

121 FERC ¶ 61,236
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Energy East Corporation,
Iberdrola, S.A. and
Their Public Utility Affiliates

Docket No. EC07-122-000

ORDER AUTHORIZING MERGER AND DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued December 6, 2007)

1. Energy East Corporation, on behalf of itself and its public utility affiliates (collectively, Energy East), and Iberdrola, S.A., on behalf of itself and its public utility affiliates (collectively, Iberdrola), filed an application seeking authorization under section 203 of the Federal Power Act (FPA)¹ for the disposition of jurisdictional facilities resulting from a merger transaction. In the proposed transaction, Iberdrola will create a subsidiary, Green Acquisition Capital, Inc. (Green Acquisition), to merge with Energy East, resulting in Energy East becoming a direct, wholly-owned subsidiary of Iberdrola. The merger would result in the disposition of jurisdictional facilities by Energy East that include transmission facilities, wholesale power sales rate schedules and wholesale electric transmission rates and service schedules, and the associated books and records.
2. The Commission has reviewed the application under the Commission's Merger Policy Statement.² As discussed below, we will authorize the merger as consistent with the public interest.

¹ 16 U.S.C. § 824b (2000), *amended by* Energy Policy Act of 2005, Pub. L. No. 109-58, § 1289, 119 Stat. 594, 982-83 (2005) (EPAct 2005).

² *See Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement). *See also FPA Section 203 Supplemental Policy Statement*, 72 Fed. Reg. 42,277 (Aug. 2, 2007), FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement). *See also Revised Filing Requirements Under Part 33 of the*

(continued...)

I. Background

A. Description of the Parties

1. Energy East

3. Energy East is a public utility holding company with affiliates that are transmission-owning public utilities:

- a. New York State Electric & Gas Corporation (NYSEG) is a public utility that purchases, transmits, generates, distributes and sells electric power and natural gas. NYSEG's electric customers have the right under state law to choose an alternate supplier. NYSEG's transmission facilities are operated by the New York Independent System Operator, Inc. (NYISO); services and charges are governed by the NYISO Open Access Transmission Tariff (NYISO OATT).
- b. Rochester Gas and Electric Corporation (RG&E) is a public utility that purchases, generates, distributes and sells electric power and natural gas. Its electric customers have the right under state law to choose an alternate supplier. Its transmission facilities are operated by the NYISO; services and charges are governed by the NYISO OATT.
- c. Central Maine Power Company (CMP) is a public utility that transmits and distributes electricity to retail customers in Maine. CMP, along with its partially-owned subsidiary Maine Electric Power Company, Inc. (MEPCO), owns and operates a 345 kV bulk transmission network in Maine, discussed below. Additionally, CMP has lower voltage transmission facilities in Maine. ISO-New England, Inc. (ISO-NE) has operational control over the CMP transmission system, and the ISO-NE OATT governs the provision of transmission service and collection of transmission charges.

CMP is entitled to power under long-term contracts with non-utility generators and a contract with Entergy Nuclear Vermont Yankee, LLC. It also has an interest in three nuclear power companies that have been permanently shut down.

Commission's Regulations, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), order on reh'g, Order No. 642-A, 94 FERC ¶ 61,289 (2001). See also Transactions Subject to FPA Section 203, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), order on reh'g, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, order on reh'g, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

- d. MEPCO's only asset is a 182-mile, 345 kV transmission line. The operations and charges related to MEPCO's transmission system are governed by the ISO-NE OATT.

4. Energy East has several non-transmission owning public utility affiliates that own a generation facility, cogeneration facilities, and energy service companies that market electricity and natural gas to retail and wholesale customers. It also indirectly owns South Glens Falls, LLC, a public utility that is in bankruptcy and under the control of the bankruptcy trustee.

2. Iberdrola

5. Iberdrola is a Spanish utility holding company with interests in gas and electricity in 28 countries. The only public utility affiliates of Iberdrola in the United States are non-transmission owning generation project companies and marketers with market-based rate authority. Iberdrola is not affiliated with any franchised public utility and holds only *de minimis* generation interests in the geographic markets where Energy East operates. Iberdrola has an indirect, 100 percent interest in PPM Energy, Inc. (PPM Energy) and its subsidiaries, including various wind and thermal energy facilities; natural gas marketing, storage and hub services; and other energy services. The facilities are primarily located in California, Colorado, Iowa, Minnesota, and Oregon. One such subsidiary is Casselman Windpower LLC, which is constructing a 35 megawatt (MW) wind power project in Pennsylvania, in the PJM Interconnection L.L.C. (PJM) control area. PPM Energy and all of its subsidiaries are authorized to sell power at market-based rates.

