

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2024-00117

August 26, 2024

CENTRAL MAINE POWER, MAINE  
NATURAL GAS, and Avangrid, Inc.  
Request for Section 708 Exemption or  
Approval of Reorganization

EXAMINERS' REPORT

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**Note: This Examiners' Report is written in the form of a Commission order but is the Staff's recommendation. Parties may file exceptions to this Examiner's Report by September 3, 2024, for the Commission's consideration.**

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## I. SUMMARY

This proceeding involves a request for an exemption from the requirements of 35-A M.R.S. § 708, or, in the alternative, an approval of the at-issue transaction under that provision. The Hearing Examiners asked for briefing on two potentially threshold legal issues that, if decided now, may limit the cost and expense of this proceeding or may narrow the issues for discovery. Those questions are: (1) whether the Commission should exempt from Commission approval the Section 708 reorganizations associated with the at-issue transaction (described below); and (2) if not exempted, whether the “no net harm” or the “net benefits” legal standard of 35-A M.R.S. § 708 applies to the at-issue transaction. The Parties were given the opportunity to brief the issues and a review of their arguments as well as a legal analysis is provided below.

As to Issue 1—whether the Commission should grant an exemption—under Section 708, the Commission has express authority to exempt a reorganization from the approval requirements of the statute by rule or order. On this issue, the Commission

concludes that, given the unique circumstances of the proposed reorganization, an exemption is warranted.

As to Issue 2—whether the “net benefits” or “no net harms” standard applies to the Transaction—if the Commission were to determine that the reorganizations are not exempt, then based on the plain language of Section 708(2)(A), the Commission concludes that the no net harm test applies.

## **II. BACKGROUND**

On May 31, 2024, Central Maine Power Company (CMP), Maine Natural Gas Corporation (MNG), and Avangrid, Inc. (Avangrid) (collectively, the Petitioners) filed a petition with the Commission (the Petition) requesting either an exemption from the approval requirements of 35-A M.R.S. § 708 for a change in ownership of a minority share of the voting securities of Avangrid or, in the alternative, approval of the proposed transaction (described below).

Iberdrola S.A. (Iberdrola) owns approximately 81.6% of the voting shares of Avangrid, which is the parent company of CMP and MNG. Through the proposed transaction, Iberdrola would acquire the remaining common shares of Avangrid (approximately 18.4%), resulting in Iberdrola becoming the sole owner of Avangrid (the Transaction).

The Office of the Public Advocate (OPA), International Brotherhood of Electrical Workers 1837 (IBEW), Natural Resources Council of Maine (NRCM), and Our Power intervened in the proceeding. On July 23, 2024, the Hearing Examiners issued a procedural order directing the parties to brief the following two legal issues: (1) whether the Commission should exempt from Commission approval the Section 708

reorganizations associated with the Transaction; and (2) if not exempted, whether the “no net harm” or the “net benefits” legal standard of 35-A M.R.S. § 708 applies to the Transaction. Petitioners, NRCM, the OPA, and Our Power filed briefs on August 12, 2024, and Petitioners, the OPA, and Our Power submitted their reply briefs on August 19, 2024. IBEW did not file any briefs. In this order, the “Parties” refers to Petitioners, the OPA, Our Power, and NRCM.

### III. PARTIES' ARGUMENTS

#### A. Central Maine Power Company

Issue 1 (Exemption). The Petitioners seek an exemption of Section 708's approval requirements. In support of that request, the Petitioners point to various standards the Commission has applied in the past when granting an exemption and assert that any of these standards could be applied here to support an exemption in this case. Specifically, the Petitioners highlight that the Commission has granted exemptions: (1) “upon a finding that the utility's customers and the service provided to them are not directly affected by the proposed reorganization”; (2) “upon findings that the proposed affiliated interest transactions had no direct financial or operational impact on Maine regulated utilities”; (3) upon a determination “that the reorganization is functionally remote and does not affect the Maine public utility”; or (4) upon a determination that there is no reason to believe that the reorganization would have an “adverse effect on [the utility's] shareholders, credit, or its ability to attract capital or provide service to Maine.” Pet'rs' Br. at 11-12 (collecting cases).

Thus, the Petitioners argue that the Commission should exempt the Transaction because: (1) the Transaction “closely resembles” the type of transactions for which the

Commission granted a “blanket” exemption in 2001 (the Restructuring Order); (2) the Commission previously approved Iberdrola’s 100% ownership of CMP and MNG (*id.* 3-4 (citing the Commission’s approval of Iberdrola’s purchase of 100% of Energy East’s interest in CMP and MNG)<sup>1</sup>; and (3) the Transaction “will not have a direct financial or operational impact” on CMP and MNG (*id.* at 14-17). As to this last argument, the Petitioners claim the Transaction will not cause any adverse impact on CMP’s or MNG’s “customers, credit, or their ability to attract capital or to provide safe, reasonable and adequate service in Maine” (*id.* at 14-17) because the Transaction merely increases Iberdrola’s existing supermajority (81.6%) ownership to 100% without any change in how the business is run on a local level. For example, according to the Petitioners, neither the executive and management teams nor the existing affiliated interests doing business in Maine will change. Furthermore, the Petitioners assert that the Transaction would not impact customer rates because rates will not include Transaction-related costs or an acquisition premium. *Id.* at 14. Based on these reasons, the Petitioners argue the Commission can and should exempt the Transaction from Section 708 approval requirements.

