

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION



CASE 07-M-0906 - Iberdrola, S.A., Energy East Corporation, et al. – Joint
Petition For Approval of the Acquisition of Energy East
Corporation By Iberdrola, S.A.

***STAFF MOTION TO POSTPONE HEARINGS
AND REQUIRE ADDITIONAL FILINGS,
AND FOR EXPEDITED CONSIDERATION***

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Dated: February 5, 2008
Albany, New York

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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 & Electric Corporation For Approval of the Acquisition of Energy East Corporation By Iberdrola, S.A.

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INTRODUCTION

On January 31, 2008, petitioners filed rebuttal testimony in this proceeding. That testimony is fatally flawed because it fails to address a crucial issue affecting this transaction that has arisen in recent weeks. That issue is the pursuit in Europe of a hostile takeover of Iberdrola, S.A. (Iberdrola), the entity that seeks approval for its acquisition of Energy East Corporation (Energy East) in this proceeding. The potential change in the ownership of Iberdrola renders the identity of the ultimate owner of Energy East unknown. Indeed, it is uncertain if Iberdrola will even continue to exist if the hostile takeover is consummated.

It may not be possible for this proceeding to go forward in the face of this uncertainty. In order to determine the future of this proceeding, petitioners should be required to explain in additional testimony how the changes in the ownership

of Iberdrola that could result from the hostile takeover affect Iberdrola's proposed acquisition of Energy East. The time for preparing the additional filings, and allowing for their analysis by other parties, cannot be accomplished within the existing schedule for this proceeding, where hearings are to commence on February 25, 2008. It is therefore necessary to postpone the commencement of hearings, and toll the schedule while the petitioners prepare and make additional filings that satisfy the requirements discussed below.

DISCUSSION

Beginning on January 23, 2008, Iberdrola's stock jumped dramatically in price in response to reports that the company was the target of a hostile takeover. Electricite de France, S.A. (EDF), France's largest electric utility, was soon named as the pursuing entity, and it was reported that it had purchased a substantial stake in Iberdrola on January 24, 2008. Moreover, press reports, a sampling of which are attached as Appendix A, indicate that EDF might combine its bid with ownership interests already acquired in Iberdrola by Actividades de Construccion y Servicios, S.A. (ACS), a Spanish construction company. Complicating the picture, the press reports also suggest that Germany's largest utility, E.ON AG (E.ON) might put in a competing bid for ownership of Iberdrola.

That these reports are more than mere speculation, and bear substantial weight, was confirmed when, on February 4, 2008, it was widely reported that Iberdrola had, at some earlier time, hired Morgan Stanley to prepare a defense against the hostile takeover efforts. Iberdrola has not denied these reports. It also appears that both the Spanish and French governments have become involved in the takeover bid process. EDF's Chairman, however, has opined that the takeover battle could last as long 18 months. There are reports that Iberdrola's Chairman, for his part, is furiously pursuing a variety of acquisitions and other anti-takeover maneuvers, and that the takeover battle is fueled in part by personal animosity between him and the Chairman of ACS.

In their extensive January 31, 2008 rebuttal filing, the petitioners nowhere mentioned the takeover possibility, notwithstanding that the EDF and ACS takeover maneuvers commenced the week before, and approval of a transaction under Public Service Law (PSL) §70 requires an inquiry into the qualifications of the proposed acquirer. Since the identity of Iberdrola, the acquirer proposed in this proceeding, is no longer certain, the requisite §70 inquiry cannot be conducted, at least on the testimony that the petitioners have presented. As a result, their rebuttal filing is factually deficient and fatally flawed.

The immediate remedy is to postpone the February 25 hearings and toll the schedule in this proceeding. It would be fruitless to commence, on February 25, hearings into rebuttal testimony known to be factually deficient and fatally flawed. Instead, the hearings should be postponed until the petitioners have answered a number of crucial questions.

Among the important unanswered questions is the Commission's jurisdiction over EDF, ACS, E.ON, and whatever other entities attempt to acquire Iberdrola. If these parties are to become the ultimate owners of Energy East, then a §70 inquiry into their qualifications must be conducted. The petitioners should explain the positions of EDF, ACS, E.ON, and any other potential acquirers, on their commitment to meeting the requirements of PSL §70. The petitioners should also be required to demonstrate that, whatever the ultimate ownership of Iberdrola, its operations and its accounting will be transparent to the Commission and Staff.

