

BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of

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.

January 2008

Exhibit____(Policy Panel - 25)

APPENDIX B
STANDARDS PERTAINING TO AFFILIATES
AND
THE PROVISION OF INFORMATION

This Appendix B addresses the relationships among New York State Electric & Gas Corporation (“NYSEG”), Rochester Gas and Electric Corporation (“RG&E”),¹ RGS Energy Group, Inc. (“RGS”), Energy East Corporation (“Energy East”), Energy East Management Corporation (“Management Corp.”), Iberdrola (including any existing entities and to any entity which is owned 10% or more, directly or indirectly, by Iberdrola or effectively owned more than 10% by Iberdrola when combined with other Iberdrola ownership interests), any Unregulated Load-Serving Entity (“ULSE”)² or other affiliates, and competitors of the ULSE or other affiliates. It is assumed, for purposes of applicability of this Appendix B, that, upon the consummation of the acquisition by Energy East of RGS, Energy East will transfer all of the stock of NYSEG to RGS. References in this Appendix B to any of the foregoing entities shall be deemed to include their successors.

Standards of Conduct

The following Standards of Conduct shall govern the DISCO’s relationship with any energy supply and energy service affiliates, including the ULSE:

- (i) All affiliates are restricted from using the same name, trade names, trademarks, service name, service mark or a derivative of a name, of

¹ Individually and collectively, NYSEG and RG&E are referred to herein as the “DISCO.” References to the DISCO herein shall be presumed to include the Regulated Load-Serving Entity (“RLSE”) function of NYSEG and RG&E, consistent with the definition of RLSE in RG&E’s 1997 Settlement Agreement, unless the context requires otherwise.

Energy East, RGS or the DISCO or in identifying itself as being affiliated with Energy East, RGS or the DISCO. The DISCO will not provide sales leads involving customers in its service territory to any unregulated affiliate, including the ULSE, and is prohibited from giving any appearance that it represents any unregulated affiliate. Unregulated affiliates are prohibited from giving any appearance that they represent the DISCO in matters involving the marketing of services by the DISCO or other affiliates. If a customer³ requests information about securing any service or product offered within the service territory by an unregulated affiliate, the DISCO must offer to provide a list of all companies that are qualified and approved pursuant to governmental or DISCO standards (including retail access standards) as providers of similar products or services within the DISCO's service territory. While this list may include Energy East affiliates, the list must provide information by company in alphabetical order and in no way may place greater emphasis on or promote any company in which Energy East has a financial interest. At no time, nor in any situations, shall any DISCO employee acting in his or her official capacity place greater emphasis on or promote any affiliate, other than to acknowledge, at the request of the customer, that an affiliation exists between the DISCO and the affiliate.

(Footnote continued from previous page)

² "ULSE," as used herein, may refer to one or more ULSEs, as the context requires.

³ In this context, "customer" refers to any existing, former, or prospective customer identified as such to the DISCO.

- (ii) The DISCO will not provide services on preferential terms, nor represent that such terms are available, exclusively to customers who purchase goods or services from, or sell goods and services to, an affiliate of the DISCO. The DISCO will not purchase goods or services on preferential terms offered only to suppliers who purchase goods or services from or sell goods or services to an affiliate of the DISCO. This standard does not prohibit two or more of the unregulated affiliates from lawfully packaging their services.
- (iii) All similarly situated customers, including energy services companies and customers of energy service companies, whether affiliated or unaffiliated, will pay the same rates for the DISCO's utility services and, in the event that any tariff provision affords the DISCO discretion in the application of such provision, the DISCO shall apply such tariff provision in a consistent manner. In particular, the DISCO shall process all requests for similar service in the same manner, within a similar time period, and without any preferential treatment for customers seeking services from Energy East affiliates. The DISCO shall not give preference to a customer of an affiliate, or to an affiliate, regarding repairs or maintenance, or operation of its system.
- (iv) Release of proprietary customer information relating to customers within the DISCO's service territory shall be subject to prior authorization by the customer and subject to the customer's direction regarding the person(s) to whom the information may be released. If a customer authorizes the

release of information to a DISCO affiliate or one or more of the affiliate's competitors, the DISCO shall make that information available to the affiliate and/or other competitors designated by the customer on a simultaneous and comparable basis.