*Issue 2 (Applicable Standard)*. If the Commission opts to not exempt the Transaction, the Petitioners request the Commission to apply a “no net harm” standard to this proceeding. The Petitioners rely on the plain meaning of Section 708, noting that Section 708 requires a reorganization to include both a transfer of ownership and a

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<sup>1</sup> Petitioners note that the conditions imposed by the Commission in 2008 when it approved Iberdrola’s acquisition of 100% of the voting securities of Energy East Corporation (Energy East), the then indirect owner of CMP and MNG, will continue to be binding and remain in effect. See *id.* 18.

transfer of control to trigger the net benefits standard under Section 708. *Id.* at 19-23. Even though the Commission does not need to look any further than the plain meaning of unambiguous statutory language, the Petitioners suggest the legislative history of the 2019 amendment to Section 708 supports their position. *Id.* at 21-22. The Petitioners argue that, because Iberdrola has controlled the Petitioners since its 2008 indirect acquisition of CMP and MNG and will continue to do so (albeit as the sole owner rather than the supermajority owner), Section 708's "net benefits" test cannot apply because the Transaction does not involve a transfer of control over the Petitioners. Petition at 22-23.

B. Office of the Public Advocate

The OPA recommends that the Commission decline to exempt the Transaction from Section 708 approval and reserve the question of the applicable legal standard until the end of the case so it can decide the issue on a complete record.<sup>2</sup>

Issue #1 (Exemption). The OPA asks the Commission to deny the Petitioners' request for an exemption.

As to the standard for granting an exemption, the OPA acknowledges that Section 708 does not include a legal standard and instead recommends the Commission review prior rulings to determine the appropriate guardrails for an exemption determination. For example, the OPA cautions that "the Commission has exercised its exemption authority carefully." OPA Br. at 2 (citing *Central Maine Power Co., et al., Request for Waiver From the Reorganization Approval Requirements in 35-A*

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<sup>2</sup> If the Commission chooses to decide both questions now, the OPA recommends the Commission find that the net benefits test applies to the proposed transaction.

§ 708, Docket No. 2001-00447 Order at 6 (Dec. 20, 2001) (emphasizing the need to retain jurisdiction over reorganizations that “may financially or operationally impact affiliate Maine public utilities.”); *Pub. Ser. Co. of New Hampshire*, Docket No. 2010-00395 Order at 1, 6-7 (May 11, 2011) (declining to grant an exemption even though the utility owned just four transmission lines in Maine)). Next, the OPA argues that exempting a transaction “involving a parent of a Maine utility” is “almost never appropriate.” OPA Br. at 2 (citing *Bangor Gas Company, LLC, Request for Exemption from Reorganization Approval Requirements of 35-A M.R.S. § 708*, Docket No. 2008-00271 Order at 1 (July 14, 2009); *Maine Public Service Company, Request for Approval of Organization or Waiver of Section 708(2)*, Docket No. 2008-00390, Order at 5 (Dec. 17, 2008)). Instead, the OPA suggests that exemptions should be limited to transactions involving “distant affiliates” in which “there are no potential consequences for Maine ratepayers.” OPA Br. at 2.

Applying these principles, the OPA suggests that an exemption is not appropriate here because the Transaction involves the reorganization of a direct parent—not a distant company—and the question of whether there is a potential harm to ratepayers<sup>3</sup> is a fact question that can only be resolved after weighing the evidence. Thus, the OPA requests the Commission deny the exemption so it may develop a record to gain clarity about how the Transaction will impact ratepayers.

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<sup>3</sup> The OPA suggests that the potential harm to Maine ratepayers is the alleged lack of transparency resulting from Avangrid no longer be a publicly traded company. See Pet. Br. at 3.

Issue 2 (Applicable Standard). The OPA disagrees with the Petitioners' argument that the Transaction does not involve a "transfer of...control" of Avangrid. Instead, the OPA suggests that, like ownership, there are "gradations of control." OPA Br. at 4. The OPA further argues that there is a factual dispute regarding the Petitioners' claim that Iberdrola's shift from 81.6% ownership to 100% ownership would not result in the transfer of some degree of control, further underscoring the need to develop an evidentiary record prior to determining which standard applies. OPA Br. At 4.

Alternatively, the OPA contends that, if the Commission is inclined to decide which standard applies now, then the OPA recommends the application of the "net benefits" standard. The OPA cautions that "Iberdrola does not seek to increase its ownership interest in Avangrid merely as a passive investment but to consolidate its *control* over the company so that it has unfettered ability to pursue investment opportunities." OPA Br. at 6 (emphasis added). The OPA emphasizes that

[t]here is a difference in kind, not just degree, in 100% ownership of a privately held company versus majority, or even supermajority, ownership of a publicly traded corporation with minority shareholders. Inherently, a greater degree of control is held by the single owner of a private corporation because of a lack of constraints over that control. By contrast, minority shareholders have rights, and the rights of Avangrid's minority shareholders are protected in part by a 2015 shareholder agreement.