The possibility of a hostile takeover undermines several of Iberdrola's arguments that are crucial to its contention that approval of the Energy East acquisition transaction is warranted. Among the press reports are discussions of the possibility that Iberdrola might be broken up, and, in the process, its wind generation subsidiaries might be sold. The ownership of those subsidiaries is essential to

Iberdrola's theory that it will provide benefits to New York in the form of additional wind generation. In the absence of proof that it will continue to own the wind subsidiaries, its own argument in support of the transaction must fail.

Another of Iberdrola's crucial assertions is that it is a highly rated, creditworthy entity whose ownership of Energy East and its New York subsidiaries will enhance their financial strength. In resisting the hostile takeover, however, Iberdrola could substantially weaken its financial position. Among the defensive strategies it might pursue in attempting to fend off the hostile takeover is taking on more debt. This and other strategies could harm its creditworthiness. Since it trumpets its existing financial indices as another reason justifying approval of the transaction, a full inquiry should be conducted into the financial circumstances that will exist at Iberdrola after the takeover battle is concluded.

The hostile takeover raises another creditworthiness issue. Any acquisition of Iberdrola will, in effect, create a third generation owner for the New York operating subsidiaries, with an additional acquisition piled onto the earlier formation of Energy East and Iberdrola's subsequent acquisition of that entity. As result, third generation goodwill necessarily will flow to the books of the ultimate owner. The effect of this goodwill on the credit quality of Energy East, and its New York

operating subsidiaries, must be fully investigated, and the New York subsidiaries must be fully protected from any harms arising out of adverse goodwill effects. Again, Iberdrola's own argument fails if it cannot show that it will retain its existing indices of creditworthiness, notwithstanding the outcome of the takeover battle.

Expedited action on these important issues is essential. Therefore, the Administrative Law Judge (ALJ) should require a response to this Motion by February 12, 2008. A ruling should be expected by February 19, 2008.

Without these expedited procedures, the February 25 hearings might go forward, even though futile, because directed towards a transaction that will no longer occur, in that the acquiring entity -- Iberdrola -- either will not exist in its present form or will no longer exist at all. As a result, the hearings would deteriorate into a theoretical study of an ephemeral set of facts. Such a theoretical inquiry is inconsistent with sound administrative practice and is wasteful of scarce administrative resources.

CONCLUSION

The ALJ should postpone hearings set to commence on February 25, 2008 indefinitely, and toll the schedule for this proceeding. He should require the petitioners to supplement their rebuttal testimony to address the facts and circumstances

surrounding the takeover battle over the ownership of Iberdrola, as discussed above. A procedural conference should be convened to establish the timing and parameters of that supplemental filing, and to consider when and if hearings may be rescheduled. Finally, this Motion should be considered upon expedited procedures, with responses required by February 12, 2008, and a decision rendered by February 19, 2008.

Respectfully submitted,

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Sean Mullany
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Dated: February 5, 2008
Albany, New York

Chairman attacks plan to 'chop up' Iberdrola

By Leslie Crawford and Mark Mulligan in Madrid

Published: January 30 2008 22:02 | Last updated: January 30 2008 22:02

Iberdrola on Wednesday hit out against a possible takeover by **EDF** of France and **ACS**, a Spanish construction group, saying it did not think its shareholders would welcome a break-up bid.

"Apparently, there is a project to chop up Iberdrola and sell it in pieces," Ignacio Sánchez Galán, the combative chairman of Spain's largest utility, said at a meeting in central Spain.

"I don't think that is an exciting project. It is much more challenging to transform a company into a world player. But if someone wants to make an attractive offer, of course we would study it."

Iberdrola's shares were suspended on Wednesday until ACS, which owns 7.7 per cent and has options on a further 5.2 per cent, issued a statement saying it had "not reached any agreement with EDF to make a take-over bid for Iberdrola".

Analysts noted that the builder did not deny having been in talks with the French utility.

Iberdrola's shares closed 3.6 per cent higher on Wednesday at €9.56, valuing the company at €47.7bn.

The company dismissed bid talk as "pure speculation". It noted that ACS had taken on more than €5bn in debt to acquire its stakes in Iberdrola and Unión Fenosa, a smaller utility, but had been unable to orchestrate a merger between the two.

