

January 6, 2014

**VIA ELECTRONIC FILING**

Hon. Kathleen H. Burgess  
Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223-1350

Re: Case 13-M-0483 – Proceeding on Motion of the Commission as to the Practices, Arrangements and Contracts for the Provision of Services by Iberdrola Energy Projects, Inc. to Public Utility Company Affiliates

Dear Secretary Burgess:

Multiple Intervenors, an unincorporated association of over 55 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, including the New York State Electric & Gas Corporation (“NYSEG”) and Rochester Gas and Electric Corporation (“RG&E”; collectively, the “Utilities”) service territories, hereby submits its *Comments* pursuant to the “Order Instituting Proceeding” (“Instituting Order”) issued by the New York State Public Service Commission (“Commission”) in the above-referenced proceeding on November 5, 2013.<sup>1</sup> Multiple Intervenors’ Comments also are submitted pursuant to the *Notice of Proposed Rule Making* published in the November 20, 2013 issue of the New York State Register (I.D. No. PSC-47-13-00012-P).

The Commission instituted Case 13-M-0483 to examine issues that were left unresolved in Case 13-M-0066, which considered certain elements of a global corporate reorganization proposed

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<sup>1</sup> Case 13-M-0483, *Proceeding on Motion of the Commission as to the Practices, Arrangements and Contracts for the Provision of Services by Iberdrola Energy Projects, Inc. to Public Utility Company Affiliates*.

by Iberdrola, S.A. (“Iberdrola”), the ultimate corporate parent of the Utilities.<sup>2</sup> The Commission noted that serious questions had been raised regarding the contractual arrangements between the Utilities and Iberdrola Engineering Projects, Inc. (“IEP”), an affiliated utility service provider that participates in the competitive market. (Reorganization Order at 38-39.) The Commission concluded that the Utilities may have paid IEP more for certain projects than it would have cost NYSEG or RG&E employees to complete the same tasks, and that IEP may have manipulated the Commission-approved rules (*i.e.*, the Code of Conduct) governing the pricing of IEP services in order to maximize potential profit. (*Id.* at 40-42.) The Commission determined that these issues should be examined further, and instituted this proceeding to determine whether: (a) IEP services are cost-effective and beneficial to customers; (b) the Code of Conduct should be modified; and (c) the Utilities’ existing contracts with IEP should be modified or disapproved. (Instituting Order at 1-2.)

The Utilities submitted a Response to the Instituting Order on December 6, 2013. The Utilities argued that their relationships with IEP are fully compliant with the Code of Conduct, transparent to the Commission, and benefit customers. The Utilities further asserted that (i) there is no need to modify the Code of Conduct or existing IEP contracts, (ii) they are adequately staffed, and (iii) they have a reasonable process of allocating work to internal and external resources.

The issues identified in the Reorganization and Instituting Orders are of significant concern to Multiple Intervenors and, presumably, customers in general. The cost of utility delivery service may have been inflated unnecessarily if the Code of Conduct was not followed, if the terms of the Code of Conduct failed to capture the synergies that should be associated with the procurement of services from an affiliate, and/or if IEP’s services simply are not cost-effective. Multiple Intervenors also is troubled by the suggestion that the numbers and/or skills of employees at NYSEG and RG&E may be declining to levels that raise concerns regarding the Utilities’ ability to continue providing safe and reliable delivery service. Resolution of these issues could have far-reaching impacts on the cost and the quality of utility service provided by NYSEG and RG&E, and may warrant remedial action in the form of, *inter alia*, customer refunds, adjustments to the Utilities’ staffing levels, or changes to existing IEP contracts. Importantly, neither the Response, Reorganization Order, Instituting Order, or Notice of Proposed Rule Making included the information necessary to support a reasoned resolution of these issues.

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<sup>2</sup> See also Cases 12-M-0066 *et al.*, *Petition of New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, RGS Energy Group, Inc., Iberdrola USA Networks, Iberdrola USA, Inc., and Iberdrola Finance UK Limited for Approval of an Internal Reorganization Pursuant to Section 70 of the Public Service Law*, Order Adopting Staff Report and Approving Reorganization, Subject to Conditions as Modified and Clarified, and Making Findings on Management Audit Compliance (issued November 5, 2013) (“Reorganization Order”) at 45-46.

Multiple Intervenors submits that it would be preferable for the Commission to resolve these issues via a process that fully develops the record necessary to support examination of the Utilities' staffing levels and relationships with IEP. Notably, the Utilities may file electric and/or gas delivery rate cases sometime in 2014, possibly early in the year. Given that delivery rate proceedings involve a comprehensive analysis of a utility's costs, revenues, and practices, and allow for discovery and the development of a record on all issues in dispute, the rate proceedings seemingly represent a more appropriate forum in which to examine and resolve the issues specified for consideration in this proceeding. Accordingly, the Commission should direct the Utilities to include in such filings the detailed information and analyses necessary to support an examination of the issues identified in the Instituting Order. If, *arguendo*, the Utilities do not file delivery rate cases in early 2014, then the Commission should: (a) direct the Utilities to file during the first quarter of 2014 detailed information and analyses to support the comprehensive examination of these issues; and (b) establish a process for discovery and briefing of the issues.

Respectfully submitted,

COUCH WHITE, LLP

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