

BEFORE THE  
STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

Re: 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.

**INITIAL POST - HEARING BRIEF OF THE  
NEW YORK STATE DEPARTMENT OF  
ECONOMIC DEVELOPMENT**

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I. Introduction

The New York State Department of Economic Development (“the Department” or “ESD”) submits this initial post - hearing brief to the Administrative Law Judge in the above referenced proceeding.

IBERDROLA, S.A. (“Iberdrola”), Green Acquisition Capital, Inc., (“Green Acquisition”), Energy East Corporation (“Energy East”), RGS Energy Group Inc. (“RGS”), New York State Electric & Gas Corporation (“NYSEG”), and Rochester Gas & Electric Corporation (“RG&E”) (collectively, the “Joint Petitioners”) has requested New York Public Service Commission (“PSC”) approval, pursuant to Section 70 of the New

York Public Service Law (“Section 70”), for Iberdrola’s acquisition of 100 % of the common stock of Energy East. The proposed transaction will merge Green Acquisition with and into Energy East, with Energy East as the sole surviving corporation and wholly owned by Iberdrola. NYSEG and RG&E will remain wholly owned subsidiaries of Energy East.

The Department believes that the approval by the PSC of the proposed merger under Section 70, with appropriate terms and conditions as recommended below, has the potential to create long term economic benefits for the upstate New York region. NYSEG and RG&E provide utility services to a substantial portion of the upstate New York region. ESD is aggressively pursuing upstate economic development initiatives to stimulate growth and the proposed merger has the potential to contribute to the economic revitalization of the region.

The hearing process in this proceeding has identified a number of potential financial benefits resulting from the proposed merger that require final quantification by the Commission. The Department recommends that PSC approval of the merger include

provisions for allocations of portions of the merger's financial benefits, including the sale of utility – owned generation assets required by the PSC, to the following initiatives to help stimulate business investment and the creation of jobs: (1) lower rates for industrial and commercial customers; (2) improvements to utility delivery infrastructure; and (3) additional funding for NYSEG and RG&E Economic Development Plans.

II. The Merger Should Result In Lower Rates For Attraction and Retention of Business and Industry in the NYSEG and RG&E Service Territories.

New York State's energy costs have risen in recent years, placing increasing pressure on business and industry to reduce those costs to maintain competitive market positions. The proposed merger provides the opportunity to lower energy costs for industrial and commercial rate payers in the service territories of NYSEG and RG&E. The Department recommends that a portion of the financial benefits of the merger approved by the PSC be allocated to lower rates for NYSEG and RG&E industrial and commercial rate payers, and that the Commission's merger approval order require the implementation of these lower rates in new multi-year rate agreements for NYSEG and RG&E. The lower rates should take effect as soon as possible after approval of the merger.

III. The Merger Benefits Should Include Increased Funding For Electric System Improvements.

The Department recommends that the Commission allocate a portion of the merger's financial benefits to implement electric system improvements in the service territories of NYSEG and RG&E. The operation and maintenance of reliable electric transmission and distribution systems are key components for economic development in the state. Additional funding for electric system growth and enhancements will enable NYSEG and RG&E to accommodate industrial and commercial load growth and stimulate new business investment and the creation/retention of jobs.

IV. The Merger Should Result in Increased Funding for the NYSEG and RG&E Economic Development Plans.

The NYSEG and RG&E Economic Development Plans (EDPs) should be reviewed by the Commission in consultation with the respective companies and the Department as part of the rate case proceedings after approval of the merger. The components of these existing EDP's, including rate incentives, infrastructure development, brownfield redevelopment, energy efficiency assistance, and capital

investment incentives provide important contributions to the state's economic development initiatives. The review process should include assessments of the effectiveness of the EDP's and approval of modifications to address economic development needs and priorities in the respective service territories. The Department recommends that the Commission allocate a portion of the merger benefits for additional funding for the EDPs.

V. Iberdrola's Investment in Renewable Energy Projects in New York State Should Be Authorized With Mitigation Measures For Compliance With The PSC's Vertical Market Power Policy.

Iberdrola proposes to support and encourage investments by Iberdrola Renewables to develop renewable generation projects in New York State after approval of the merger. Specifically, the company indicated in its Joint Petitioners Acceptance Document dated March 14, 2008 that it will commit support for Iberdrola Renewables to invest in excess of \$100 million in wind generation in New York State within three (3) years, so long as the Commission does not impose limitations on Iberdrola's ability to develop renewable generation in the State, and subject to permits and authorizations and no material changes in project economics. The Commission staff has indicated that the

merger transaction as proposed, and Iberdrola's goal of additional investment in renewable energy projects in the state, raises concerns regarding compliance with the Commission's Statement of Policy Regarding Vertical Market Power (VPM Policy) in Case 96-E-0900 (PSC Policy Panel Staff Testimony, January, 2008, p.116).

The PSC's requirement for the separation of ownership of generation facilities from the ownership of transmission and distribution systems is a key component in the functioning of the competitive electric market in the State.

The Department supports increased private investment in renewable generation projects to meet the goals of the State's Renewable Portfolio Standard (RPS) and increase overall supplies of renewable generation sources. Iberdrola has asserted in this proceeding that it brings the financial resources and expertise in renewable energy generation to make significant investments in wind generation in the short term. A majority of the proposed wind projects to date are in the upstate New York region, and the potential positive impacts resulting from development of these projects include investment in plant and equipment, creation of construction and operations jobs, increased tax revenues for localities, and long-term supplies of clean energy over the long

term.

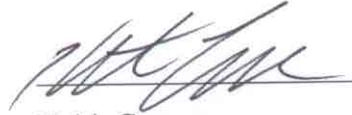
ESD recommends that the Commission incorporate in the merger approval appropriate mitigation requirements to ensure that private investments in wind generation projects by Iberdrola Renewables can proceed in compliance with the requirements of the VMP Policy.

## VI. Conclusion

The proposed merger offers the potential to create long term economic development benefits for the upstate New York region. Iberdrola has committed to the retention of utility jobs, maintenance of corporate headquarters in the state and providing investment in new renewable generation projects. ESD recommends that the PSC condition any approval of the merger with requirements for NYSEG and RG&E to lower rates for business and industrial customers, invest in delivery system improvements and commit additional funds to economic development initiatives in their respective service territories. The incorporation of these requirements will complement the State's economic development programs for the attraction/retention of business and industry and

creation of new jobs in the upstate New York region.

Respectfully submitted,



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