

**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 Stock Acquisition**

**Prehearing Conference Order**

**ORDER NO. 24,788**

**September 21, 2007**

**APPEARANCES:** Scott J. Mueller, Esq., of LeBoeuf, Lamb, Greene & MacRae, for New Hampshire Gas Corporation; James M. Avery, Esq. and Paul G. Alfonso, 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), a large international utility and energy company headquartered in Spain, along with Energy East Corporation (Energy East) and New Hampshire Gas Corporation (NHGC) (collectively, the Joint Petitioners), filed a petition with the Commission 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. 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.

On August 21, 2007, the Commission issued an order of notice scheduling a pre-hearing conference, which was held on September 6, 2007. On September 11, 2007, Commission Staff filed a report of the technical session following the pre-hearing conference.

## **II. PRELIMINARY POSITIONS OF THE PARTIES AND STAFF**

### **A. Joint Petitioners**

The Joint Petitioners requested that the Commission authorize the proposed merger between Energy East and Iberdrola by independently verifying the Joint Petitioners' assertion that the transaction will have no adverse effect on the rates, terms, service or operations of NHGC, pursuant to RSA 369:8. They stated that it is appropriate to review this transaction under the expedited procedures of RSA 369:8, II, because the merger involves a parent company transaction that will not change the rates, terms, or operations of NHGC, because the Joint Petitioners have committed that they will not seek recovery in NHGC's rates of the acquisition premium or transaction costs, and because they have pledged no change in rates, terms or services for customers in New Hampshire. Alternatively, they seek approval of the transaction by the Commission under RSA 374:33 that the transaction is lawful, proper and in the public interest.

The Joint Petitioners said that in view of their confidence that a mutually satisfactory procedural schedule could be worked out, they agreed with Staff that the Commission may defer the issue of an adverse finding pending a full review by the Commission. They stated that they understood that this required an affirmative waiver of certain rights under RSA 369:8, II.

### **B. Staff**

Staff stated that under the Commission's longstanding policy, the Commission independently verifies assertions of no adverse effect made by proponents of a merger or acquisition involving public utilities or public utility holding companies. Staff said that although its position on the merits was not yet fully developed, it expected to conduct a thorough review of the assertions made in the petition.

Staff noted the petition states that NHGC customers will experience no adverse effect as a result of the proposed transaction because there will be no recovery of an acquisition premium, no recovery of transaction costs in rates and no change of services to customers. According to Staff, such assertions and commitments, provided they are independently examined and verified, would help to ensure that customers will not be impacted by the merger. Nonetheless, in Staff's view, the Commission should keep in mind that customers could be harmed from changes to existing programs, such as the plan of action filed with the Staff and implemented in 2006 to address unaccounted for gas levels. Staff stated that NHGC has seen a noticeable decrease in unaccounted for gas levels as a result of the steps already taken and further improvements are expected, and that if the program were to be slowed or terminated, system reliability and safety could potentially be compromised.

The petition states that the proposed transaction will provide positive benefits to New Hampshire, such as a significant focus on clean technology and environmental issues, as well as a commitment to excellence in customer service and reliability. Staff said that while an increased focus on environmental issues and improved service and reliability is welcomed, the question of whether there are positive benefits will depend on the concrete steps NHGC takes to address those areas, particularly in light of NHGC's limited customer base.

As a preliminary matter, Staff indicated that the petition itself falls short of unequivocally demonstrating on its face that the proposed merger will not adversely affect rates, terms or service by NHGC. Accordingly, in Staff's view, further proceedings are appropriate pursuant to RSA 369:8, II, (b). To promote the efficient and orderly resolution of this docket, Staff suggested that the issue of adverse effects within the meaning of RSA 369:8, II, (b) be deferred pending the Commission's ultimate resolution of all the issues in the docket, notwithstanding the

tight deadlines set forth in RSA 369:8, II, (b). Staff said it was sensitive to the Joint Petitioners' need for timely resolution of this docket and would work with them to develop a suitable procedural schedule.

### **III. PROCEDURAL SCHEDULE**

Following the pre-hearing conference, the Joint Petitioners and Staff met in a technical session and agreed upon the following schedule, which was submitted to the Commission by a report from Staff dated September 11, 2007:

Staff & Intervenor Data Requests – Set 1	September 21, 2007
Company Data Responses	October 4, 2007
Technical Session	October 8, 2007
Staff & Intervenor Data Requests – Set 2	October 10, 2007
Company Data Responses	October 22, 2007
Staff & Intervenor Testimony	November 7, 2007
Technical Session/Settlement Conference	November 14, 2007
Company Rebuttal Testimony/Settlement	November 21, 2007
Hearing	December 7, 2007
Post Hearing Briefs	December 21, 2007
Final Order Requested	January 11, 2008

The report also stated that the proposed procedural schedule is intended to provide sufficient time for the Commission to review the effect of the merger transaction on the rates, terms, service and operations of NHGC under RSA 369:8, II (b) and issue a final order on or before January 11, 2008. Accordingly, the parties requested that the Commission defer a determination of "adverse effect" within the meaning of RSA 369:8, II (b) pending the Commission's

consideration of the joint petition under the proposed procedural schedule, notwithstanding any provisions entitling the petitioners to a preliminary determination under RSA 369:8, II (b).

The proposed procedural schedule is inconsistent with certain deadlines established in RSA 369:8, II, (b) and the proposal is therefore treated as a proposed waiver of certain provisions of the statute. *See Public Service Company of New Hampshire*, 85 NH PUC 125, 126-127 (2000); *National Grid plc*, Order No. 24,690 (October 27, 2006), slip op. at 5. We have reviewed the proposed procedural schedule and we find it, and the proposed statutory waiver, to be reasonable and in the public interest.

**Based upon the foregoing, it is hereby**

**ORDERED**, that the procedural schedule as set forth herein is hereby approved; and it is

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

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Clifton C. Below  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary