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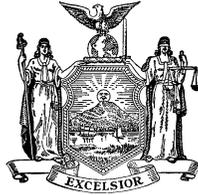
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Secretary

April 4, 2008

(Sent by electronic mail)

RE: Case 07-M-0906 - Iberdrola, S.A., et al.

To Active Parties:

At the conclusion of hearings on March 20, in a discussion about briefing topics, the question arose whether briefs should address the possibility that Iberdrola is a potential takeover target. On reviewing that portion of the discussion (Tr. 1899-1903), I find it did not identify the relevant issues clearly enough.

My present intention, subject to reconsideration on the basis of post-hearing briefs, is to present this subject to the Commission as one that raises two general issues. The first involves the abstract but undeniable proposition that, should Iberdrola acquire Energy East as proposed, the acquired assets thereafter would always remain subject to further disposition through subsequent transactions that are not specifically foreseeable at this time. Such possible transactions would not be limited to a hostile takeover of Iberdrola but also might include, for example, Iberdrola's voluntary divestiture of Energy East assets in whole or part.

Despite the absence of a specific scenario involving known future transactions affecting the Energy East assets, the mere possibility of such transactions raises legitimate, immediate questions: (1) whether the Commission's approval of the proposed acquisition in this case would diminish its regulatory authority over Energy East with respect to future transactions; (2) if so, whether such long-range effects on the Commission's authority would have public interest implications; and (3) whether the Commission should address such implications,

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if any, by adopting protective measures or conditions as part of the decision in this case if the petition is approved.

In my view, the answers to questions (1) and (2) are essential if the Commission is to fully understand the nature and consequences of the approval sought by petitioners Iberdrola et al. in the present case, and the extent to which such approval in this case would bind Iberdrola's successors in interest with respect to Energy East. However, as far as I can tell, these questions have yet to be argued explicitly. That is why I suggested, during the March 20 discussion, a closer examination of Public Service Law §70 (although, on further reflection, §70 may not be the only relevant consideration). As for question (3), it has been a subject of extensive testimony at least indirectly, although not necessarily as it relates to questions (1) and (2).

A second and independent general issue involves questions whether an attempted takeover of Iberdrola is imminent. Such questions are primarily factual and already have been argued on the record, in connection with Staff's February 5, 2008 motion and again briefly at the March 20 hearing. Presumably, the main purpose of any additional argument along these lines would be to provide updated information. However, the March 20 discussion may have gone astray in concluding that questions (1), (2), and (3) above become immaterial unless there is evidence that a takeover attempt against Iberdrola is imminent. Again, a material issue is the impact of the proposed Energy East acquisition upon the Commission's authority in subsequent transactions involving Iberdrola's assets, regardless of whether such a transaction can be expected in the near future.

Ultimately, of course, each party decides how to argue its case. The above outline nevertheless may facilitate development of the record and will at least provide fair notice of how I propose to frame the issues.

RAFAEL A. EPSTEIN
Administrative Law Judge