Iberdrola has fought off attempts by ACS to win board representation. "We think ACS is talking to anyone that might help it out of its impasse," an Iberdrola executive said.

Spanish businessmen said ACS's designs on Iberdrola were driven by a battle of wills between Mr Sánchez Galán and Florentino Pérez, chairman of ACS, who are said to hate each other. "Florentino will not stop until he defeats Sánchez Galán," a business leader told the FT. "It has become personal."

There are poison pills against a hostile takeover. Iberdrola's bylaws limit the voting rights of individual shareholders to 10 per cent of the voting stock. In the

event of an all-cash bid, two-thirds of shareholders must agree to lift restrictions on voting rights. If a bid is part cash and part shares, the restrictions can be lifted by three-quarters of shareholders.

Banks and small savings banks, which own more than 20 per cent of Iberdrola, might be amenable to an attractive offer for their shareholdings, because they are feeling the international credit squeeze.

EDF said the utility was “always reviewing all opportunities in Europe” but would not comment further.

Analysts noted the attractiveness of the deal for EDF. “It would give the French group a unique position in nuclear and wind power, which are carbon dioxide free,” CM-CIC, a broker, said in a report.

Iberdrola is the world’s largest producer of wind energy and an important nuclear power operator as a result of its ownership of Scottish Power in the UK.

Javier Suárez, analyst at Dresdner Kleinwort, said: “EDF loves Iberdrola’s renewables business. EDF would get an attractive mix of nuclear and renewable energy sources, which is where the whole world is headed.”

According to French diplomats, EDF would also like to play a part in the renewal of Spain’s nuclear power plants, which meet 27 per cent of the country’s electricity needs but are old and will need to be replaced soon.

The political obstacles to a crossborder takeover do not seem insurmountable.

Relations between France and Spain have improved markedly. Spain is very happy with the commitment of Nicolas Sarkozy, French president, to build a power inter-connector across the Pyrenees, which would link the Iberian peninsula with northern Europe’s electricity grid.

Spanish minister doesn't favor splitting up top utility Iberdrola

By Jonathan House

Last update: 6:19 a.m. EST Jan. 31, 2008

(Updates with comments from finance minister, background.)

MADRID (MarketWatch) -- Spanish Finance Minister Pedro Solbes said Thursday he doesn't like the idea of splitting up Spanish utility Iberdrola SA

The Financial Times reported Wednesday that France's Electricite de France SA (1024251.FR) and Spanish construction company Actividades de Construccion y Servicios SA have held talks with the idea of taking over Iberdrola and then splitting up the company.

ACS, which already controls nearly 13% of Iberdrola, said it had no agreement with EdF to bid for the remainder of the company, while EdF declined to comment.

"Buy a company to divide it up between different companies is not a decision that one likes... in principle I don't like it either, though I realize Spanish companies have participated in these kinds of deals in other countries," Solbes said in an interview with Spanish State Radio.

Last year Spanish banking giant Santander Central Hispano SA (STD) participated in a consortium together with Belgium's Fortis NV (FORSY) and Royal Bank of Scotland Group PLC (RBS) that took over and then divided up Dutch bank ABN Amro Holding NV (ABN).

Solbes said the possibility of EdF and ACS bidding for Iberdrola was a complex issue and the government wouldn't intervene in the process until there is actually a bid on the table.

The Spanish government has wide-ranging powers to vet deals in the country's energy sector.

Company Web site: <http://www.iberdrola.es>

-Contact: 201-938-5400

Iberdrola Uses Morgan Stanley for Defense, People Say (Update1)

By Kristian Rix and Christine Harper

Feb. 4 (Bloomberg) -- Iberdrola SA, Spain's second-biggest power producer, hired Morgan Stanley to prepare a defense against a possible takeover, according to two people briefed on the plan.

Morgan Stanley advised Iberdrola, which has a market value of 51.7 billion euros (\$77 billion), against the \$13 billion bid by Endesa SA in 2000. The firm also helped the Bilbao-based utility repel Gas Natural SDG SA's 26 billion-euro attack in 2003.

Iberdrola jumped 33 percent in Madrid trading from Jan. 23 through last week after newspaper Cinco Dias reported Electricite de France SA was preparing a bid and that E.ON AG was planning to buy a stake in the utility. Spain's largest power company, Endesa, was acquired last year by a group including Enel SpA following a 25-month bidding contest.