6. In addition, Iberdrola holds indirect interests in the following public utilities through its wholly-owned subsidiary Iberdrola Energias Renovables SAU:

- a. Locust Ridge Wind Farm, LLC (Locust Ridge) owns and operates a 26 MW wind electric generating facility in east central Pennsylvania. Locust Ridge is authorized to sell power at market-based rates.
- b. Northern Iowa Windpower is developing an 80 MW wind facility in Iowa. It is authorized to sell power at market-based rates.

B. Description of the Merger

7. In the proposed transaction, Iberdrola will create Green Acquisition, which will merge with and into Energy East, with Energy East as the surviving entity as a wholly-owned subsidiary of Iberdrola. Outstanding shares of Energy East not held by Energy East or Iberdrola or its subsidiaries will be cancelled; their holders will have the right to receive \$28.50 per share. The outstanding shares of Green Acquisition held by Energy East or Iberdrola will be converted into shares of Energy East, and Iberdrola will hold all of the stock of Energy East.

8. Iberdrola will pay approximately \$4.5 billion to acquire all of the common stock of Energy East, based upon the approximately 158 million Energy East shares outstanding as of June 25, 2007. Because Iberdrola has already raised the equity needed to close the proposed transaction in the capital markets, Applicants state that the transaction will not result in any increase in the debt of Energy East or Iberdrola, or any of their affiliates.

II. Notice of Filing and Responsive Pleadings

9. Notice of the application was published in the *Federal Register*, 72 Fed. Reg. 46,453 (2007), with interventions and protests due on or before September 17, 2007. AES Eastern Energy, LP (AES) and Independent Power Producers of New York, Inc. (IPPNY) filed timely motions to intervene and protests. Mr. James W. Hawkins filed comments on September 4, 2007. Senator Charles E. Schumer filed comments on September 18, 2007. On October 1, 2007, The New York Association of Public Power (NYAPP) filed a motion to intervene out of time but no comments. On October 2, 2007, Energy East and Iberdrola filed an answer to the AES and IPPNY protests.

III. Discussion

A. Procedural Issues

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,⁴ the Commission will grant NYAPP's unopposed, late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁵ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Applicants' answer because it has provided information that assisted us in our decision-making process. In addition, we consider the comments submitted by Senator Schumer and Mr. Hawkins as part of the record.

³ 18 C.F.R. § 385.214 (2007).

⁴ 18 C.F.R. § 385.214(d) (2007).

⁵ 18 C.F.R. § 385.213(a)(2) (2007).

B. Standard of Review under Section 203

12. Section 203(a)(4) requires the Commission to approve a merger if it determines that the merger will be consistent with the public interest. The Commission's analysis of whether a transaction will be consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.⁶ Section 203 also requires the Commission to find that the transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."⁷ The Commission's regulations establish verification and informational requirements for applicants that seek a determination that a transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.⁸

C. Analysis under Section 203

1. Effect on Competition – Horizontal Market Power

a. Applicants' Analysis

13. Applicants state that the proposed transaction will not harm competition. With respect to horizontal market power, Applicants state that the only geographic markets in which Energy East and Iberdrola both own or control generation facilities are NYISO, PJM, and ISO-NE. They contend that a competitive analysis screen is not required because their business transactions in these markets are *de minimis*.⁹ Nonetheless, Applicants calculate the change in market concentration resulting from a combination of Energy East's and Iberdrola's generation in NYISO, the only market in which Applicants own or control an arguably material amount of generation (3.7 percent of the NYISO market). Applicants state that the change in market concentration or HHI¹⁰ is 1 or 4

⁶ See Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

⁷ 16 U.S.C. § 824b(a)(4) (2000).

⁸ 18 C.F.R. § 33.2(j) (2007).

⁹ Application at 39.

¹⁰ The Herfindahl-Hirschman Index (HHI) is a widely accepted measure of market concentration, calculated by squaring the market share of each firm competing in the market and summing the results. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Markets in which the HHI is less than 1,000 points are considered unconcentrated; markets in which the HHI is greater than or equal to 1,000 but less than 1,800 points are considered

(continued...)

points, depending on the generation rating used.¹¹ Applicants state that this is well below any threshold that indicates a competitive concern. Thus, because the extent of their business transactions in the relevant geographic markets is *de minimis*, the merger does not raise horizontal market power concerns.

b. Commission Determination

14. We find that the proposed transaction does not raise horizontal market power concerns. Applicants have demonstrated that the effect of combining their operations in the relevant geographic markets—NYISO, PJM, and ISO-NE—is *de minimis*. Therefore, the merger will not eliminate a competitor or materially increase market concentration in the relevant markets.

2. Effect on Competition – Vertical Market Power

a. Applicants’ Analysis

15. Applicants assert that the transaction does not raise any vertical market power concerns. They state that there are no transmission market power concerns because Iberdrola does not own any transmission facilities other than those necessary to connect to the electricity grid, and Energy East’s transmission assets are operated by NYISO and ISO-NE.¹² Applicants state that the merger will not result in control of any equipment suppliers or facilities used to transport fuels or other inputs to generation. Energy East has affiliated natural gas local distribution companies (LDCs) that operate in the Northeast, but none of its affiliates own major interstate or intrastate gas transmission pipelines. Because the generating facilities owned or controlled by Iberdrola in the Northeast are wind generators, none take delivery of natural gas from Energy East. Thus, Applicants contend that Iberdrola cannot use Energy East’s affiliated LDC to either favor its own generation or to disadvantage rivals.¹³ Applicants assert that the merger will not

moderately concentrated; and markets where the HHI is greater than or equal to 1,800 points are considered highly concentrated. The Commission has adopted the Federal Trade Commission/Department of Justice Horizontal Merger Guidelines, which state that in a horizontal merger, an increase of more than 50 HHI in a highly concentrated market or an increase of 100 HHI in a moderately concentrated market fails its screen and warrants further review. U.S. Department of Justice and Federal Trade Commission, *Horizontal Merger Guidelines*, 57 Fed. Reg. 41,552 (1992), *revised*, 4 Trade Reg. Rep (CCH) ¶ 13,104 (April 8, 1997).

¹¹ Applicants state that the difference reflects the use of both nameplate rating (1 point) and summer rating (4 points) to calculate the change in HHI.

¹² Appendix J at 23.

¹³ *Id.*

create barriers to entry for other suppliers through control of sites for new capacity development or control of fuel inputs to generation.¹⁴ Therefore, Applicants assert that the merger will not create or enhance vertical market power.

b. Protests and Comments

16. IPPNY and AES argue that the merger does raise vertical market power concerns in New York. They argue that Applicants will have the incentive and ability to exercise vertical market power by using their transmission holdings to favor their affiliated generation over other generation.¹⁵ IPPNY and AES therefore urge the Commission to impose mitigation measures.¹⁶

17. IPPNY argues that while vertical market power is not typically a concern where a utility's transmission system is controlled by an independent system operator, there are unique circumstances in this case. There are over 5,000 MWs of proposed wind energy projects in NYISO's interconnection queue, which creates a very competitive playing field on which developers of new generation are battling over scarce interconnection points and transmission capacity. IPPNY states that Iberdrola is a major player in the development of wind energy projects in New York and that any competitive advantage Iberdrola has could determine which projects are built.¹⁷

18. AES argues that Applicants' vertical market power analysis does not factor in Iberdrola's strategic plans to add generation in New York State, nor does it adequately assess the potential for the merged company to erect barriers to entry.¹⁸ Iberdrola's statements and actions demonstrate that it does not intend to maintain the separation of the ownership of generation from the ownership of transmission that generally exists throughout New York State. AES also notes that Iberdrola's recent acquisition of PPM Energy indicates that it intends to expand its generation holdings in the same markets as those in which it proposes to own and operate transmission and distribution facilities. Further, AES states that the vertical market power analysis fails to reflect the fact that Iberdrola will own a potentially re-powered Russell Station.¹⁹

¹⁴ *Id.* at 24-25.

¹⁵ IPPNY Protest at 2; AES Comments at 5.

¹⁶ IPPNY Protest at 1; AES Comments at 7.