*Id.* The OPA raises the concern that, after the Transaction, "there will be no check on Iberdrola's control of Avangrid." *Id.* Accordingly, the OPA asserts that there is sufficient reason to believe that the Transaction will result in a "change in control" sufficient to give rise to Section 708's "net benefits" standard.

C. Our Power

Issue 1 (Exemption). Our Power also requests that the Commission deny an exemption. Our Power emphasizes that circumstances have changed since the Commission's prior approval of this corporate structure in 2008, suggesting that such an exemption would ignore changed circumstances over the last sixteen years, and the potential harm to Maine customers. Our Power points to various perceived wrongs and shortcomings of CMP since 2008 and, by extension, Avangrid over the last sixteen years, and Our Power blames Iberdrola, characterizing it as a financially motivated, remote owner with little regard for the local concerns of Maine's ratepayers. See Our Power Br. at 9-12. Our Power cautions that, given this history, it would be arbitrary and capricious for the Commission to grant an exemption.

Issue 2 (Applicable Standard). Our Power agrees with the OPA that the Transaction would result in a "change of control" sufficient to trigger the "net benefits" standard of Section 708. Our Power Br. at 9. In addition to the OPA's reliance on the concept of "gradation of control," Our Power emphasizes the fundamental difference in control that a majority shareholder has in a publicly traded company compared to the type of control enjoyed by a wholly owned, private company. Our Power stresses:

[F]ollowing the acquisition of the last outstanding publicly owned share of Avangrid, Iberdrola is no longer required to report anything about its operation of Avangrid to anybody, and there are no minority shareholders out there to keep Iberdrola honest in its dealing with its daughter and her local utility progeny. This is an entirely different form and degree of "control" than the level of control that Iberdrola is presently able to exercise as a publicly owned corporation under the oversight of the SEC and with minority shareholders seeking to protect their interest.



Our Power Br. at 10. According to Our Power, this change from public to private eliminates the role of the Commission's "allies," such as minority shareholders and federal securities regulators, and thus, will make it "markedly more difficult for this Commission, unaided, to effectively control the kinds of corporate shenanigans with which we are all too familiar." *Id.* at 10-11. Thus, Our Power asserts, the "change of control" contemplated by the Transaction—*i.e.*, a transfer from public to private—is the kind of change for which Section 708 requires a "net benefits" test.

D. Natural Resources Council of Maine<sup>4</sup>

Issue 1 (Exemption). NRCM also opposes an exemption. NRCM encourages the Commission to avoid simply "reverting" to its prior approval of 100% ownership by Iberdrola sixteen years ago in 2008, emphasizing that it would ignore the current legal and factual context of the Petitioners' request. NRCM Br. at 17. NRCM points to the fact that the Legislature has amended Section 708 five times since 2008 as well as "fundamentally modified the purpose of the Public Utilities Commission in section 101 to include reducing greenhouse gas emissions alongside its conventional responsibilities of ensuring safe and adequate service at just and reasonable rates." *Id.* NRCM also reminds the Commission of the political context in which this request for an exemption is made (*Id.* at 8-9), opining that the 2023 ballot initiative focused on local control of utilities demonstrates ratepayer concern for reducing foreign control of Maine's utilities. *Id.* Quoting the 2021 report by the Liberty Consulting Group on behalf of the

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<sup>4</sup> A substantial portion of NRCM's brief addresses whether Petitioners can satisfy the "net benefits" or "no net harms" standard. See NRCM Br. at 9-14, 16-17. Because these portions of NRCM's brief addresses factual issues not before the Commission at this time, they should not be considered.

Commission, NRCM highlights its concern about “a persistent and overarching focus from Spanish leadership on financial results...which came at the expense of an emphasis on improved operations, core to the utility business.” *Id.* at 9. NRCM cautions that, in this context, it would be inappropriate for the Commission to grant an exemption for a transaction that would strengthen Iberdrola’s control over Avangrid and thus exacerbate these issues.

Issue 2 (Applicable Standard). NRCM agrees with the OPA and Our Power that the Transaction should be construed as a “change of control” under Section 708 and thus the “net benefits” standard should apply. NRCM Br. at 15. Specifically, NRCM notes that:

There are governance structures, practices, and policies in place that assure minority shareholders can participate and have influence in internal corporate affairs and decision-making. By eliminating minority shareholders and consolidating 100% ownership under Iberdrola, this diversity of influences in corporate affairs and decision-making would also be eliminated. Minority shareholders provide a check on Iberdrola’s authority.

*Id.* 15-16.

#### **IV. DISCUSSION AND DECISION**

As requested, the parties briefed two legal issues: (1) whether the Commission should exempt from its approval the Section 708 reorganizations associated with the proposed transaction; and (2) if not exempted, whether the “no net harm” or the “net benefits” legal standard of 35-A M.R.S.A. § 708 applies to the proposed reorganizations. The first issue is addressed in Section IV(A), and the second issue is addressed in Section IV(B).