- (v) Except for purposes of complying with applicable statutes, regulations and orders, or providing information to the Senior Management and Officers of Energy East, RGS or Management Corp., the DISCO will not disclose to any affiliate (other than Management Corp.) any customer or market information (which includes proprietary information held exclusively by the DISCO about its gas and/or electric transmission and distribution systems and/or regulated operations such as availability or curtailments) relative to its service territory including, but not limited to, information that it receives from a marketer, customer or prospective customer, which is not available from sources other than the DISCO unless it makes such information available to its affiliate's competitors on a simultaneous and comparable basis. Only those employees of the recipient affiliate whose functions require that they have access to the subject information for compliance purposes shall be provided such access. Such employees shall be instructed to maintain the confidentiality of such information. This Appendix B shall not, however, preclude the DISCO from disclosing such information to its regulated affiliates or to Management Corp. for purposes of participation in joint arrangements, alliances or similar transactions pertaining to purchasing, sales, trading, transportation, storage and similar

business functions intended to produce economies and efficiencies from which customers can benefit. Information provided pursuant to the preceding sentence need not be made available to competitors of the DISCO or competitors of the DISCO's affiliates. Management Corp. shall not disclose such information to unregulated affiliates. Any management corporation which receives such information must execute a signed protective order with the utility. The utility will then be required to make the protective order available upon Staff's request. No such information may leave the United States.

- (vi) If any competitor or customer of the DISCO believes that the DISCO has violated the standards of conduct established in this section of the agreement, such competitor or customer may file a complaint in writing with the DISCO with a copy to Staff. The DISCO will respond to the complaint in writing to the complainant and Staff within twenty (20) business days after receipt of the complaint. After the filing of such response, the DISCO and the complaining party will meet, if necessary, in an attempt to resolve the matter informally. Staff will be available for arbitration. If the DISCO and the complaining party are not able to resolve the matter informally within fifteen (15) business days after the filing of such response, the matter will be referred promptly to the Commission for disposition. This provision shall not preclude the Commission from addressing any such matter more expeditiously in the event that exigent circumstances so require.

- (vii) The Commission may impose on the DISCO remedial action, consistent with the Commission's statutory authority, for violations of the Standards of Conduct. If the Commission, after affording the DISCO a full and fair opportunity to present its position as to any alleged violations of these Standards of Conduct, finds that the DISCO has violated the Standards during the term of this Settlement, it shall provide the DISCO notice of its findings and may afford the DISCO a reasonable opportunity to remedy such conduct. In the event that the Commission affords the DISCO an opportunity to remedy such conduct and the DISCO fails to do so within a reasonable period after receiving such notice, the Commission may take remedial action with respect to the DISCO to prevent it from further violating the Standard(s) at issue.
- (viii) The Standards of Conduct set forth in this Settlement will apply in lieu of any existing generic standards of conduct (for the subject matters addressed in this Appendix B) and may be proposed as substitutes for any future generic standards of conduct established by the Commission throughout the term of this Settlement. Thereafter, Staff and the DISCO shall meet to discuss whether any changes in these Standards are appropriate, giving due consideration to the DISCO's specific circumstances, including its performance under the existing Standards.

Access to Books and Records and Reports

The following provisions govern the access by Staff to books and records of non-utility operations:

- (i) (a) Staff will have access, upon reasonable notice and subject to appropriate resolution of any issues pertaining to applicable privileges and protections against disclosure, including the attorney/client privilege, and confidentiality, to the all books and records of any affiliate(s). Issues pertaining to applicable privileges and protections against disclosure shall be resolved pursuant to CPLR §§ 3101 and 4503. Confidentiality issues shall be resolved pursuant to the Commission's regulations on confidential information at 16 NYCRR Part 6, with due regard to the regulations of any other commission that has jurisdiction over this information.
- (b) In the event that the access to books and records as described in subparagraph (a), above, is insufficient sufficient access to such information shall be provided to Staff, subject to appropriate resolution of any issues pertaining to applicable privileges and protections against disclosure pursuant to CPLR §§ 3101 and 4503 and resolution of confidentiality issues, pursuant to the commission's regulations on confidential information at 16 NYCRR Part 6, with due regard to the regulations of any other commission that has jurisdiction over this information.
- (c) All access to books and records pursuant to this paragraph (i) shall be provided at the DISCO's headquarters or, at the DISCO's option, at

another affiliate office situated in New York State, provided, however, that if such access is not practicable, access will be provided at whatever reasonable location the DISCO deems appropriate at the DISCO's expense. In no event shall the provisions of this subparagraph (c) unreasonably delay Staff's ability to perform its audit functions.