¹⁷ IPPNY Protest at 2-3.

¹⁸ AES Comments at 5-6.

¹⁹ AES Comments at 6.

19. Because Iberdrola focuses on adding new generation, AES argues that it could take coordinated actions to disadvantage the generating facilities of its competitors. While the NYISO controls the operation of the bulk power transmission system, NYSEG and RG&E maintain the transmission facilities and also operate and maintain their subtransmission systems. IPPNY and AES argue that, after the merger, Iberdrola could delay maintenance and/or capital projects needed to support the operations and deliverability of its competitors or could proceed with other projects that will benefit its own generation facilities. The Commission should impose mitigation measures to ensure that Iberdrola does not use its transmission holdings to favor its own generation subsidiaries.²⁰

c. Applicants' Answer

20. Applicants again note that NYISO controls the transmission facilities owned by Energy East and that transmission service is provided under NYISO's Commission-approved OATT. Moreover, Applicants state that no Iberdrola affiliate owns any transmission facilities other than those necessary to connect its generating facilities to the grid. Further, Applicants state that there are no other barriers to entry because Applicants and their affiliates do not have dominant control over generation sites, fuel inputs, or construction firms.²¹

21. Applicants assert that IPPNY and AES did not undertake a market analysis or provide a direct response to Applicants' market analysis to support their claim that NYSEG and RG&E will be able to favor their affiliated generation in New York after the merger occurs. They argue that IPPNY and AES are not clear as to how such undue preference could occur in light of the Commission's open access and affiliate code of conduct regulations, policies and precedent which, as applied in New York, prevent the exercise of vertical market power by transmission owners.²²

22. Regarding IPPNY's assertion that the merged company will have incentive to favor the interconnection of Iberdrola's wind generators in New York over competing wind generators, Applicants note that the Commission's regulations require that a regional transmission organization, such as NYISO, "must have the authority to review and approve requests for new interconnections."²³ They state that the Commission requires the NYISO to adhere to the standardized interconnection terms and conditions in its OATT and obligates all jurisdictional transmission owners in New York to comply

²⁰ IPPNY Protest at 3; AES Comments at 7.

²¹ Applicants' Answer at 3-4.

²² *Id.* at 4.

²³ *Id.* at 5, citing 18 C.F.R. § 35.34(k)(1)(i) (2007).

with the Large Generator Interconnection Procedures. They further state that the Commission has concluded that such a “standard set of procedures as part of the OATT for all jurisdictional transmission facilities will minimize opportunities for undue discrimination and expedite the development of new generation, while protecting reliability and ensuring that rates are just and reasonable.”²⁴

d. Commission Determination

23. In mergers combining electric generation assets with inputs to generating power (such as natural gas, transmission, or fuel), competition can be harmed if a merger increases the merged firm’s ability or incentive to exercise vertical market power in wholesale electricity markets. For example, by denying rival firms access to inputs or by raising their input costs, a merged firm could impede entry of new competitors or inhibit existing competitors’ ability to undercut an attempted price increase in the downstream wholesale electricity market. Here, as discussed below, Applicants have shown that the proposed transaction does not raise any of these concerns.

24. Applicants have shown that the proposed combination of electric transmission and generation assets will not harm competition. We reject IPPNY’s and AES’s assertions that the merger would create vertical market power because Applicants will be able to use their transmission to favor their affiliated generation over other competitive generation. Turning over operational control of transmission facilities to an independent entity mitigates any concerns about transmission-related vertical market power because it eliminates a company’s ability to use its transmission system to harm competition. In a number of cases, we have stated that both the ability and incentive to exercise vertical market power are necessary for a merger to harm competition.²⁵ Here, Energy East has turned over control of its transmission facilities to two independent entities – NYISO and ISO-NE – so it has no ability to use its transmission to disadvantage its competitors. Moreover, Iberdrola has no transmission facilities other than those needed to connect to the transmission grid. Therefore, there is no need to impose vertical market power mitigation.

²⁴ *Id.* at 5, citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 11 (2003), *order on reh’g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh’g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh’g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff’d sub nom. Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

²⁵ *See, e.g., National Grid plc and KeySpan Corp.*, 117 FERC ¶ 61,080, at P 45 (2006) (*National Grid*); *American Electric Power Co.*, 90 FERC ¶ 61,242, at 61,788 (2000), *review denied sub nom. Wabash Valley Power Assn. v. FERC*, 268 F.3d 1105 (D.C. Cir. 2001). *See also* Order No. 642 at 31,911.

