

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DG 07-083

IBERDROLA, S.A., ENERGY EAST CORPORATION AND
NEW HAMPSHIRE GAS CORPORATION

Joint Petition for Approval of the Acquisition of New Hampshire Gas Corporation

Order Approving Settlement Agreement

ORDER NO. 24,812

December 28, 2007

APPEARANCES: Scott J. Mueller, Esq., of Dewey & LeBoeuf LLP for Energy East Corporation and New Hampshire Gas Corporation; James M. Avery, Esq., of Brown Rudnick Berlack Israels LLP for Iberdrola S.A.; and Edward N. Damon, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On August 2, 2007, Iberdrola, S.A. (Iberdrola), an international utility and energy company headquartered in Spain, together with Energy East Corporation (Energy East) and New Hampshire Gas Corporation (NHGC) (collectively, the Joint Petitioners), filed a petition seeking approval pursuant to RSA 369:8 and RSA 374:33 of the acquisition of EnergyEast by Iberdrola, a transaction that would result in NHGC becoming a wholly owned indirect subsidiary of Iberdrola. Accompanying the petition was the pre-filed testimony of Pedro Azagra Blazquez, Karen L. Zink and Robert E. Rude. Energy East is NHGC's parent holding company and NHGC provides propane-air services to approximately 1,000 customers in Keene. The proposed transaction is structured as a merger of a subsidiary of Iberdrola into Energy East, with Energy East as the surviving corporation that will be wholly owned by Iberdrola.

A pre-hearing conference and technical session were held on September 6, 2007. As set forth in Staff's report of the technical session, the parties requested that the Commission defer a

determination of "adverse effect" under RSA 369:8, II(b) pending the Commission's consideration of the joint petition under the procedural schedule proposed by the Joint Petitioners and Staff, notwithstanding any provisions entitling the Joint Petitioners to a preliminary determination under RSA 369:8, II(b). Since the proposed procedural schedule was inconsistent with certain deadlines established in the statute, the Commission treated the proposed procedural schedule as a requested waiver of certain provisions of RSA 369:8, II(b). See *Iberdrola, S.A.*, Order No. 24,788, slip op. at 5 (September 21, 2007). The Commission approved the procedural schedule, finding the proposed procedural schedule and statutory waiver to be reasonable and in the public interest. *Id.*

On November 11 and 30, 2007, respectively, Staff filed its testimony and a proposed settlement agreement between it and the Joint Petitioners. A hearing on the settlement agreement was held on December 7, 2007.

II. SETTLEMENT AGREEMENT

The settlement agreement provides that, subject to the terms of the settlement agreement, Iberdrola and Energy East be authorized to consummate the proposed transaction pursuant to the terms of the merger agreement. The Joint Petitioners and Staff further recommended that the Commission find that the proposed transaction is "lawful, proper and in the public interest" and will "not have an adverse effect on rates, terms, service or operation" of NHGC and approve the proposed transaction pursuant to RSA 369:8, II and 374:33.

Specifically, the Joint Petitioners agreed that NHGC would (1) maintain the current level of eight full time employees, (2) maintain its operations and service center in Keene, and (3) maintain average annual capital expenditures at no less than \$275,000, adjusted for inflation, for a period of not less than five years, *i.e.* through December 31, 2012. However, these

commitments would be subject to reevaluation in NHGC's next base rate case. Upon filing for new base rates, NHGC would have the burden of demonstrating the reasonableness of any departure from these commitments. In addition, the Joint Petitioners agreed to provide a feasibility study for siting a liquefied natural gas facility in NHGC's service territory as part of NHGC's next base rate filing. The Joint Petitioners also agreed that they would not seek to recover through rates any transaction costs or an acquisition premium associated with the proposed transaction. Finally, NHGC agreed to identify in its annual reports any accounting changes or impacts resulting from the proposed transaction.

III. POSITIONS OF THE PARTIES AND STAFF

A. Joint Petitioners

In their petition and supporting testimony, the Joint Petitioners stated that Iberdrola, a global utility company and one of the largest energy companies in the world, with a market capitalization of almost \$70 billion¹ and more than 100 years of experience, has the requisite financial strength and managerial capacity to acquire all of the common stock of Energy East and ensure that NHGC will continue to provide safe and reliable propane-air service. The Joint Petitioners stated that the proposed transaction would not result in synergistic savings that sometimes accompany mergers. Nevertheless, according to the Joint Petitioners, New Hampshire customers would experience no adverse effect from NHGC becoming part of Iberdrola because the Joint Petitioners will not seek to recover in the rates of NHGC any acquisition premium associated with the proposed transaction or any costs incurred to consummate it and because there will be no change in the rates, terms or conditions of service to NHGC customers in connection with the proposed transaction. The Joint Petitioners also

¹ This figure was calculated using a currency exchange rate of \$1.35 per euro.

recognized that the proposed transaction will not affect the Commission's ability to regulate the operations of NHGC.

