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March 14, 2008

Honorable Rafael Epstein
Administrative Law Judge
New York State
Department of Public Service
Three Empire State Plaza
Albany, New York 12223

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. – Joint Petitioners' Acceptance Document

Dear Judge Epstein:

In an effort to narrow the issues prior to the evidentiary hearings, Joint Petitioners unilaterally submit this Joint Petitioners' Acceptance Document to accept certain New York State Department of Public Service Staff and intervenor proposed benefits and/or conditions to be included in an order approving the Proposed Transaction. The proposed benefits and/or conditions would be effective immediately upon closing of the Proposed Transaction. The Joint Petitioners' Policy Panel will sponsor and be subject to cross-examination on the Acceptance Document.

Should you have any questions regarding this Acceptance Document please contact the undersigned.

Respectfully submitted,



David L. Schwartz
of LATHAM & WATKINS LLP
Counsel for Iberdrola, S.A.

cc: Active Party List

JOINT PETITIONERS' PARTIAL ACCEPTANCE DOCUMENT

In an effort to narrow the issues raised in this proceeding prior to the commencement of evidentiary hearings, Joint Petitioners hereby unilaterally accept certain benefits and/or conditions proposed by New York State Department of Public Service Staff ("Staff") and intervenors, which could be included in an order approving the Proposed Transaction.¹ The proposed benefits and/or conditions would be effective immediately upon closing of the Proposed Transaction ("Acceptance Document").² The Joint Petitioners' Policy Panel will sponsor, and be available for cross-examination on, this Acceptance Document.

I. VERTICAL MARKET POWER

Staff, IPPNY and IBEW have proposed that approval of the Proposed Transaction be conditioned upon on the sale of the Russell Station Site and other Fossil Units. (Staff Policy Panel (Redacted) p. 288, lines 8-11; Staff Policy Panel (Redacted) p. 288, line 12; Direct Testimony of Mark Younger p. 2, lines 4-10 (repeated on p. 24 lines 18-22); Direct Testimony of Glen Casey p. 8).

Joint Petitioners' Acceptance: The Joint Petitioners will competitively bid and auction: (i) Russell Station; (ii) the 63 MW Allegany Station; (iii) the 14 MW Peaker Station 3; and (iv) the 14 MW Peaker Station 9. Cayuga Energy will competitively bid and auction the 67 MW Carthage Peaking Unit.³ The above commitments are subject to reasonable protocols determined by the Commission, which should provide that such assets would not be sold below book value.

II. POSITIVE BENEFIT ADJUSTMENTS ("PBAS")

Staff has proposed \$646 million PBA adjustments to NYSEG and RG&E in the areas of deferred costs and reserves, prior to its additional \$208 million of one-time rate adjustments. (Staff Policy Panel (Redacted) p. 236, lines 14-18; Staff Witness John W. Benedict Exhibit JB-4, Staff Witness Robert P. Haslinger Exhibit RPH-4).

Joint Petitioners' Acceptance in Part: The Joint Petitioners will accept Staff's position with regard to the \$201.642 million PBAs specified in Attachment 1. Attachment 1 was developed from Staff Witness Benedict's Exhibit JB-4 and Staff Witness Haslinger's Exhibit RPH-4). The only changes from JB-4 and RPH-4 are: (a) the amount/categories of PBAs that are accepted by the Joint Petitioners (which is a subset of the items on those

¹ While Joint Petitioners do not believe that this partial acceptance is necessary in order for this Proposed Transaction to be approved under Section 70, Joint Petitioners are nonetheless agreeing to the benefits and/or conditions described herein.

² This Acceptance Document applies solely to, and is binding only in, the context of an approval order in Case 07-M-0906.

³ The above-book proceeds from the auction of RG&E's regulated assets (*i.e.*, Russell, Allegany and peakers) will be shared with ratepayers in a manner to be determined by the Commission. All proceeds in connection with the auction of the unregulated Carthage Peaking Unit will accrue to shareholders.

exhibits); and (b) the date on which the PBAs will occur (*i.e.*, July 2008 versus December 2008).

The Joint Petitioners would agree to pass back the rate impact of the PBAs to customers immediately following closing of the Proposed Transaction in a manner to be determined by the Commission.

