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April 11, 2008

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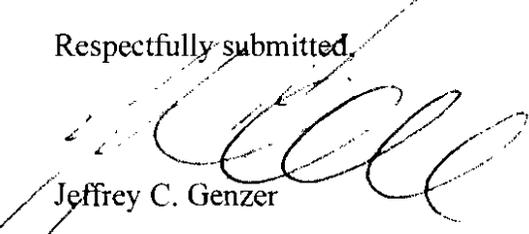
Honorable Jaclyn A. Brillig  
Secretary  
Public Service Commission  
3 Empire State Plaza  
Albany, New York 12223-1350

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.

Dear Secretary Brillig:

Enclosed for filing are an original and five copies of the Initial Post-Hearing Brief of the New York Association of Public Power and the New York State Rural Electric Cooperative Association in the above-captioned case. Copies have been served on the presiding Administrative Law Judge and on all active parties listed on the active service list.

Respectfully submitted,

  
Jeffrey C. Genzer

cc: Administrative Law Judge Epstein  
All Active Parties

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.

**INITIAL POST-HEARING BRIEF  
OF  
THE NEW YORK ASSOCIATION OF PUBLIC POWER  
AND  
THE NEW YORK STATE RURAL ELECTRIC COOPERATIVE ASSOCIATION**

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Dated: Washington, D.C.  
April 11, 2008

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.

INITIAL POST-HEARING BRIEF OF THE NEW YORK ASSOCIATION OF PUBLIC  
POWER AND THE NEW YORK STATE RURAL ELECTRIC COOPERATIVE  
ASSOCIATION

INTRODUCTION

The New York Association of Public Power (NYAPP) and the New York State Rural Electric Cooperative Association (NYSRECA), and, specifically on behalf of five of their members, Delaware County Electric Cooperative, Oneida Madison Electric Cooperative, Otsego Electric Cooperative, Steuben Rural Electric Cooperative and the Village of Sherburne, intervened in this matter for the express purpose of drawing attention to the inadequate service reliability provided by New York State Electric & Gas Corporation to these members. NYAPP and NYSRECA were concerned that even more distant, foreign ownership would make a bad situation worse.

Intervenor testimony and associated exhibits were submitted in this proceeding on behalf of NYAPP and NYSRECA by three of the electric cooperative leaders, Richard A. Moyle, Gregory J. Starheim and Stephen T. Rinell (Tr. 82-105 and Exhibits 1-5).

## ARGUMENT

On March 14, 2008, counsel for Iberdrola, S.A., David L. Schwartz, submitted to Judge Epstein a document entitled, “Joint Petitioners’ Partial Acceptance Document” (“Partial Acceptance Document”) (Tr. 577-588 and Exhibit 50 (JPP-9)). With the submission of this document and its disclosure as part of the public record in this proceeding, NYAPP and NYSRECA no longer oppose the proposed acquisition.

Section IV of the Partial Acceptance Document (Exhibit 50) provides as follows:

### **IV. ELECTRIC COOPERATIVES AND THE VILLAGE OF SHERBURNE**

The Electric Cooperatives expressed concerns regarding reliability and communication from NYSEG. (Direct Testimony of Richard A. Moyle p. 5, lines 1-8; Direct Testimony of Stephen Rinell p. 3, lines 1-4; Direct Testimony of Gregory J. Starheim p. 4, lines 14-16).

**Joint Petitioners’ Acceptance:** A “task force” will be established that includes representatives from each cooperative, the Village of Sherburne and NYSEG personnel. The task force will hold meetings no less than quarterly and establish milestones to achieve numerous objectives. The first five (5) objectives include: 1) Capital investments<sup>4</sup>; 2) Transmission study<sup>5</sup>; 3) Upon completion of the study, NYSEG planning and engineering personnel will meet with representatives of the cooperatives and the Village of Sherburne within thirty (30) days to discuss specific implementation measures. Staff shall be invited to be present at such meetings; 4) Review of history, repair and maintenance activities<sup>6</sup>; 5) Actions taken consistent with this process shall be implemented utilizing best efforts on a mutually agreed upon schedule and NYSEG commits to take additional corrective actions to the extent required.

The next four (4) objectives are: 6) Storm response - NYSEG agrees to provide the cooperatives and the Village of Sherburne with data related to the response to storm conditions that affect cooperative and Village of Sherburne customers. This data will be compared to the overall storm response; 7) Notifications - NYSEG commits to prioritizing response for any outage affecting cooperative customers and customers of the Village of Sherburne as it would for an outage affecting a similar number of its own retail customers. Proper prioritization and response will require continued communication and coordination between the parties<sup>7</sup>; 8)

Reliability<sup>8</sup>; and 9) Reservation of rights - The cooperatives and the Village of Sherburne reserve all rights to challenge NYSEG's implementation of their obligations in any and all forums.