25. We are not persuaded by IPPNY's assertion that, after the merger, Iberdrola's wind generators will have a competitive advantage in terms of interconnection in New York over competing wind generators. As noted by Applicants, the Commission requires the NYISO to adhere to the standardized interconnection terms and conditions in its OATT and requires all jurisdictional transmission owners in New York to comply with the Large Generator Interconnection Procedures. In addition, in Order No. 2003, the Commission concluded that such a "standard set of procedures as part of the OATT for all jurisdictional transmission facilities will minimize opportunities for undue discrimination and expedite the development of new generation."²⁶ Therefore, we conclude that the merger will not result in undue preference in terms of interconnection for Iberdrola's wind generation capacity.

26. Similarly, Applicants have shown that the combination of natural gas transportation and electric generation assets will not harm competition. Applicants will not be able to favor their own generation, raise rivals' costs, or otherwise disadvantage rivals because: (1) the generation they own or control in the relevant markets is *de minimis*, (2) all the generators Iberdrola has in the relevant markets are wind generators and thus do not use natural gas, and (3) none of the Energy East affiliates own major interstate or intrastate gas transmission pipelines.²⁷ Applicants have also shown that there are no other barriers to entry that would raise vertical market power concerns.

3. Effect on Rates

a. Applicants' Analysis

27. Applicants state that the merger will have no adverse effect on rates. They also commit to hold transmission and wholesale customers harmless from costs related to the transaction.²⁸ Applicants state that they are making the same commitment to the Connecticut Department of Public Utility Control, the Maine Public Utility Commission, the New Hampshire Public Utilities Commission, and the New York Public Service Commission with respect to retail customers. Moreover, Applicants note that the books and records requirement under the Public Utility Holding Company Act of 2005 (PUHCA 2005)²⁹ offers additional assurance that the Commission and applicable states

²⁶ Order No. 2003, FERC Stats. & Regs ¶ 31,146 at P 11.

²⁷ Application at 42.

²⁸ *Id.* at 43.

²⁹ Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 1261 et seq., 119 Stat. 594 (2005).

will be able to monitor the Applicants' compliance with their hold harmless commitment.³⁰

28. In addition, Applicants point out that Energy East's transmission assets are operated by NYISO and ISO-NE under Commission-approved OATTs. Further, the wholesale transmission rates of Energy East cannot be changed without making a filing under FPA section 205. Iberdrola does not own any transmission facilities other than those necessary to connect to the electric grid. Finally, Applicants note that the transaction will not have an "adverse effect on [their] sales pursuant to their respective market-based tariffs, because all such sales will continue to be made at market-based rates."³¹

b. Commission Determination

29. We accept Applicants' commitment to hold transmission and wholesale customers harmless from costs related to the transaction. We note that nothing in the application indicates that rates to customers will increase as a result of the transaction, and no customer argues otherwise. In addition, the Commission will be able to monitor the Applicants' hold harmless provision under the books and records provision of PUHCA 2005. Therefore, we find that the proposed transaction will not adversely affect rates.

4. Effect on Regulation

a. Applicants' Analysis

30. Applicants assert that the merger will not diminish the Commission's jurisdiction or affect the jurisdiction of state regulatory authorities.³² Applicants also note that the books and records requirements of PUHCA 2005 will make documents available to state commissions that have regulatory jurisdiction over retail rates.

b. Commission Determination

31. We find that neither state nor federal regulation will be impaired by the proposed merger. The Commission's review of a merger's effect on regulation is focused on ensuring that the merger does not result in a regulatory gap at the federal or state level.³³ We find that the merger will not create a regulatory gap at the federal level, because the Commission will retain its regulatory authority over the merged companies. In the

³⁰ Application at 43-44.

³¹ *Id.* at 43 n.131.

³² Application at 44.

³³ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

Merger Policy Statement, the Commission stated that it ordinarily will not set the issue of the effect of a merger on state regulatory authority for a trial-type hearing where a state has authority to act on a merger. However, if the state lacks this authority and raises concerns about the effect on regulation, the Commission stated that it may set the issue for hearing; and that it will address such circumstances on a case-by-case basis.³⁴ We note that no party alleges that regulation would be impaired by the proposed transaction, and no state commission has requested that the Commission address the issue of the effect on state regulation.