The Commission considers each of these issues to be questions of law. Thus, taking the facts as presented in the Petition—that the Transaction would change Iberdrola's ownership interest in Avangrid from 81.6% to 100%—these legal issues can be decided at this time. Both issues are addressed based on the Petitioners' initial pleadings and full consideration of the arguments presented in the Parties' briefs.

With respect to the first issue, an exemption will not be granted unless the undisputed facts in Petitioners' pleadings, on their face, warrant an exemption, and the Commission need not rely on disputed evidence.<sup>5</sup> However, if the Commission is satisfied that the Petitioners' initial pleadings demonstrate on their face that, as a legal matter, an exemption is warranted, then the Commission may exercise discretion to grant or deny an exemption.

The second issue presents a question of statutory interpretation, which may be decided based on: (1) a review of Section 708; (2) if ambiguous, the relevant legislative history; and (3) the arguments presented in the Parties' briefs.<sup>6</sup>

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<sup>5</sup> An exemption request must be capable of, although not necessarily, being decided in the initial stage/s of a case without an evidentiary record, otherwise an exemption is of little point if all parties would have to proceed with litigation in any event.

<sup>6</sup> The Commission notes that Our Power filed testimony of its expert witness, Mr. Scott Hempling, with its initial brief. The filing of such testimony was not permitted by the current case schedule, and Our Power did not seek leave to file such testimony. Consequently, given the nature of the legal issues presented, the Commission does not rely on Mr. Hempling's testimony in this order.

A. In this Unique Circumstance, the Commission Grants an Exemption

The Commission's practice has been to grant, through individual orders, "blanket exemptions" for certain utilities that proactively exempt specific categories of reorganizations from Section 708's reorganization approval requirements but to require Section 708 approval for other categories of reorganizations referred to as "restructurings." See e.g. *Bangor Hydro-Elec. Co., Request for Exemption (Limited Exemption) from Reorganization Approval Requirements*, Docket No. 2006-543, Order Approving Stipulation (Jan. 5, 2007). At times, the Commission has also granted specific exemptions for a specific reorganization when "consumers will not be adversely affected by [a] remote transfer of a portion of the minority interest among existing owners the nature of whose interest in [utility] stock is for investment purposes." See e.g. *Noverco Inc., Petition for Approval or Exemption of Reorganization of Portland Natural Gas Transmission System (35-A M.R.S. § 708)*, Docket No. 2011-00111, Order at 5 (May 4, 2011). At other times, rather than grant an exemption, the Commission has approved a reorganization on the merits when there has been a showing that consumers will not be adversely affected by a remote upstream reorganization. See e.g. *Pub. Serv. Co. of New Hampshire, Request for Waiver or for Approval of Reorganization*, Docket No. 2010-395, Order at 4-9 (May 11, 2011). Thus, the Commission applies different approaches to Section 708 exemptions on a case-by-case basis.<sup>7</sup>

The Petitioners concede that the proposed reorganizations are not already exempt under its existing blanket reorganization exemption because it is "restructuring". See Pet'ers' Br. at 13-14 (citing *Cent. Me. Power Co., et al., Request for Waiver from*

*the Reorganization Approval Requirements in 35-A M.R.S. § 708*, Docket No. 2001-00447, Order at 4 (Aug. 8, 2001)). The question then is whether the proposed reorganizations should now be exempted pursuant to Section 708(2)(A).<sup>8</sup> This case presents a relatively unique situation in which the currently proposed reorganizations would essentially reestablish the corporate organizational structure that was previously approved by the Commission, with numerous conditions of approval, in *Central Maine Power Company, Reorganization/Acquisition of Energy East Corporation and Iberdrola, S.A.*, Docket No. 2007-00355, Stipulation (Jan. 9, 2008). Specifically, the Commission's 2008 approval of Iberdrola's acquisition of CMP and MNG's then parent company, Energy East, resulted in Iberdrola indirectly owning 100% of the common shares of both CMP and MNG through its wholly-owned subsidiary, Iberdrola USA, Inc. Eventually, in 2015, Iberdrola USA, Inc. merged with UIL Holdings Corporation.<sup>9</sup> An effect of this merger was to dilute Iberdrola USA, Inc.'s 100% ownership of CMP and MNG to 81.6%. Now, the Petitioners seek to reestablish Iberdrola's 100% indirect ownership of CMP and MNG. In doing so, no new affiliates of CMP and MNG will be created.

This is a rare case in which the Commission has previously approved the very same corporate organizational structure that the Petitioners now propose. See *Cent.*

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<sup>7</sup> The Commission does not have a rule that addresses utility reorganizations and exemptions more globally across utilities.

<sup>8</sup> Section 708(2)(A) expressly permits the Commission to exempt reorganizations from its approval by either "rule or order of the Commission."

<sup>9</sup> CMP states that it did not seek approval of that reorganization because "no new affiliated interest was created, as no other person or entity acquired 10% or more of the voting securities of Avangrid. through the merger." Pet. Br. at 5, n. 13.

