

February 7, 2008

CENTRAL MAINE POWER COMPANY  
Request for Approval of Reorganization  
Acquisition of Energy East Corporation  
and Iberdrola, S.A.

ORDER APPROVING  
STIPULATION

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## I. SUMMARY

Central Maine Power Company (CMP) and Maine Natural Gas Company (MNG) (together referred to as Petitioners) filed a petition for reorganization approval for the proposed acquisition of Energy East Corporation (Energy East), by Iberdrola, S.A. pursuant to the provisions of 35-A M.R.S.A. §708 on August 1, 2007. In this Order, we approve a Stipulation entered into by CMP, MNG, Iberdrola, the Office of the Public Advocate (OPA), Industrial Energy Consumer Group (IECG), the Independent Energy Producer's of Maine (IEPM), FPL Energy Maine (FPL), Friends of the Coast (FOTC) and the International Brotherhood of Electrical Workers, Local 1837 (IBEW), and thus approve the proposed merger subject to the conditions set forth in the Stipulation. Through the inclusion of the conditions set forth in the Stipulation, we are able to find that the proposed transaction is consistent with the interests of CMP's and MNG's ratepayers and thus meets the statutory standard for approval under 35-A M.R.S.A. §708 and otherwise satisfies our criteria for approval of a Stipulation.

## II. BACKGROUND

On August 1, 2007, CMP and MNG filed a Petition for the approval of the acquisition of Energy East, CMP and MNG's parent corporation, by Iberdrola, a corporation organized under the laws of the Kingdom of Spain. The proposed acquisition by Iberdrola of 100% of Energy East stock constitutes a reorganization within the meaning of 35-A M.R.S.A. §708 and also constitutes "restructuring" within the meaning of the Commission's Order in *Central Maine Power Company, et al. Request for Waiver From the Reorganization Approval Requirements in 35-A M.R.S.A Section 708*, Docket No. 2001-447, Order (Dec. 20, 2001) and thus requires the Commission's approval.<sup>1</sup> As part of its petition, CMP and MNG submitted the prefiled testimony of

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<sup>1</sup> In that Order, we granted CMP's and MNG's general request for exemption from the approval requirements of Chapter 35-A M.R.S.A. §708, however we excepted certain classes of transactions referred to as "restructurings", which include the transfer of ownership of 10% of the voting securities of Energy East or any other parent entity of CMP or MNG.

Sara Burns, President and Chief Executive Officer of CMP; Robert Rude, Vice President and Chief Regulatory Officer of Energy East; and Pedro Azagra Blazquez, Director of Corporate Development of Iberdrola.

A Notice of Proceeding which provided interested persons with an opportunity to intervene was issued on August 21, 2007. Timely petitions to intervene were filed by the OPA, the IECG, the IBEW, FOTC, the IEPM, FPL, Iberdrola, and Maine Public Service Company (MPS). In addition, petitions for discretionary limited intervenor status were filed by Bangor Hydro-Electric Company (BHE) and Bangor Gas Company (Bangor Gas). There being no objections, all petitions were granted by the Hearing Examiner on August 30, 2007.

On November 6, 2007, the OPA submitted the pre-filed testimony of Thomas Catlin and Dr. Leigh Riddick; the IECG submitted the pre-filed testimony of Dr. Richard Silkman and the Advisory Staff submitted its Bench Analysis in response to the Petitioners' direct case. In addition, on November 8, 2007, FOTC submitted the pre-filed testimony of Raymond Shadis.

On December 4, 2007, CMP, MNG and Iberdrola submitted the pre-filed rebuttal testimony of witnesses Burns, Rude and Blazquez, as well as the testimony of Dr. Kenneth Gordon. Technical Conferences on the pre-filed testimony and the Bench Analysis were held on October 4, 2007, November 28, 2007 and December 10, 2007. In addition, a public witness hearing was held in Brunswick, Maine on November 28, 2007.

An initial settlement conference in this matter was held on December 14, 2007. Based on the progress made towards resolving this case, the parties agreed to suspend the litigation schedule and postpone the hearings scheduled for December 18 and 19, 2007, in order to pursue a settlement. On January 10, 2008, the Commission received a Stipulation which proposed to resolve this matter in its entirety and which was entered into by CMP, MNG, the OPA, FOTC, the IECG, the IEPM, and FPL. Bangor Gas and MPS both indicated that, although they were not signing the Stipulation, they did not oppose approval. Just prior to the filing of the Stipulation, BHE filed a request for leave to withdraw. The IECG objected to BHE's request on January 10, 2008. On January 22, 2008, the Examiner, finding BHE's withdrawal would not prejudice any party on the process, granted BHE's request for withdrawal.