III. RENEWABLE COMMITMENT

NRDC, City of Rochester, ESD, GRE and NYSDEC have proposed that additional renewable energy be developed in New York. (Direct Testimony of Ashok Gupta p. 11, lines 18-20; Direct Testimony of Patricia Malgeiri p. 3, lines 15-17; ESD Statement in Lieu of Testimony p. 2; Direct Testimony of Dennis Mullen p. 5, lines 14-16; Direct Testimony of J. Jared Snyder p. 7, lines 18-21).

Joint Petitioners' Acceptance: So long as the Commission does not impose any limitations on the ability of Iberdrola Renewables to develop renewable generation in New York State as a result of this proceeding, Iberdrola will support and encourage investments by Iberdrola Renewables (through its upstream voting interest in Iberdrola Renewables) in excess of \$100 million in the development of wind generation in New York State within the next 3 years, subject to all necessary development permits and authorizations, and provided that there is no material adverse change to the existing fundamental economics of wind generation development in New York State (*e.g.*, values associated with PTCs, RPS and NYISO market pricing).

Joint Petitioners' Further Acceptance in Part: Joint Petitioners commit that all renewable generation ownership and development will be accomplished through an unregulated affiliate of Iberdrola that is not a direct or indirect subsidiary of NYSEG or RG&E.

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 investments⁴; 2) Transmission study⁵; 3) Upon completion of the study, NYSEG planning

⁴ 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.

⁵ 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

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 activities⁶; 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.⁷; 8) Reliability⁸; 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.

V. CITY OF ROCHESTER

The City of Rochester believes it could support the Proposed Transaction but raised several concerns. (Direct Testimony of Patricia K. Malgieri p. 2, lines 20-21; p. 6, lines 15-17; p. 7, line 18; p. 9, lines 1-3).

Joint Petitioners' Acceptance: Joint Petitioners agree to begin comprehensive collaborative discussions with the City of Rochester, Staff and the DEC to review the plans and schedules for the remediation of the Beebee Station and Andrews Street sites, with the understanding that both of these sites are already in the DEC "queue". RG&E commits to sharing schedule and milestone data, along with periodic progress reports, with the City of Rochester. With respect to the 81 South Avenue facility and the City's desire to have public access to that facility, RG&E agrees to work with the City on a

owned and controlled by the cooperatives and the Village of Sherburne. The study shall be provided to the cooperatives and Sherburne for review and comment.

- ⁶ 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.
- ⁷ 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 jointly established no later than 90 days after the closing of the Proposed Transaction.
- ⁸ 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.

schedule to expeditiously review the facility's structural condition and to make any necessary safety enhancements required for public access, assuming the City retains its interest in public access.

Iberdrola / Energy East Merger
PBA Adjustments Accepted by the Company
Amounts as of July 1, 2008
(\$ Thousands)

	Staff Testimony Reference	NYSEG		Total	RG&E		Total
		Electric	Gas		Electric	Gas	
PBA Adjustments Accepted by the Company							
Loss on Reacquired Debt - Reg. Asset	JB - 4 ; RPH - 4	(a) \$ (22,796)	\$ (6,023)	\$ (28,819)	\$ (3,814)	\$ (1,634)	\$ (5,448)
2006 Flood - Reg. Asset	JB-4	"	(2,442)	(2,442)	"	"	"
Nine Mile II Mirror CWIP - Reg. Asset	RPH - 4	"	-	-	(19,272)	-	(19,272)
Nine Mile II - Reg. Asset	RPH - 4	"	-	-	(95,662)	-	(95,662)
Environmental - SIR - Reserve Increase (77.6% Electric / 22.4% Gas)	JB-4		(11,200)	(50,000)	-	-	-
Total PBAs - (pre-tax)		(61,596)	(19,665)	(81,261)	(118,747)	(1,634)	(120,381)
							(201,642)

(a) The above regulatory asset amounts are based on July 1, 2008 estimated balances. Staff JB-4 and RPH-4 Exhibits are based on December 31, 2008 estimated balances. The July 1, 2008 date is utilized to approximate the estimated closing of the Proposed Transaction.