5. Cross-subsidization

a. Applicants' Analysis

32. Applicants assert that the proposed transaction will not result in, at the time of the proposed transaction or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. Applicants verify that the transaction will not result in: (i) any transfer of facilities between a traditional utility associate company that has captive customers or that owns or provides transmission service over jurisdictional facilities, and an associate company; (ii) any new issuances of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (iii) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (iv) any new affiliate contract between a non-utility company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA.³⁵ Further, Applicants and their affiliates disclose their existing pledges and encumbrances of utility assets, as required under Order No. 669-A and 18 C.F.R. § 33.2(j)(1).³⁶

b. Commission Determination

33. Based on the facts as presented in the application, we find that the transaction will not result in cross-subsidization, or the pledge or encumbrance of utility assets for the benefit of an associate company. We note that no party has argued otherwise.

³⁴ *Id.* at 30,125.

³⁵ *Id.* at 1-2.

³⁶ *Id.* at 10.

D. Other Considerations**1. Additional Comments**

34. Senator Schumer expresses concern that the purchase price paid by Iberdrola may require it to raise rates or make other changes that would affect service. In addition, Senator Schumer states that the Commission should consider Iberdrola's ability to meet the growing demand for power in the service areas covered by NYSEG and RG&E. Finally, Senator Schumer states that RG&E has announced plans to convert its coal-fired Russell Station power plant into a combined-cycle, natural gas facility. In light of those plans, he further states that the Commission should not "sign-off" on this merger unless Iberdrola makes a commitment to operate Russell Station as a natural gas facility, and not as a "clean coal" facility.

35. Mr. Hawkins raises concerns about ownership of Central Maine Power. He notes that the utility provides electricity to hospitals and vital emergency services and expresses concern that customer service could be affected by the proposed transaction.

2. Commission Determination

36. Regarding Senator Schumer's concern that the purchase price paid by Iberdrola may require it to raise rates or make other changes that would affect service, we note that, as discussed above, Applicants have committed not to seek recovery of any acquisition premium or costs incurred to consummate the merger from transmission customers or in wholesale cost-based rates. Consistent with Senator Schumer's statement that the merger also requires the approval of the New York Public Service Commission, we also note that the merger's possible effects on retail rates and service are a subject within the purview of state regulatory review.

37. Regarding Senator Schumer's comment that the Commission should consider Iberdrola's ability to meet the growing demand for power in the service areas covered by NYSEG and RG&E, it is important to recognize that this merger will not diminish Energy East's obligations to comply with either mandatory Reliability Standards that the Commission approves pursuant to section 215 of the FPA³⁷ or the transmission planning requirements that the Commission established in Order No. 890.³⁸ More generally, the

³⁷ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

³⁸ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007).

record before us provides no basis for concluding that the merger will make Energy East less able or willing to meet growing demands for power or to otherwise provide adequate service, including the type of customer service that Mr. Hawkins discussed in his comments.

38. Senator Schumer also states that the Commission should condition approval of this merger on a commitment from Iberdrola to operate Russell Station as a natural gas facility, and not as a “clean coal” facility. As an initial matter, we note that the Commission does not ordinarily consider the potential environmental effects of proposed transactions under section 203 of the FPA, and that these issues are subject to the purview of other regulatory authorities. In this case, a decision concerning fuel usage at the Russell Station is not related to the proposed merger.

The Commission orders:

(A) The proposed merger and disposition of jurisdictional facilities is hereby authorized, as discussed in the body of this order.

(B) Applicants must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in granting the application.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Applicants shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the proposed merger.

(G) The Commission will hold Applicants to their commitment to hold transmission and wholesale power customers harmless for costs related to consummation of the transaction.

(H) Energy East and Iberdrola shall submit their final accounting entries to the Commission within six months after the date on which the merger is consummated. The accounting submission shall provide: (1) all accounting entries necessary to effect the

merger, along with narrative explanations describing the basis for the entries; and (2) an explanation of the accounting for the acquisition premium.

(I) Applicants shall notify the Commission within 10 days of the date that the merger and disposition of jurisdictional facilities have been consummated.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.