Beyond that, the Joint Petitioners maintained that the proposed transaction would have positive benefits to New Hampshire, including benefits to NHGC from Iberdrola's global utility expertise and commitment to infrastructure investment, service quality and sustainable development, Iberdrola's financial stability and its long-term Standard and Poor's "A" level credit rating, Iberdrola's proven commitment to excellence in customer service and reliability, and the Joint Petitioners' commitment not to change the locations of NHGC's headquarters or operational centers in connection with the proposed transaction. In addition, the Joint Petitioners stressed that New Hampshire would benefit from Iberdrola's focus on clean technology and the environment and its efforts to achieve its business objectives while meeting customer needs and addressing climate change. Iberdrola stated that because the equity needed to close the proposed transaction has already been raised, there would be no increase in the debt of Energy East, Iberdrola or any of their affiliates.

According to the Joint Petitioners, the present arrangement under which the Berkshire Gas Company, another subsidiary of Energy East, provides affiliate services to NHGC would not change in connection with the proposed transaction. Iberdrola does not contemplate that any utility company operations, plant, equipment, franchises permits or other assets of NHGC would change or be transferred pursuant to the transaction. In addition, the Joint Petitioners asserted that the merger will not adversely affect contracts with NHGC's customers, suppliers, lenders, employees or vendors. Iberdrola stated that it values the skills and experience of the management teams and the employees of Energy East, Berkshire Gas Company and NHGC who will be vital to the success of the proposed transaction. The Joint Petitioners concluded that the

proposed transaction fully satisfies the applicable statutory criteria for Commission approval under RSA 374:33 and 369:8, II.

At hearing, the witnesses for the Joint Petitioners stated that in addition to the commitment to retain the eight full time employees of NHGC under the settlement agreement, the level of services provided to NHGC by the Berkshire Gas Company would be not less than that currently made available. They also explained that the commitment to maintain average annual capital expenditures at no less than \$275,000 is based on NHGC's average annual expenditures for such things as cast and wrought iron main replacement, meter replacement and change-out programs during the past eight years. Further, they stated that, as permitted by the federal Securities and Exchange Commission, Iberdrola and Energy East expect to use international accounting standards rather than generally accepted accounting principles, but such change would not affect NHGC's books. In order to prevent merger transaction costs from being passed along to NHGC, a special account number has been assigned to capture merger-related costs and employees working on the merger have been instructed to charge that account.

The Joint Petitioners' witnesses confirmed a number of statements in support of their declaration that the proposed transaction will not have an adverse effect on rates, terms, service and operations of NHGC. For example, they reaffirmed Iberdrola's plan, as further described in the petition, to rely on local management for business and regulatory matters, consistent with its worldwide practice. In addition, they assured the Commission that NHGC's ongoing program for reducing the levels of unaccounted-for gas, including the installation of a turbine meter in 2008, would be continued and completed notwithstanding the merger.

B. Staff

In its pre-filed testimony, Staff stated that at present there are no reorganization plans that would affect NHGC. According to Staff, NHGC's operations and service center will remain in Keene, all employees will be retained, and the Berkshire Gas Company will continue to provide services to NHGC. Staff maintained that the petition does not contain a firm commitment by the Joint Petitioners that ensures the same level of spending for capital investments, operations and maintenance and customer service. Staff stated that, if spending were to be reduced, there may be an adverse impact on customers because, given NHGC's small size, any reduction in staff or capital investment could have a profound effect on areas such as customer service, system reliability and rates and could jeopardize the favorable trend in unaccounted-for gas and the accompanying benefits realized by customers.

Staff did not believe the proposed transaction would provide a concrete public benefit. Staff noted that Iberdrola has no propane experience and, given the tiny impact NHGC will have on Iberdrola's overall financial performance, it is unlikely that NHGC would be the focus of any new initiatives resulting from the proposed transaction. Without a firm commitment by Iberdrola to that effect, Staff stated that it was reluctant to support the proposed merger. Nevertheless, Staff did not oppose the proposed transaction, as it should not have an adverse effect on rates, terms, service or operations. Staff reiterated that no changes in NHGC's current operations are expected following the proposed transaction and Iberdrola will not be seeking recovery of the acquisition premium through rates.

