

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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.

Case 07-M-0906

JOINT PETITIONERS' RESPONSE TO STAFF MOTION

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Dated: February 7, 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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Iberdrola, S.A. ("Iberdrola"), Energy East Corporation, RGS Energy Group, Inc., Green Acquisition Capital, Inc., New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (collectively the "Joint Petitioners") respond herein to the Motion To Postpone Hearings and Require Additional Filings, and For Expedited Consideration (the "Motion") submitted in the above-captioned proceeding on February 5, 2008 by the Staff of the New York State Department of Public Service ("Staff"). In the Motion, Staff asks Your Honor to postpone the evidentiary hearings scheduled to start on February 25, 2008, and to toll the overall procedural schedule indefinitely. Staff claims that an indefinite delay is warranted as a result of certain speculation, reported in the press, regarding a potential hostile takeover of Iberdrola by any of the following entities: Électricité de France, S.A. ("EdF"), Actividades de Construcción y Servicios, S.A. ("ACS"), E.ON AG ("E.ON") or other potential, yet unidentified, suitors. Staff further requests that Your Honor require the Joint Petitioners to supplement their rebuttal testimony to address facts and circumstances about which the Joint Petitioners simply have no knowledge – namely, the potential plans for any hostile attempts to acquire control of Iberdrola.

Staff's Motion is unnecessary and should be rejected because there has been no offer or bid made, or agreement reached, to acquire the stock of, or obtain a controlling interest in,

Iberdrola. Furthermore, if any entity or group of entities were to seek to acquire Iberdrola at some point in the future, such acquisition would require a filing with and approval from the Public Service Commission (“Commission”) under Section 70 of the New York Public Service Law (“PSL”), thereby providing Staff and the Commission with a full opportunity to evaluate such transaction. The Joint Petitioners commit to make a filing with the Commission if any agreement is reached for an entity to acquire the stock of, or obtain a controlling interest in, Iberdrola. Therefore, the Joint Petitioners request that Your Honor (i) maintain the existing procedural schedule for this proceeding, and (ii) reject Staff’s request that the Joint Petitioners be required to submit supplemental rebuttal testimony.

In light of the fact that Staff’s Motion is based entirely on press reports speculating on possible future takeover activity, and that the Joint Petitioners have no factual information to offer with respect to speculation about such takeover activity, the Joint Petitioners respectfully request that Your Honor summarily reject Staff’s Motion. Additionally, the Joint Petitioners respectfully request that Your Honor consider shortening the time period for responses to Staff’s Motion, as necessary in order to maintain the existing procedural schedule. Moreover, due to the unnecessary uncertainty that Staff’s Motion has created in this proceeding, the Joint Petitioners respectfully request that Your Honor issue his decision on this matter as expeditiously as possible, to permit the parties to this proceeding to maintain the existing hearing schedule and focus their efforts on preparing for the upcoming hearings.¹

¹ Consistent with the current procedural schedule, the Joint Petitioners are prepared to provide time estimates for witnesses on February 15, 2008, and to have witnesses cross-examined on February 25, 2008.

I. STAFF'S REQUEST FOR A DELAY SHOULD BE REJECTED BECAUSE THE COMMISSION AND STAFF WOULD HAVE AN OPPORTUNITY TO REVIEW ANY PROPOSAL TO ACQUIRE THE STOCK OF, OR OBTAIN A CONTROLLING INTEREST IN, IBERDROLA, IF ANY SUCH EVENT WERE TO OCCUR.

Speculation about a potential takeover of Iberdrola by ACS, EdF, E.ON, or any other entity, simply does not warrant any delay in the existing procedural schedule that has been established for this proceeding, much less an indefinite delay. If such a potential takeover were ever to become more than hypothetical and any entity or group of entities were actually to seek to acquire the stock of, or obtain a controlling interest in, Iberdrola, then that transaction would be subject to the requirements of Section 70 of the PSL. In such an event, the Commission and Staff would have the ability to fully evaluate the impact of any such proposed transaction, including its impact on the Joint Petitioners' gas and electric utility subsidiaries (*e.g.*, New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation). To be clear, the Joint Petitioners commit to submit such a Section 70 filing, which could take the form of either a new or amended Section 70 filing if any agreement were reached for an entity to acquire the stock of, or obtain a controlling interest in, Iberdrola.