### **III. DESCRIPTION OF THE STIPULATION**

The parties to the Stipulation agree that the proposed transaction, subject to the conditions set forth in the Stipulation, is consistent with the interests of the CMP and MNG's ratepayers and investors and, therefore, should be approved by the Commission. The Stipulation sets out 59 separate conditions for approval, several containing a number of sub-parts. In broad terms, the conditions fall into the following categories: reporting commitments; financial protection, which include credit rating, transaction cost

protections, capital structure and liquidity; affiliate transaction protections; corporate governance; service quality monitoring provisions; competitive parity regarding entry into the generation market; safety and security issues at the former Maine Yankee Atomic nuclear site; ISO-New England (ISO-NE) participation; transmission approval requirements; and conditions labeled "Additional Ratepayer Value" which include provisions regarding Energy East's recovery of the acquisition premium related to Energy East's purchase of CMP, the ratemaking treatment for costs associated with CMP's proposed Advanced Meter Infrastructure (AMI) investment and energy efficiency commitments, which include a commitment to develop demand response programs and to not oppose increases in funding for Efficiency Maine.

A complete list and description of the conditions of approval can be found in the Stipulation, which is attached and incorporated into this Order as Appendix One.

#### IV. DECISION

As we have now stated on many occasions, to accept a stipulation the Commission must find:

1. The parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;
2. the process that led to the stipulation was fair to all parties; and
3. the stipulated result is reasonable and is not contrary to legislative mandates.

*See Central Maine Power Company, Proposed Increase in Rates, Docket No.92-345(II) Detailed Opinion and Subsidiary Findings (Me. P.U.C. Jan. 10, 1995), and Maine Public Service Company, Proposed Increase in Rates (Rate Design), Docket No.95-052, Order (Me. P.U.C. June 26, 1996). We have also recognized that we have an obligation to ensure that the overall stipulated result is in the public interest. See Northern Utilities, Inc., Proposed Environmental Response Cost Recovery, Docket No. 96-678, Order Approving Stipulation (Me. P.U.C. April 28, 1997). We find that the proposed Stipulation in this case meets these criteria.*

The Stipulation before us was entered into by all active participants in this matter. These parties represent a vast array of interests in the ratemaking and regulatory process. MPS and Bangor Gas who have not signed the Stipulation, have indicated that they did not oppose the Stipulation. We also note that our Advisory Staff was an active participant in the settlement process and has not indicated any objection to the

Stipulation. We are, therefore, satisfied that a broad spectrum of interests are represented by the Stipulation.

Based on our review of the record in this case, it does not appear that there is any question that the process in this matter was anything but fair. BHE, who chose to withdraw prior to the time of the filing of the Stipulation, has not raised any issues with regards to the process that led to Stipulation. We thus find the second criteria has also been satisfied in this matter.

Finally, we conclude that the Stipulation meets our third criteria for approval as the results of the Stipulation are reasonable, in the public interest and consistent with relevant legislative mandates. In this particular instance, the provisions of 35-A M.R.S.A. §708 require that in order to be approved, the proposed merger must be consistent with the interests of the utility's shareholders and ratepayers. We have held this test is satisfied if the total benefits flowing from the merger are equal to or greater than the deterrents or risks for both ratepayers and shareholders. *CMP Group, Inc. et. al, Request for Approval of Reorganization and of Affiliated Interest Transaction*, Docket No. 99-411, Order at 4 (Jan. 4, 2000).

In the transaction before us, Iberdrola will be paying approximately \$1 billion above Energy East's market trading price at the time of announcement. Thus, the issue of whether the transaction is consistent with Energy East's shareholders' interests has clearly been satisfied and has not been a focus of this proceeding. Rather, the parties and our Staff have focused on the question of whether the risks of the proposed transaction to ratepayers are offset by the benefits of the transaction. We would note at the outset of our analysis that any merger carries with it a certain amount of risk. We find that Iberdrola's proposed acquisition of Energy East carries with it the additional risks associated with the Maine utilities we regulate not only becoming a very small part of a very large corporate entity but also becoming part of a very large foreign corporate entity with significant generation holdings whose operations may not always be obvious to U.S. regulators. We conclude, however, that through the numerous conditions set out in paragraphs 2 through 59 of the Stipulation, the parties have provided a package of benefits to CMP and MNG's ratepayers which, at a minimum, offsets the risks associated with the transaction.

In reaching this conclusion, we would first note that CMP and MNG agree that they will not seek recovery of the acquisition premium being paid by Iberdrola in the proposed merger nor will they seek recovery of any of the transaction costs, including legal fees, severance costs or change of control payments resulting from the transaction. The Stipulation also contains a number of financial reporting, financial separation and translation requirements, which will help ensure that CMP and MNG's financial operations are transparent to the Commission.