- <sup>4</sup> This includes identifying capital improvements that could be made to enhance system reliability with respect to the cooperatives and the Village of Sherburne and agreeing on an overall schedule for implementation of certain capital improvements, which would be reflected in subsequent rate proceedings.
- <sup>5</sup> NYSEG will conduct a transmission study to be completed no later than 90 days after the closing of the Proposed Transaction, to determine the age and capacity of all facilities providing service to the substations owned and controlled by the cooperatives and the Village of Sherburne. The study shall be provided to cooperatives and Sherburne for review and comment.
- <sup>6</sup> The task force will review outage history and line performance, as well as specific plans and schedules associated with the maintenance of transmission and sub-transmission facilities which serve the cooperatives and the Village of Sherburne.
- <sup>7</sup> Review of outages, communications, and response will be topics for the ongoing task force. A specific communications protocol will be jointly developed that is not merely an automated outage report line, but will include, and not be limited to, senior NYSEG personnel and other appropriate persons. Protocols will be established no later than 90 days after the closing of the Proposed Transaction.
- <sup>8</sup> NYSEG acknowledges the concerns expressed by the cooperatives and the Village of Sherburne regarding present and future electric reliability, without making any admissions. For the future, the parties agree to develop guidelines that are intended to lead to the development of a penalty and enforcement protocol for failure of NYSEG to satisfy such guidelines, including, but not limited to: a) minimum employment levels for NYSEG personnel dedicated to reliability requirements and operation and maintenance on transmission and sub-transmission facilities; and b) maximum response times for outages.

As the aforementioned section of the Partial Acceptance Document makes clear, a task force will be established with the company representatives and the cooperatives and Sherburne to address service quality and reliability, capital investments, transmission and sub-transmission issues, a transmission study, a joint review of outage history and line performance, improvements in communications, etc. When the cooperatives and Sherburne experienced outages, which impacted thousands of their rural customers, NYSEG treated those outages as if they were a single outage. With the implementation of the Partial Acceptance Document, this will no longer be the case. We look forward to

enhanced communication with the company in order to address these issues. There are strict time frames established in the Partial Acceptance Document to address these issues.

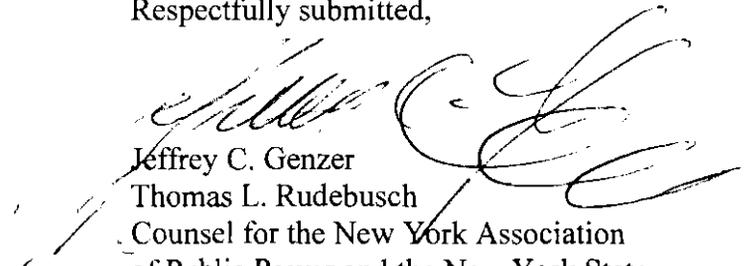
While it is certainly unfortunate that it required NYAPP and NYSRECA's intervention in this proceeding to address these long-term issues, we are encouraged that they will be addressed in a productive manner. We hope that we will be able to easily implement the joint measures required in the Partial Acceptance Document in a timely manner. While we remain concerned that more distant foreign ownership might exacerbate communication problems that NYAPP and NYSRECA members have experienced, we are hopeful that the situation will improve. In the event the merger does not close, or the Commission somehow rejects the agreement offered in the Partial Acceptance Document or if actions are not taken consistent with the Partial Acceptance Document, NYAPP and NYSRECA retain all rights to raise these issues before the New York Public Service Commission, the Federal Energy Regulatory Commission or in any other appropriate forum.

We remain open to productive discussions with the company as we move forward. We hope those interactions will include the opportunity for discussion of specific purchases of company assets by the NYAPP and NYSRECA members in these rural areas which may not fit into the long-term service plans of the company.

#### CONCLUSION

For the foregoing reasons, NYAPP and NYSRECA do not oppose the merger application, with the specific condition that the Partial Acceptance Document is implemented in a timely manner, consistent with its terms.

Respectfully submitted,

A handwritten signature in black ink, appearing to be a cursive combination of the names Jeffrey C. Genzer and Thomas L. Rudebusch, written over the typed names.

Jeffrey C. Genzer  
Thomas L. Rudebusch  
Counsel for the New York Association  
of Public Power and the New York State  
Rural Electric Cooperative Association

Dated: Washington, D.C.  
April 11, 2008