the NYISO; (2) Renewables could enter such a contract with a third party rather than the T&D companies; and (3) petitioners could be required to divest the RG&E and NYSEG transmission assets. Parties have an opportunity to respond to these proposals on exceptions, as they did not appear initially until SPM's reply brief.

Rec Dec at page 74. SPM assumes IPPNY will also complain about Staff's very same long-term contract suggestion in their BOE which arrived much later than the Reply Brief to the ALJ.

Furthermore, why did IPPNY wait to object to SPM's proposals?

If it thought the proposals were procedurally untimely, then it should have and could have made a motion to the ALJ to complain or attempt to have them severed from consideration.

IPPNY's request to have these proposals dismissed should itself be dismissed as time barred since they have been out there since April 25, 2008 - over two months ago. The proper place to join this dispute was before the ALJ, not the Commission. The ALJ, however, must have seen some merit in these proposals since he invited the parties to respond in their BOEs. So IPPNY's complaint is not only untimely, it has already been addressed by the Rec Dec with the invitation to comment.

The fact that these proposals were not offered up in testimony is of no consequence. They are completely conceptual ways to consider mitigation of the exercise of VMP and were presented in response to the Staff and IPPNY Initial Briefs. As Staff has done in its BOE, it is offering the Commission and the parties alternatives to its primary position. One wonders why IPPNY would object to a procedure that would earn higher returns on equity with a long-term contract with a financially stable counter party?

New York Association of Public Power and New York Rural Electric
Cooperative Association

NYAPP and NYRECA except to the Rec Dec on the grounds that the partial acceptance document which addressed their reliability concerns by setting up protocols to address outage communications, response times, etc., was not considered a benefit. Both organizations saw the partial acceptance as a benefit in that it would avoid complaint litigation at FERC and this Commission. As with the other benefits, the Rec Dec found this wanting. The Commission should grant NYAPP and NYRECA exceptions and consider the partial acceptance in total as a substantial benefit supporting this transaction in the public interest.

Greater Rochester Enterprise

GRE opposes the Rec Dec finding that it is counter-productive to economic development; that Iberdrola's commitment to invest \$2 billion is **"bold and speaks volumes of their willingness to assist the State in finding solutions to its long term energy needs."** GRE asserts that VMP concerns are contrary to FERC's findings and the immediate rate relief "well serves the public interest."

Conclusion

Balance, fairness and proportionality are good concepts for decision makers to keep in mind when reviewing the extensive record in this case. This Commission should ask "Is the Rec Dec balanced?" There appears to be no doubt that the answer is that it is not balanced, but rather it is slanted entirely to the Staff litigation position. Is the Rec Dec fair? The Rec Dec cannot be considered fair in that it ignored the numerous tangible and intangible benefits associated with this merger that were discussed on the record. Does the Rec Dec evidence a proportional set of conditions to the alleged risks or potential harms? In some respects, but not when it comes to VMP and PBAs.

A precondition bar to interconnection of affiliated wind generation with NYSEG and RG&E is not proportional to the potential harm which has been shown to be non-existent.

If the end justifies the means, then the Staff PBA position is the means, or perhaps just mean. This construct of proxy benefits "supported" by comparables, turns logic on its head and throws proportionality out of the window. Like ancient alchemists, Staff magically turns transaction costs into benefits and then triumphantly claims they are only recommending a mere 40% be credited to ratepayers.

This logic is akin to saying I just saved \$70,000 because I did not purchase a new Mercedes. Is there an extra \$70,000 in the savings bank? Likewise there is no bank account from which the Joint Petitioners may withdraw the Staff PBA position and provide ratepayer credits. In any event, the remaining PBAs beyond the conceded \$201.6 million should be addressed in the context of the recommended full blown rate cases, which should be staggered, where a proper and careful analysis of the impact of those adjustments can be seen in the context of other rate issues.

For all of the reasons express herein and in the other parties' briefs overwhelmingly in support of this merger, SPM asks that the Commission find the merger (as conditioned by Joint Petitioners with their on- and post-record concessions) in the public interest and do so as quickly as possible.

Respectfully submitted,

Daniel P. Duthie

Daniel P. Duthie, Esq.

Counsel to Strategic Power
Management, LLC

Dated: July 3, 2008

Warwick, NY