*Me. Power Co., Reorganization/Acquisition of Energy East Corp. and Iberdrola, S.A.*, Docket No. 2007-00355, Order Approving Stipulation (Feb. 7, 2008) (2008 Reorganization Order). That case was thoroughly litigated and resulted in the Commission's approval of a stipulation that contained 59 numbered conditions of approval. The stipulation was joined by nine parties (as well as CMP, MNG, and Iberdrola, S.A.).<sup>10</sup> Importantly, those conditions include both extensive reporting requirements and "ringfencing" conditions designed to protect the Maine utilities from the impact of financial harm that may be experienced by affiliates.

The reporting conditions include:

- **Books and Records:** The Commission will have access, in English and in Maine, to (a) the books/records of CMP and MNG, and (b) any books/records of IBERDROLA or any IBERDROLA affiliates that are related to CMP or MNG. The Commission will have access, in English and in Maine, to any minutes of the IBERDROLA Board of Directors, and any sub-committee thereof, to the extent that such minutes discuss Energy East, CMP or MNG. IBERDROLA also shall translate such other documents as the Commission determines to be reasonably necessary to fulfill its statutory duties. CMP Budgets: CMP agrees to file its annual capital budget and to explain any significant variances from the prior year's budget and spending levels.
- **Audit Reports:** The Commission will have access, in English and in Maine, to all internal and external audit reports and recommendations for CMP and MNG, and for any IBERDROLA affiliate with respect to the provision of goods and services for compensation to CMP or MNG.
- **Tax Returns:** All tax returns of CMP and MNG, and all consolidated US tax returns that include CMP or MNG, will be provided to the Commission.

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<sup>10</sup> In 2012, the Commission modified the 2008 stipulation conditions so that the expressly apply to Iberdrola Networks (now Avangrid Networks), as the immediate parent of both CMP and MNG. *Cent. Me. Power Co., Request for Approval of Reorganization Acquisition of Energy East Corp. and Iberdrola, S.A.*, Docket Nos. 2007-355 and 2012-93, Order **Corrected** at 5 (May 8, 2012).

- **Management Meetings:** 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.
- **SEC Reporting:** IBERDROLA's consolidated balance sheets, income statements and cash flow statements will be made available to the Commission, in English and in Maine, on an annual basis and in a format that is mutually agreed to between IBERDROLA and the Commission Staff. Audited financials will be in accordance with International Financial Reporting Standards ("IFRS"), consistent with SEC requirements. Additionally, IBERDROLA agrees to provide specific answers to particular questions raised by the Commission and its Staff with respect to IFRS.<sup>11</sup>
- **Material Adverse Rulings or Decisions:** IBERDROLA commits to notify the Commission of any final decision of an administrative agency, court or regulatory authority, notwithstanding any appeal, that finds that IBERDROLA or any IBERDROLA subsidiary has violated a law, rule or regulation that either results in a criminal conviction, or results in a penalty assessed in excess of 5 million Euros per event, and to provide a translation to English of the decision within thirty days following the issuance of such decision.
- In addition to the above requirements, IBERDROLA also agrees to report to the Commission any final findings or decision by a regulatory agency or court, notwithstanding any appeal, of anti-competitive behavior committed by IBERDROLA in the United States.

The financial protections / ringfencing conditions include:

- **Credit Rating Maintenance:** IBERDROLA, Energy East and CMP will maintain credit ratings with at least two generally accepted ratings agencies (e.g., S&P and Moody's).
- **Credit Events:** If there is a "Credit Event" (defined as the downgrade of IBERDROLA's, Energy East's or CMP's credit rating below BBB-/Baa3, or credit rating of BBB-/Baa3 with a "Watch Negative", by at least two major credit reporting agencies (e.g., S&P and Moody's)), CMP and MNG will make a timely filing notifying the Commission of any such Credit Event and then periodic filings with the Commission, once every three months, identifying (i) the current credit rating during such Credit Event and (ii) a plan to remedy such Credit Event, until such Credit Event is eliminated.

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<sup>11</sup> Note that this condition provides information in lieu of SEC reporting. CMP and MNG's then parent, Energy East had reported to the SEC, but with Iberdrola's acquisition Energy East, SEC reporting terminated.