In addition to providing such protections, the Stipulation provides benefits to the Maine utilities' ratepayers through Energy East's agreement to forego recovery of the

current Energy East CMP acquisition premium in future revenue requirement calculations and through CMP's agreement to levelize the revenue requirement associated with its proposed Advanced Metering Infrastructure (AMI) investment and to forego the carrying charges on the deferred costs which are accrued under this mechanism. CMP also commits to work with our Staff and all interested parties to develop and implement one or more voluntary price-based customer demand response programs to take full advantage of the AMI technology and to propose any rate design changes necessary to implement such program(s). CMP and MNG also agree to provide detailed quarterly service quality reports with the Commission which will enable us to monitor service quality and help us to ensure that CMP and MNG's ratepayers receive safe, reasonable and adequate service after the merger.

As part of the Stipulation, the parties agree that the Commission's evaluation of the continued participation of Maine utilities in ISO-NE has demonstrated that certain current policies of ISO-NE are highly detrimental to Maine consumers. As such, the parties agree that within 60 and not more than 90 days following receipt of Commission approval of this Stipulation, CMP will initiate and the Commission will conduct a proceeding to determine, subject to any applicable legislative approval or review as may be necessary, if extension or renewal of the Transmission Owners Agreement is in the public interest. Pending the initiation and resolution of this proceeding, and any legislative approval or review to the extent necessary which may occur in 2008 or 2009, Iberdrola, Energy East and CMP agree to take no action with regard to CMP's position in any RTO, including whether to extend, consent to, amend, or renew or otherwise modify the terms of the ISO-NE Transmission Owners Agreement without explicit Commission approval. Upon issuance of a Commission order, and subject to any applicable legislative approval or review, as may be necessary, CMP will act in accordance with that order. CMP will not assert or seek federal preemption, such as FERC authority, to frustrate the Commission's action or subsequent order. Specifically, CMP, Iberdrola and any of its affiliates agree that (1) they will not appeal the Commission order on the basis that the Commission lacks the jurisdiction to issue its order or that the Commission lacks the authority to issue or enforce its order, including but not limited to, that the Commission is preempted by federal law from issuing or enforcing its order, and (2) pending the resolution of any such appeal, they will not seek to stay the effect of any such order and will take all steps required to effectuate the same, until and unless such order is overturned or modified by a court or body of competent jurisdiction.

Iberdrola and CMP also agree that neither CMP nor any other affiliate of Iberdrola will undertake any major upgrade to existing transmission infrastructure, or construction, management, ownership or operation of new transmission infrastructure in the State of Maine at or above 69kV in voltage or utilizing direct current without Commission approval. We find that the Stipulation's resolution of these jurisdictional issues, involving continued ISO-NE participation and transmission construction approval, provides significant benefits to CMP's ratepayers and to the citizens of the State of Maine.

Finally, we note that as part of the Stipulation, Iberdrola commits to make key decision makers responsible for policy, management and operations at CMP and MNG available to meet with the Commission upon request. We take this commitment seriously and intend to have such meetings with Iberdrola management on a regular basis following closing of the transaction.

For the reasons discussed above, as well as the other benefits in the Stipulation, including commitments on nuclear safety, competitive parity for generation services and commitments to support energy efficiency, we find that the benefits of the Stipulation offset the potential risks posed by the merger and thus conclude that the Stipulation satisfies all relevant legislative mandates in this case, and is otherwise reasonable and consistent with the public interest.

Accordingly, we

### O R D E R

1. That the Stipulation submitted to the Commission in this matter on January 10, 2008, a copy of which is attached as Appendix One, is approved;
2. That the acquisition of Energy East by Iberdrola, which constitutes a reorganization of Central Maine Power Company and Maine Natural Gas Company, is approved subject to the conditions set forth in the Stipulation; and
3. That pursuant to the terms of the Stipulation, conditions 24 through 26, 40 through 47, 50 and 51 through 56, shall be effective upon the date of this Order. In the event the proposed transaction is terminated or not consummated, conditions 51 through 56 shall be void and of no further effect. The remaining conditions of the Stipulation shall take effect upon closing the proposed transaction.

Dated at Augusta, Maine this 7th day of February, 2008.

BY ORDER OF THE COMMISSION

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Karen Geraghty  
Administrative Director

COMMISSIONERS VOTING FOR:     Adams  
  Reishus  
  Vafiades

**NOTICE OF RIGHTS TO REVIEW OR APPEAL**

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.