"Iberdrola has learned from past hostile bid attempts that good defensive planning is half a battle won," said Pedro Real de Asua, who helps manage the equivalent of about \$8 billion at Barclays Fondos in Madrid, including Iberdrola shares.

"Iberdrola is the only possible takeover target for any company with pan-European ambitions."

Bid Speculation

Iberdrola intends to show investors it can deliver the 11 percent annual earnings and dividend growth promised in October, said one of the people, who declined to be identified because the discussions are confidential. Carlos Melville, a spokesman for Morgan Stanley in London, declined to comment, as did a spokesman for Iberdrola, who wouldn't be identified because of company policy.

European utility mergers increased 24 percent last year to a record \$217 billion because of rising energy prices. Iberdrola completed the 14.4 billion-pound (\$28 billion) purchase of Scottish Power Plc on April 23, adding plants in North America and the U.K. Since then the company's shares gained 11 percent through last week, beating a 1.2 percent rise by the Dow Jones Stoxx Utilities Index.

Chairman Ignacio Sanchez Galan is planning for Iberdrola, the world's largest owner of wind parks, to profit from alternative energy as nations curb carbon-dioxide emissions and cut reliance on imported fuel. Galan said on Oct. 24 that earnings per share and dividend payments will rise at least 11 percent a year between 2008 and 2010.

Iberdrola last week gained 11 percent to 10.36 euros in Madrid, where the benchmark IBEX 35 Index advanced 2.7 percent.

Takeover Protection

Cinco Dias reported Jan. 24 that French state-controlled Electricite de France, Europe's biggest power company, bought a 3 percent stake, a report denied by the Paris-based operator of nuclear plants.

The newspaper sparked speculation of multiple offers when it said a week later that Germany's E.ON, which lost out to Enel and Acciona SA in its attempt to acquire Endesa, will purchase securities that are convertible into Iberdrola shares. E.ON declined to comment.

Iberdrola's bylaws offer some protection, as they restrict the voting rights of any single shareholder to 10 percent, regardless of the stake owned. They also prohibit executives from European rivals from joining the board.

Overturing these bylaws requires the support of 75 percent of shareholders. The rules also cease to have effect if a single party buys 67 percent of Iberdrola in a cash bid, or 75 percent if the bid is stock and cash.

Indicated Interest

Electricite de France and Actividades de Construccion y Servicios SA, Spain's largest builder, may make a joint bid for Iberdrola and split it up, the Financial Times reported Jan. 29. ACS, as the construction company is known, told Spanish regulators it had no agreement with Electricite de France to buy Iberdrola, without denying that it had held talks.

Spain's government hasn't been formally approached by any potential buyer for Iberdrola, Deputy Prime Minister Maria Teresa de la Vega told journalists on Feb. 1. The government's view on a foreign bid for the utility would be guided by "general and consumer interest," she said.

Spanish law could help Iberdrola in the event of an EDF-led takeover. A 2000 rule forbids state-controlled companies from having voting rights beyond 3 percent. The law, created by former Finance Minister Rodrigo Rato, was designed to stop EDF from controlling Spanish utility Hidroelectrica del Cantabrico SA.

"EDF has indicated its interest in principle in the Spanish market, and the state as the majority shareholder in EDF has also indicated to management that all investment in Spain must be done with the agreement of Spanish authorities," David Martinon, spokesman for French President Nicolas Sarkozy, told reporters Jan. 31 in Paris.

UPDATE 1-EDF CEO says Iberdrola deal may take 18 months-paper

Mon Feb 4, 2008 4:20am EST

(Adds more media reports, background, MADRID to dateline)

PARIS/MADRID, Feb 4 (Reuters) - French utility group EDF (EDF.PA: [Quote](#), [Profile](#), [Research](#)) reckons it could take 18 months to buy Iberdrola (IBE.MC: [Quote](#), [Profile](#), [Research](#)), its top executive was quoted as saying on Monday, as media speculated over the Spanish power company's fate.

Last week, the Financial Times reported that EDF was in talks with Iberdrola shareholder ACS (ACS.MC: [Quote](#), [Profile](#), [Research](#)) about making a bid to buy and divide Spain's largest utility by market value.

"We are talking with everybody and nothing has been decided yet," EDF Chairman and CEO Pierre Gadonneix was quoted as saying in Monday's Le Figaro.