- **Rating Agency Presentations and Reports:** IBERDROLA, Energy East or CMP, as applicable, will provide the Commission on a confidential basis with copies of all slide presentations to credit ratings agencies relating to Energy East, as well as all rating agency reports relating to Energy East or any Energy East subsidiaries, on an on-going basis.
- **Cost of Debt Protections:** CMP and MNG ratepayers shall be held harmless for any increase in CMP's cost of debt caused by IBERDROLA's financial status. The Parties agree that, for ratemaking purposes, the Commission may impute a reasonable cost of debt that is based on CMP's stand-alone risk profile.
- **Dividend Policy:** CMP and MNG will maintain their respective dividend policies with due regard for the financial performance and needs of CMP and MNG, irrespective of the financial performance and needs of IBERDROLA. IBERDROLA will report to the Commission in the event that the dividend payout for any year is more than 100% of income available for dividends calculated on a two-year rolling (eight calendar quarter) average basis.
- **Acquisition Premium:** CMP and MNG will not seek recovery of the acquisition premium being paid by IBERDROLA in the Proposed Transaction, either directly or indirectly, from customers in any proceeding.
- **Transaction Costs:** CMP and MNG will not seek recovery in rates of any transaction costs for the Proposed Transaction in any proceeding. Transaction costs include investment bank fees, legal fees, transfer, or other taxes, severance or change of control related payments, incremental costs for stock options and restricted stock and any other costs incurred either to complete or as a result of the Proposed Transaction.
- **EC Tax Matters:** CMP and MNG ratepayers shall be held harmless from any negative financial impact to IBERDROLA that may arise from the EC decision regarding Spain's current goodwill tax amortization.
- **Minimum Common Equity Ratio:** CMP and MNG will at all times maintain common equity capital at levels equal to or greater than 40% of total adjusted capital (including common equity, preferred equity, long-term debt, short term debt, capitalized leases, Current Maturities of Long-Term Debt (CMLTD) and Current Maturities of Capitalized Long-Term Leases (CMLTL)). No equity distributions, whether by dividend or other form, will be allowed that would result in equity capital falling below the minimum level, without prior approval of the Commission. Notwithstanding the foregoing, CMP and MNG shall maintain the right to petition the Commission for an exception to this condition. One-time events, such as mandated changes in accounting, that



temporarily affect equity will be reported to the Commission and excluded from the common equity ratio calculation.

- **Adequate Liquidity:** CMP will maintain adequate cash and equivalents and availability in its utility-specific line of credit to meet the anticipated cash requirements of utility operation.
- **Separate Financing:** CMP's financing should be issued by the utility entity and should be used exclusively for utility operations; provided however, that other forms of financing for CMP may be utilized that the Commission determines acceptable.
- **Limitations on Developing New Joint Credit Facilities:** CMP will maintain independent and separate credit facilities from that of IBERDROLA or any affiliate. CMP will have separate credit facility solicitation processes and different lead syndication banks for CMP (on the one hand) and IBERDROLA and unregulated affiliates (on the other hand). Notwithstanding the foregoing, to the extent CMP presently maintains joint credit facilities, those existing credit facilities shall remain permissible.
- **Money Pool Participation:** CMP and MNG may participate in IBERDROLA money pools provided the other participants in such money pools are limited to regulated utility affiliates of IBERDROLA in the United States unless otherwise authorized by the Commission. IBERDROLA shall not borrow from utility money pools in which CMP or MNG are participants.
- **Bankruptcy Protection:** CMP and MNG will be protected from inclusion in any bankruptcy proceeding of IBERDROLA or any affiliate by specific structural and governance provisions. Within three months after the closing of the Proposed Transaction, CMP will submit to the Commission the specific bankruptcy protections that will be put in place to comply with this condition, for Commission review and approval if found in accordance with this provision.

These conditions, and others, continue to apply.<sup>12</sup> Given the extensive ratepayer protections already in place and that those conditions were designed to address a corporate organizational structure in which Iberdrola indirectly owned 100% of both CMP and MNG, the Commission does not see a compelling reason to effectively revisit

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<sup>12</sup> Over time, certain conditions have been modified and/or enhanced as appropriate, but those listed have not been materially modified.

the 2008 approval at this time because the Parties do not raise arguments that change the underlying legal or factual analysis. More specifically, the Commission addresses the two primary arguments against exemption: (1) that the elimination of Avangrid's minority shareholders would remove a minority influence or constraint on Iberdrola's actions, and (2) with Iberdrola's 100% ownership of Avangrid, Avangrid would no longer be required to file reports with the U.S. Securities and Exchange Commission (SEC) detailing its financial condition.

Regarding the elimination of Iberdrola's minority shareholders, in 2008 when the Commission approved Iberdrola's indirect acquisition of CMP and MNG, Avangrid had no minority shareholders. *See Cent. Me. Power Co., Request for Approval of Reorganization, Acquisition of Energy East Corp. and Iberdrola, S.A., Order Approving Stipulation, Docket No. 2007-355 (Jan. 7, 2008)* (approving Iberdrola's acquisition of 100% of Energy East's stock, making it no longer publicly traded). Although minority shareholders were subsequently introduced, the loss of minority shareholders does not represent a change vis-à-vis the Commission's 2008 approval. The Commission has approved reorganizations in which the intermediate parent owns 100% of the Maine utility with no minority shareholders (like Avangrid following the Transaction). *See e.g. Bangor Hydro-Elec. Co., MEPCO, Chester SVC P'shp, and Emera Inc., Request for Approval of Reorganization (Joint Petition), Docket No. 2000-663, Order Rejecting Revised Stipulation and Approving Original Stipulation (Jan. 5, 2001); Biddeford and Saco Water Co. and the Maine Water Co., Request for Approval of Reorganization Pertaining to Biddeford & Saco Water Company, Docket No. 2013-00447 (Dec. 3, 2013).*

Likewise, with respect to Avangrid's SEC reporting, following the Commission's approval of Iberdrola's indirect acquisition of CMP and MNG, SEC reporting terminated. Moreover, the Commission has approved other reorganizations that eliminated SEC reporting for the Maine utility itself. *Bangor Hydro Elec. Co., Me. Pub. Serv. Co., MEPCO, and Chester SVC P'shp, Request for Approval of Reorganization (35-A M.R.S. §§ 708 and 1103)*, Docket No. 2010-89, Order (Sept. 14, 2010).