- (ii) The DISCO will supplement the information that the Commission's regulations require it to report annually with the following information: Transfers of assets to and from an affiliate, cost allocations relative to affiliate transactions, identification of DISCO employees transferred to an affiliate, and a listing of affiliate employees participating in common benefit plans.
- (iii) The Commission shall continue to be provided all filings currently made with the Securities and Exchange Commission ("SEC") by Energy East and any subsidiary of Energy East including the DISCO on a Generally Accepted Accounting Principles (GAAP) basis. In addition, the companies shall provide the former SEC reports U-5S., Iberdrola will provide a report similar to SEC Form U-9C-3 which shows how the results of Energy East are incorporated/consolidated into Iberdrola's financial statements. Finally, Energy East is required to provide annually all the financial statements and informational tables in its most SEC Form 10K.
- (iv) A senior officer of Iberdrola, Energy East, RGS, and the DISCO will each designate an employee, as well as an alternate to act in the absence of such designee, to act as liaison among Iberdrola, Energy East,,RGS, the DISCO

and Staff (“Company Liaisons”). The Company Liaisons will be responsible for ensuring adherence to the established procedures and production of information for Staff, and will be authorized to provide Staff access to any requested information to be provided in accordance with this Appendix B.

Affiliate Relations

1. General

a) Within 30 days of the commencement of operations, following the formation of any new unregulated affiliate:

- (i) The books of account and other business records of such affiliate shall be maintained separate and distinct from those of the DISCO.
- (ii) Any unregulated affiliate competing in any energy-related business (including but not limited to energy management/services and/or generation services) within the DISCO’s service territory shall establish and maintain offices and work spaces separate and distinct from those of the DISCO in a separate building or leasehold.

Further, such affiliate(s) shall not have preferential access to any property (tangible, intangible and/or intellectual), offices, work spaces, facilities, assets, plant, computers, and/or equipment of the DISCO (except as provided for elsewhere in this document).

- b) Cost allocation guidelines are attached as Schedule I to this Appendix B. These guidelines will be amended and/or supplemented, if necessary, to reflect affiliate transactions not contemplated by the initial guidelines set forth in Schedule I. The DISCO will file with the Director of the Office of Accounting, Finance, and Economics of the Department of Public Service all amendments and supplements to the guidelines, thirty (30) days prior to making such change(s).

2. “Royalties”

Given the prohibitions contained in the Standards of Conduct, there shall be no “royalty” payments payable by any affiliate of the DISCO or imputed to the DISCO or credited to DISCO customers as long as the Standards of Conduct restrict the use of the DISCO’s name, etc.; provided, however, that applicability of this section 2 period shall be conditioned upon the DISCO’s compliance with the standards contained in this Appendix B as such standards may be modified pursuant to item (viii) of “Standards of Conduct,” supra.

3. Transfer of Assets

- a) Transfers of assets from the DISCO to an affiliate or from an affiliate to the DISCO will not require prior Commission approval except for the transfer of generating stations and other assets from the DISCO whose transfer requires Commission approval under Public Service Law § 70.

- b) For all assets other than generating stations whose transfer requires Commission approval under Public Service Law §70, transfers of assets from the DISCO to an affiliate shall be at the higher of market value or net book value and transfers of assets from an affiliate to the DISCO shall be at the lower of market value or net book value. "Cost" for purposes of an affiliate transfer to a utility shall be at original cost to the first Iberdrola affiliate. Nothing in this paragraph 3(b) shall limit the Commission's authority to determine ratemaking issues arising out of such transactions.

4. Personnel

- a) Except as expressly provided otherwise herein, the DISCO and all affiliates will have separate operating employees.
- b) Non-administrative operating officers of the DISCO will not be operating officers of any of the unregulated affiliates.
- c) Officers of Iberdrola, Energy East, RGS or Management Corp. may not be officers of the DISCO. Officers of the DISCO may not be directors of Iberdrola, Energy East, RGS and Management Corp..
- d) Employees may be transferred between the DISCO and an unregulated affiliate upon mutual agreement. Transferred employees may not be reemployed by the DISCO for a minimum of one year from the transfer date, unless a specific waiver is received from the Commission or its designee. Employees returning to the DISCO may not be transferred to an unregulated affiliate for a minimum of one year from the date of return, unless a specific waiver is received from the Commission or its designee.