In Spain, Cinco Dias newspaper said Iberdrola Chairman Ignacio Sanchez Galan could find new shareholders to buy into the company and shore up its capital against a hostile bid.

Meanwhile, El Mundo said Iberdrola could be merged with Gas Natural (GAS.MC: [Quote](#), [Profile](#), [Research](#)) and Union Fenosa (UNF.MC: [Quote](#), [Profile](#), [Research](#)) merger with some assets sold to EDF. El Confidencial Web site said EDF could bid for Iberdrola, merge it with Union Fenosa (UNF.MC: [Quote](#), [Profile](#), [Research](#)) and spin off the Spanish assets to ACS.

Iberdrola declined to comment on the reports.

Any deal would need the backing of the Spanish government, which put numerous hurdles in the way of E.ON's (EONG.DE: [Quote](#), [Profile](#), [Research](#)) fated takeover bid for Endesa (ELE.MC: [Quote](#), [Profile](#), [Research](#)), which was eventually bought by Enel (ENEI.MI: [Quote](#), [Profile](#), [Research](#)) and Acciona (ANA.MC: [Quote](#), [Profile](#), [Research](#)).

Other problems are bound to come from the fact that EDF is 85-percent owned by the French state.

Gadonneix used the E.ON-Endesa example to suggest that any deal over Iberdrola could take a long time.

"The Endesa case lasted two years, therefore you can easily count on 18 months for Iberdrola," Le Figaro quoted Gadonneix as saying in Hong Kong.

Gadonneix would not comment on which Iberdrola assets he liked, but said "there are various possibilities".

Iberdrola stock jumped last week after newspaper reports of a possible bid from EDF and it has now risen 35 percent since hitting a 16 month low on Jan. 23.

By 0916 GMT Iberdrola stock was up 1.1 percent at 10.47 euros, compared to a 0.7 percent rise in the DJ Stoxx index of European utility stocks . ACS was up 1.5 percent, Union Fenosa was 3.5 percent higher while EDF lost 1.5 percent.

Cinco Dias reported that, as part of its defence strategy, Iberdrola could buy Solaria (SLRS.MC: [Quote](#), [Profile](#), [Research](#)) and that the solar panel maker's main shareholders could use the proceeds to buy a 5 percent stake in Iberdrola. Solaria stock was up 6.5 percent.

The paper said Morgan Stanley (MS.N: [Quote](#), [Profile](#), [Research](#)) was working on the defence and that construction company Nozar could also take a stake. Nozar is currently involved in various property companies which are restructuring or selling out as the sector slumps. (Reporting by Marcel Michelson, Andrew Hay and Ben Harding; Editing by Louise Ireland)

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Iberdrola chief wants to block EDF-ACS bid -report

Mon Feb 4, 2008 2:55am EST

MADRID, Feb 4 (Reuters) - Iberdrola (IBE.MC: [Quote](#), [Profile](#), [Research](#)) Chairman Ignacio Galan wants to team up with Spanish investors to block a possible bid by French utility EDF (EDF.PA: [Quote](#), [Profile](#), [Research](#)) and construction firm ACS (ACS.MC: [Quote](#), [Profile](#), [Research](#)) for the Spanish utility, the Cinco Dias newspaper reported on Monday.

Iberdrola is in talks to buy solar panel maker Solaria and for Solaria's current owners to invest money from the sale in a 5 percent stake in Iberdrola, valued at 2.5 billion euros (\$3.72 billion), the newspaper said.

The Solaria purchase is part of a takeover defence plan designed by Morgan Stanley for a dozen investors to buy stakes in Iberdrola and block a possible EDF bid, Cinco Dias said, citing sources familiar with the strategy.

Galan is also negotiating with Spanish construction company Nozar to take a stake, the newspaper reported.

Iberdrola declined to comment on the report. "Iberdrola does not comment on rumours," a spokesman said.

Under the Morgan Stanley plan, the Spanish investors would give voting rights in their Iberdrola shares to Galan so he had large enough portion of stock to block a possible bid, the newspaper said.

Iberdrola stock rose last week after newspaper reports of a possible bid for the firm by Spanish construction firm ACS and EDF. ACS said it had not reached any deal with the French firm to launch an offer.

EDF reckons it could take some 18 months to arrive at a deal with Iberdrola, its chairman and chief executive was quoted as saying on Monday. (Reporting by Andrew Hay; Editing by Louise Ireland)

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