The Parties opposing exemption do not address the numerous ratepayer protections adopted in 2008. Further, the suggestion that both the existence of minority shareholders and SEC reporting by upstream affiliates are requirements of Section 708 reorganizations would severely constrain the Commission's ability to approve reorganizations and is inconsistent with the plain language of Section 708, which requires neither.<sup>13</sup>

Our Power and NRCM appear to take the position that an investor-owned utility holding company structure is, in and of itself, adverse to the interests of CMP's and MNG's ratepayers. For example, NRCM states that "[c]orporate and foreign ownership of public utilities has been a longstanding concern for people in Maine." NRCM Br. at 8. However, that is an organizational structure that is permitted by Public Utility Holding Company Act and its corollary 35-A M.R.S. §§ 707 and 708. See 42 U.S.C.A. § 16451 *et. seq.* Further, re-litigating Iberdrola's initial indirect acquisition of CMP and MNG is not within the scope of this proceeding.

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Finally, the Commission rejects NRCM's argument that in granting an exemption the Commission would be abrogating its responsibility pursuant to 35-A M.R.S. § 103-A to facilitate the achievement of the State's greenhouse gas emission reductions. NRCM has not sufficiently alleged how the Transaction could have a direct and substantial impact on Maine's greenhouse gas emission goals.<sup>14</sup>

Thus, in this narrow circumstance, the Commission concludes that an exemption is warranted based on the Commission's prior approval of the corporate structure that Petitioners now seek to resurrect, and the plethora of conditions on that approval that remain in effect and continue to serve ratepayers' interests.<sup>15</sup>

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<sup>14</sup> For example, NRCM's argument that the New England Clean Energy Connect, a Avangrid project, does not address Maine's climate and clean energy laws, is belied by the Commission's finding that NECEC "will result in incremental hydroelectric generation" and that the "expert analyses provided in the record in this proceeding indicates that the GHG emission reductions in the region resulting from the NECEC would be in the range of 3.0 to 3.6 million metric tons per year." *Cent. Me. Power Co., Request for Approval of CPCN for the New England Clean Energy Connect Consisting of the Construction of a 1,200 MW HDVC Transmission Line from Quebec-Maine Border to Lewiston (NECEC) and Related Network Upgrades*, Docket No. 2017-00233, Order Granting CPCN and Approving Stipulation at 72 (May 3, 2019).

<sup>15</sup> Our Power and Mr. Hempling allege that a reorganization that has been undetected by the Commission and therefore not approved by the Commission occurred because of the Qatar Investment Authority's (Qatar) cumulative investment in Iberdrola. Our Power Br. at 8; Hempling Test. at 65-68. As noted above, this order does not rely on Mr. Hempling's testimony. However, the Commission notes that Our Power's argument on this point is unclear. Mr. Hempling's allegation is premised on the statement that Qatar "currently owns, indirectly, 8.71% of Iberdrola's outstanding shares," citing a website last visited on August 8, 2022. And then adds an additional investment by Qatar, to calculate a total of 10.8% of Qatar's indirect investment in the Maine utilities. Data from August of 2022 would not be sufficiently current to be reliable in this matter. Moreover, Petitioners dispute that Commission approval was required for the reorganizations associated with Qatar's investment. Pet'ers' Reply at 15, n. 13. Our Power's allegations, to the extent that they may prove true, are concerning. However, they are not within the scope of the instant proceeding. Moreover, the Commission has not penalized Maine

B. Absent an Exemption, the Appropriate Standard Under the Plain Language of Section 708(2)(A) is "No Net Harm"<sup>16</sup>

Alternatively, if an exemption were not warranted, the Commission must determine at some point in this proceeding which legal standard applies to its review of the Transaction, either the net benefits or the no net harm standard. The OPA argues that whether the net benefits or the no net harm test applies is a mixed question of law and fact that should not be decided until the record is complete. See OPA Br. at 3. The Commission, however, views the determination of the legal standard to be a question of law. Moreover, the Commission believes that the Parties will benefit from a threshold determination of the standard to guide discovery and the scope of the proceeding or similar proceedings.

The Commission's objective in construing a statute is to give effect to the Legislature's intent. The Commission begins its statutory analysis by considering the plain language of the statute. If the plain language is unambiguous, the Commission goes no further. See, e.g., *Klein v. Univ. of Me. System*, 2022 ME 17, ¶ 7, 271 A.3d 777, 780 (2022). The Commission may use dictionary definitions to inform the plain meaning of statutory language. E.g. *id.* at ¶ 11, 782. In examining the plain language, the Commission considers the entire statutory scheme to achieve a harmonious result.

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utilities in the past when a reorganization effectively occurs on the open market without the utilities' knowledge. *Me. Pub. Serv. Co., Request for Approval of Reorganization or Waiver of Section 708(2)*, No. 2008-390, Order Approving Reorganization and Granting Partial Waiver for Designated Future Reorganizations (Dec. 2, 2008). To the extent that an undetected statutory violation exists, that should be the subject of a separate proceeding.