The DISCO will file annual reports to the Commission, beginning with the first Rate Year ending after approval of this Settlement, showing transfers between the DISCO and unregulated affiliates by employee name, former company, former position, new company and new position. After the DISCO will be entitled to compensation resulting from transfers of its employees to unregulated affiliates , equivalent to 25% of the employees salary and benefits..

- e) The foregoing provisions do not restrict any affiliate from loaning employees, on a fully loaded cost basis, to the DISCO to respond to an emergency that threatens the safety or reliability of service to consumers or to assist the DISCO during Ginna Station outages.
- f) The compensation of DISCO employees may not be tied directly to the performance of any unregulated affiliates of Iberdrola, or Energy East; provided, however, that some elements of such compensation may be based upon the aggregate performance of RGS or Energy East; and provided further that the compensation of the officers of RGS, Energy East or Management Corp. who are also officers of the DISCO may be based upon the performance of the DISCO and the aggregate performance of RGS, Energy East or Management Corp.
- g) The employees of the DISCO and the unregulated affiliates who are currently participating in common pension and benefit plans may continue to do so, and the cost shall be allocated as set forth in Schedule I.

5. Provision of Services and Goods

- a) Corporate services (such as corporate governance, administrative, legal, purchasing, and accounting) currently provided by Management Corp. or another affiliate of Energy East (including RGS) for the DISCO and other affiliates on a fully-loaded cost basis may continue. Iberdrola or its affiliates may not provide goods and services to the DISCO. During its provision of any corporate services, such entity shall be subject to all requirements in the Standards of Conduct pertaining to information obtained about/from the DISCO. Nothing in this paragraph 5(a) shall limit the Commission's authority to determine ratemaking issues arising out of such transactions.
- b) The DISCO may provide other services to affiliates, except that the DISCO may not use any of its marketing, sales, advertising, public relations, and/or energy purchasing employees to provide services to an unregulated affiliate for business within the DISCO's service territory. Before the rendition of such services by the DISCO commences, it shall notify its affected employees that they are subject to all disclosure requirements in the Standards of Conduct. The unregulated affiliate shall compensate the DISCO for the services of employees performing such services at the fully-loaded cost. Nothing in this paragraph 5(b) shall limit the Commission's authority to determine ratemaking issues arising out of such transactions.
- c) Current affiliates may provide services to Energy East, RGS, Management Corp. and the DISCO, except that only Management Corp. may use any of

its marketing, sales, advertising, public relations, and energy purchasing employees to provide services to the DISCO. Iberdrola affiliates may not provide services to Energy East, RGS, Management Corp. and the DISCO, nor may they engage in "chaining transactions." Before the rendition of such services by the affiliate, the DISCO shall notify its affected employees that they are subject to all requirements in the Standards of Conduct. Any management, construction, engineering or similar contract between the DISCO and an affiliate and any contract for the purchase by the DISCO from an affiliate of electric energy or gas shall be governed by Public Service Law § 110, and will be subject to any applicable FERC and SEC requirements, including PUHCA. All other goods and services will be provided to the DISCO at a price that is consistent with such requirements.

- d) The DISCO and current affiliates may continue to be covered by common property/casualty and other business insurance policies so long as the DISCO is protected from potential insurance claims against the unregulated affiliates arising from such policies. The costs of such policies shall be allocated among the DISCO and the affiliates in an equitable manner.

6. Other Provisions

- a) All affiliates will be established as separate business entities from the DISCO.

- b) All DISCOs and Energy East will have individual debt ratings. If DISCO experiences a downgrading or placement on a credit watch or review of its senior debt, DISCO management will notify the Director of Accounting & Finance of the New York State Department of Public Service.
- c) DISCO will not guarantee the notes, debentures, debt obligations or other securities of any affiliate, nor will it pledge any of its assets or promise specific actions as security for any indebtedness of any affiliate.
- d) DISCO will not conduct competitive behind-the-meter energy services, except that DISCO will be permitted to provide solutions to customer reliability and deliverability issues related to transmission and distribution.
- e) Energy East, and all DISCOs will have a stated goal of maintaining an investment grade rating on their securities.
- f) Copies of presentations by Energy East, Iberdrola and the DISCOs to Credit Agencies and backup shall be provided on an ongoing basis.
- g) Whenever a credit downgrade by S&P or Moody's of either DISCO occurs, we will require the filing of a plan with the Commission to remedy this downgrade.
- h) If DISCO's debt ratios for any 12-month period ending at the end of a fiscal quarter exceeds 60%, Iberdrola would first be given a nine-month period to cure the problem, during which time the amount of dividends paid out as a percentage of total equity may not be increased. If the problem is not cured after nine months, DISCOs could not pay any dividends until the problem is cured.