Moreover, if at some point in the future there is a confirmation of a sole or joint acquisition attempt or an agreement for another entity to acquire the stock of, or obtain a controlling interest in, Iberdrola, the Joint Petitioners commit to file in this proceeding information with respect to such an agreement.² Of course, Staff and the other parties to this proceeding may continue to ask data requests and questions on cross examination at the evidentiary hearings on these issues. These commitments should provide adequate assurance to

Staff and the other parties to allow the Joint Petitioners to proceed in accordance with the current procedural schedule with respect to the only transaction that is before the Commission – namely, the proposed acquisition of Energy East by Iberdrola.

II. STAFF’S REQUEST FOR A DELAY SHOULD BE REJECTED BECAUSE IT IS BASED SOLELY ON SPECULATION AS TO POSSIBLE FUTURE EVENTS

In support of its request for delay, Staff cites only the press statements that it attaches to the Motion. These press statements contain nothing more than speculation about the interests of other European utility holding companies (*e.g.*, ACS, EdF, and E.ON) in possibly acquiring Iberdrola, and about discussions that may have occurred among some of those entities, about which Iberdrola has no information other than what is speculated in these press reports. These press reports speculate as to possible future events,³ and provide no factual basis to conclude that a takeover, or even a takeover attempt, is likely to occur. Although not discussed in Staff’s

² Consistent with its obligation to provide a complete and accurate record for Commission action on the Joint Petition, Iberdrola would provide this type of information to all parties even in the absence of Staff’s Motion.

³ *See, e.g.*, Staff’s Motion, Appendix A, p. 3 (Jonathan House, *Spanish minister doesn’t favor splitting up top utility Iberdrola*, MarketWatch (Jan. 31, 2008) “ACS...said it had no agreement with EdF to bid for the remainder of the company, while EdF declined to comment.”); *id.* at p. 5 (Kristian Rix and Christine Harper, *Iberdrola Uses Morgan Stanley for Defense, People Say (Update 1)*, Bloomberg (Feb. 4, 2008) “Cinco Dias reported Jan. 24 that [EdF]...bought a 3 percent stake [in Iberdrola], a report denied by the Paris-based operator of nuclear plants.”); *id.* at p. 6 (Reuters, *UPDATE 1-EDF CEO says Iberdrola deal may take 18 months-paper* (Feb. 4, 2008) “‘We are talking with everybody and nothing has been decided yet,’ EdF Chairman and CEO Pierre Gaddonneix was quoted as saying in Monday’s Le Figaro.”); *id.* at p. 8 (Reuters, *Iberdrola chief wants to block EDF-ACS bid-report* (Feb. 4, 2008) “ACS said it had not reached any deal with [EdF] to launch an offer [for Iberdrola].”).

Motion, these same press statements report that EdF and ACS deny the existence of any takeover attempt.⁴

Reports speculating about potential takeovers of large companies, whether European or U.S.-based, are not new to the media (particularly the European media). The Commission (as well as other regulatory authorities in the United States) should not act precipitously based upon such speculation unless and until there is an actual factual basis behind them, such as an agreement reached on the acquisition of stock or the transfer of a controlling interest in Iberdrola, which would result in a filing with this Commission pursuant to Section 70 of the PSL in any event. To be clear, no such event has occurred.

Staff requests that Your Honor require the Joint Petitioners to supplement their rebuttal testimony “to address the facts and circumstances surrounding the takeover battle over the ownership of Iberdrola.”⁵ In particular, Staff asks that the Joint Petitioners be required to “explain the positions of EdF, ACS, E.ON and any other potential acquirers, on their commitment to meeting the requirements of PSL §70.”⁶ The Joint Petitioners have no such information to provide, and they do not engage in speculation on the intent of other companies, especially in the absence of any statements made by such companies. The Joint Petitioners do not view this as a uniquely European issue. Publicly traded companies based in the United States do not typically engage in speculation, for reasons including compliance with the securities laws.

⁴ See footnote 3, *supra*. Indeed, moving beyond reported rumors in the press, ACS submitted two letters to the Spanish Stock Market Commission on January 30, 2008 and February 5, 2008, confirming that it has not entered into any agreement with EdF to launch a takeover of Iberdrola. Copies of ACS’s letters are attached hereto as Attachment A.