<sup>16</sup> *Hearing Examiner Note*: If the Commission grants an exemption, then the Commission need not address the applicable legal standard.

*Id.* at ¶ 7, 780. If the statute is ambiguous, the Commission turns to the legislative history to inform its interpretation of ambiguous language. *Id.* As a general matter, the Commission should interpret statutory language to avoid absurd, illogical, or inconsistent results. *Jackson Lumber & Millwork Co. v. Rockwell Homes, LLC*, 2022 ME 4, ¶ 10, 266 A.3d 288.

The Commission may not approve a reorganization “unless it is established by the applicant for approval that the reorganization is consistent with the interests of the utility’s ratepayers and investors.” 35-A M.R.S. § 708(2)(A). Historically, this language has been interpreted by the Commission as a “no net harm” standard. More recently, the Legislature amended Section 708 to apply a net benefits test to reorganizations that would result in the transfer of both “ownership and control” of the utility or its parent company/ies:

Unless exempted by rule or order of the commission, a reorganization may not take place without the approval of the commission. A reorganization may not be approved by the commission unless it is established by the applicant for approval that the reorganization is consistent with the interests of the utility's ratepayers and investors. *If a reorganization would result in the transfer of ownership and control of a public utility or the parent company of a public utility, a reorganization may not be approved by the commission unless it is established by the applicant for approval that the reorganization provides net benefits to the utility's ratepayers.*

35-A M.R.S. § 708(2)(A) (emphasis added). The Parties do not dispute that the proposed reorganizations involve a transfer of ownership. Disagreement lies in the second element of “control.”

The OPA contends that whether there is a transfer of “control” is a factual question that should be resolved on a complete record. OPA Reply Br. at 5-6. Further,

the OPA and Our Power both argue that the proposed transactions involve a transfer of control because of the graduations of control and that 81.6% control is different than 100% control. Thus, Our Power and NRCM both contend that the net benefits test should apply. The OPA argues that if the Commission decides now which test to apply, it should apply the net benefits test because the proposed transaction will likely result in the transfer of both ownership and control. OPA Br. at 5-6. Conversely, the Petitioners contend that no transfer of control of Avangrid is associated with the proposed reorganizations because Iberdrola already has supermajority control of Avangrid through its current 81.6% ownership of Avangrid stock.

The plain language of the statute is a “transfer of ownership and control.” If the Legislature intended to apply the net benefits test to reorganizations that result in an increase (or decrease) in control, the Legislature could have applied the net benefits test to transactions that involve, for example, “a transfer of ownership and increased control.” The Legislature did not elect to do so.

Further, Black’s Law Dictionary defines “control” as “[t]he direct or indirect power to govern the management and policies of a person or entity, whether through ownership of voting securities, by contract, or otherwise; the power or authority to manage, direct, or oversee.” *Black’s Law Dictionary* (12th ed. 2024). Under this plain language definition of control, Iberdrola’s 81.6% supermajority interest already gives Iberdrola the power to govern the management and practices of Avangrid through its authority to elect Avangrid’s directors and decide all issues requiring a majority or supermajority vote. Indeed, this power and authority is a significant source of Our Power’s concerns, and Our Power does not dispute this point. Following the proposed

transaction, Iberdrola will continue to exert supermajority control. While it will increase its already supermajority control from 81.6% to 100%, according to the plain language of Section 708(2)(A), the net benefits test applies to transfers of control rather than transfers that increase control.

Finally, this interpretation avoids potentially absurd or illogical results. For example, if the Commission accepted the OPA's, Our Power's, and NRCM's view that an increase of ownership from a supermajority percentage to 100% ownership represents a change of control to which the net benefits test applies, then the net benefits test would apply to an increase of ownership from 99.9% to 100% because that would also be a transfer of "control." It would be illogical and absurd to require net benefits be demonstrated for an ownership change of 0.01%.

Thus, the Commission concludes that the "no net harm" test applies to the reorganizations proposed in this case. The Commission specifically leaves open the question of what other transactions might constitute a transfer of ownership and control to which the net benefits test may apply.

## **V. CONCLUSION**

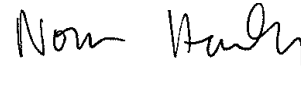
An exemption is warranted based on the Commission's prior approval of the corporate structure that Petitioners now seek to resurrect along with the plethora of conditions on that approval that remain in effect and continue to serve ratepayers' interests. Thus, the Commission

### **ORDERS**

1. That pursuant to 35-A M.R.S. § 708(2)(A), the reorganizations proposed by the Petitioners in their May 31, 2024 Petition are exempt from Commission approval.



Respectfully Submitted:



Nora Healy  
Nora Healy

/s/ Sarah E. Coleman

Sarah E. Coleman

Hearing Examiners

With Advisory Staff:

Amanda Asfahl  
Derek Davidson  
William Lohrman  
Michael Simmons  
Lucretia Smith  
Bradley Turner

Dated at Hallowell, Maine, this 26<sup>th</sup> day of August 2024.