- i) DISCOs would be allowed to pay a dividend as long as they maintained at least a BBB/BB2 credit rating at both S&P and Moody's, respectively.
- j) the dividend should be limited during the year to no more than the sum of the income available for common plus the cumulative amount of retain earnings since the acquisition was consummated plus the portion of additional paid in capital that is recorded on the books of DISCOs as unappropriated retained earnings, unappropriated undistributed earnings less accumulated other comprehensive income immediately prior to the consummation of the acquisition, to the extent such earnings had not already been paid out as a dividend.
- k) DISCOs would each be prohibited from paying dividends at any point in time when (a) its least secure unsecured bond rating is at the lowest investment grade and a rating agency has outstanding negative watch or review downgrade notices, or (b) Iberdrola's least secure senior unsecured debt is rated below an investment grade by a rating agency
- l) In the event that a dividend restriction is triggered, DISCOs may not transfer, lease, or lend any moneys, assets, rights or other items of value to any affiliate without first obtaining this Commission's permission.
- m) Should DISCOs debt or similar financing reflect a cost rate which is higher than what it would be under their present debt ratings (BBB+/Baa1), the cost of such financing will be lowered to reflect a cost consistent with the present ratings

- n) DISCOs and any future domestic regulated entities should be allowed to participate in a money pool arrangement as a borrower or lender. Iberdrola, however, should only participate in a money pool as a lender. Specifically, we recommend the prohibition of non-regulated or foreign entities from participate in a money pool with DISCOs.
- o) Indirect loans from DISCOs to any affiliate, either through the money pool or through other means, are prohibited.
- p) Iberdrola pledges that there are no cross default provisions for any affiliate of Iberdrola which affect the DISCOs and that Iberdrola and its affiliates will not enter into such arrangements in the future.

Confidentiality of Records

The DISCO and, as applicable, any affiliate shall designate as confidential any non-public information to or of which Staff requests access or disclosure, and which such entity believes is entitled to be treated as a trade secret, and may submit information to the Commission or the Staff subject to the Commission's regulations on confidential information at 16 NYCRR Part 6.

**SCHEDULE I
TO
APPENDIX B**

**COST ALLOCATION GUIDELINES
FOR
AFFILIATE TRANSACTIONS**

Costs associated with goods and services currently provided by and among Energy East, RGS, Management Corp. and a DISCO and/or other affiliates will continue to follow current allocation procedures designed to ensure that those costs incurred on an affiliate's behalf are appropriately identified and assigned to the affiliate on a systematic, rational, and fully loaded basis.

Direct Costs: These are current costs incurred by Energy East, RGS, Management Corp. or the DISCO in direct support of any or all affiliates. They will be charged directly to the affiliate without undergoing any allocation process. These costs would include goods and services provided that are readily ascribable to an affiliate entity and are for the specific benefit of the affiliate and not mutually beneficial to all affiliates. The amount so charged will be the original cost incurred within the affiliated group without any adjustments for intercompany profit or other purpose except the recognition of Indirect Costs described below.

Indirect Costs: These are current consequential costs incurred in connection with Direct Costs. For example, the costs of employee benefits, sales and other such costs are indirect costs. These costs will be charged directly to affiliates, concurrently with the related Direct Costs.

Joint and Common Costs: These are current other costs that encompass broad general and administrative corporate activity and thus in theory benefit all affiliates. As such, it is necessary that each affiliate bear a representative share of these costs. Examples includes: Corporate

Governance (Board of Directors and Officers), General Accounting (including Accounts Payable and Payroll), Finance and Treasury, Purchasing, Internal Audit, Human Resources, and Real Estate. The assignment of Joint and Common Costs will be made by allocation and charged to the appropriate books of account of each affiliate monthly consistent with current FERC and PSC requirements,