In Staff's view, when a small local utility is acquired by a much larger, out-of-state utility, there is always a concern that the needs of the acquired company will be overlooked, and particularly if the company is not contributing to the bottom line. According to Staff, that did

not happen when Energy East, serving three million customers in four states, acquired NHGC's predecessor, Keene Gas Company, in 1998. Staff noted that the Keene Gas Company was operating at a loss at the time of its acquisition. Energy East, through a large infusion of equity, made substantial investments in the propane-air plant and the distribution system, maintained adequate staffing and improved employee training. As a result, NHGC's safety and reliability has improved under Energy East. Also, in 2002, NHGC filed for a rate increase that was well below what could have been requested under traditional ratemaking. And, with the Commission's approval, NHGC implemented the increase over the course of several years to limit the rate impact on customers. Staff stated that more recently, NHGC has implemented a plan designed to reduce unaccounted-for gas. The plan is being successfully implemented, which has helped lower customer bills.

At hearing, Staff expressed confidence that because the same people will be operating NHGC before and after the merger, Iberdrola's lack of specific experience in operating a propane-air distribution company does not call into question its ability to successfully manage a company that includes NHGC. Furthermore, staff asserts that the settlement assures that NHGC will maintain its current staffing level for at least 5 years, that NHGC will maintain its operations and service center in Keene for at least 5 years, and that the costs of the merger will in no way increase NHGC's gas rates. As a result, Staff concludes that customers will not be harmed as a result of the merger.

IV. COMMISSION ANALYSIS

N.H. Code Admin. Rules Puc 203.20 (b) provides that the Commission shall approve disposition of any contested case by settlement "if it determines that the result is just and reasonable and serves the public interest." *See also* RSA 541-A:31, V(a) (authorizing informal

disposition of contested administrative cases via settlement). In this case we are also guided by the underlying standards for approval of a merger or acquisition set forth in RSA 369:8, II(b) (requiring no adverse effect on rates, terms, service or operation of the utility) and RSA 374:33 (requiring transaction to be lawful, proper and in the public interest). In applying these standards, we consider all the interests involved and all the circumstances in determining what is reasonable. *See Grafton County Electric Light and Power Co. v. State*, 77 N.H. 539, 540 (1915); *Parker-Young Co. v. State*, 83 N.H. 551, 561-562 (1929); *Appeal of Pinetree Power*, 152 N.H. 92, 97 (2005).

The settlement terms are consistent with the numerous unilateral commitments made by the Joint Petitioners in the petition and supported by their pre-filed and hearing testimony. Staff has had an opportunity through discovery to assess the validity of those commitments and it supports consummation of the proposed transaction on the terms set forth in the settlement agreement. The settlement terms are also consistent with the points made in Staff's pre-filed testimony.

In their petition, the Joint Petitioners stated that the proposed transaction will not affect the Commission's ability to regulate the operations of NHGC. We understand the statement, among other things, as the Joint Petitioners' recognition of the Commission's existing authority to access the books and records of Iberdrola and its affiliates, including service companies and unregulated companies, as these books and records relate to NHGC.

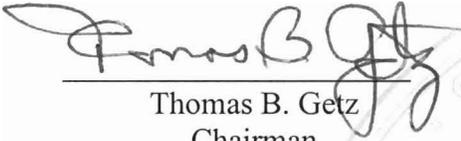
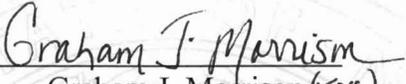
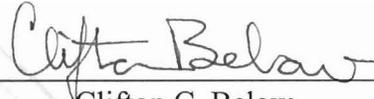
We conclude, on the basis of the record before us and subject to the above understanding regarding the Commission's access to books and records, that the settlement agreement satisfies both the "no adverse effect" standard under RSA 369:8, II(b) and the "public interest" standard

of RSA 374:33, achieving a result that is just, reasonable and in the public interest. Accordingly, we approve the settlement agreement.

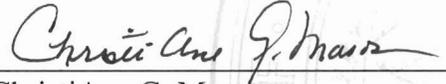
Based upon the foregoing, it is hereby

ORDERED, that the settlement agreement is approved as set forth above.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of December, 2007.

 _____ Thomas B. Getz Chairman	 _____ Graham J. Morrison (CNS) Commissioner	 _____ Clifton C. Below Commissioner
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Attested by:



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