⁵ Motion at 6-7.

Staff's insistence that permitting this case to proceed as scheduled would be "wasteful of scarce administrative resources"⁷ rings hollow. The parties to this proceeding have filed their respective testimonies and are preparing for hearings that are scheduled to commence in less than three weeks. Grinding this proceeding to an indefinite halt based on speculation as to a possible hostile takeover attempt that may never be commenced (and even if commenced, may never succeed) would not be reflective of administrative efficiency, but rather would constitute delay merely for the sake of delay, and should be rejected.⁸

III. IF STAFF'S MOTION IS NOT DENIED OUT OF HAND, THE TIME FOR RESPONSES TO THE MOTION SHOULD BE SHORTENED AS NECESSARY TO MAINTAIN THE EXISTING PROCEDURAL SCHEDULE AND A RULING SHOULD BE ISSUED EXPEDITIOUSLY

Your Honor has established February 12, 2008, as the date by which responses to the Motion must be submitted. Given that Staff's request is based solely on speculation about possible future events and that the Joint Petitioners have no information to provide with respect to such speculation, the Joint Petitioners respectfully submit that there is no need to entertain responses to Staff's Motion, and it should therefore be denied out of hand. Additionally, if responses are to be entertained, the Joint Petitioners respectfully request that Your Honor consider shortening the time period for responses to Staff's Motion, as necessary in order to maintain the existing procedural schedule. The Joint Petitioners further request that Your Honor

⁶ *Id.* at 4.

⁷ *Id.* at 6.

⁸ Moreover, if speculation about future transactions were sufficient to forestall existing proceedings, the Commission would find it difficult to conclude many of its proceedings. There should be no opportunity for parties to delay this merger proceeding based purely on speculation about future events that may never happen. For example, it would be irrational and impractical to

issue a ruling on Staff's Motion as expeditiously as possible to permit the parties to this proceeding to maintain the existing hearing schedule and focus their efforts on preparing for the upcoming evidentiary hearings.

Respectfully submitted,



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Dated: February 7, 2008
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require Joint Petitioners to obtain explicit statements of disinterest in acquiring Iberdrola from potential suitors prior to the commencement of evidentiary hearings in this proceeding.

ATTACHMENT A

ACS, Actividades de Construcción y Servicios, S.A.

**Spanish Stock Market Commission
Pº de la Castellana, 19
28046 MADRID**

Madrid, January 30, 2008

Dear Sirs,

For the purposes established in Article 82 of the Spanish Securities Act 24/1988 and related provisions, please be informed of the following Relevant Fact.

ACS Actividades de Construcción y Servicios, S.A., communicates that has not reached to any agreement with Electricité de France (EDF) to launch a OPA over the shares of Iberdrola S.A.

Yours faithfully,

José Luis del Valle Pérez
Director-Secretary General
ACS, Actividades de Construcción y Servicios, S.A

ACS, Actividades de Construcción y Servicios, S.A.¹

To **Comisión Nacional del Mercado de Valores (CNMV)** (Regulatory Agency in charge of supervising and inspecting the Spanish Stock Markets)

Madrid, 5 February 2008

Dear Sirs:

Pursuant to Article 82 of the Securities Market Law (*Ley 24/1988, de 28 de julio, reguladora del Mercado de Valores*) and implementing regulations, I hereby communicate to you the following **Significant Event**:

That, *ACS Actividades de Construcción y Servicios, S.A.*, in answering a request for information sent by the CNMV, has stated, among other things, that it has held discussions with EDF about the European energy sector and about its interest in Iberdrola and in the Spanish market generally. However, said discussions have not resulted in any type of agreement and, therefore, nothing has been submitted to the Board of Directors of ACS. Those conversations are, on the other hand, normal between energy players.

The strategy of the ACS Group, as disclosed several times, is, while respecting all shareholders (large and small), to consolidate a large Spanish energy group in which ACS may be a leading player, together with the rest of its partners.

This project will always be conditioned on a loyal respect for the Government's energy policy and to ensure that the majority of the Spanish energy assets remain in the hands of Spanish shareholders.

Yours sincerely,

José Luis del Valle Pérez

Consejero-Secretario General (Member and Secretary to the Board)

¹ This document was originally submitted to the CNMV in Spanish. In the interest of time, Iberdrola is providing an unofficial translation of this document.