STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2024-00117

August 19, 2024

CENTRAL MAINE POWER COMPANY ET AL., Request for Section 708 Exemption or Approval of Reorganization

Petitioners' Reply Brief on Legal Issues Identified in the July 23, 2024, Procedural Order

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I. INTRODUCTION

Central Maine Power Company ("CMP"), Maine Natural Gas Corporation ("MNG"), and Avangrid, Inc. ("Avangrid") (collectively "Petitioners") submit this Reply Brief to respond to the relevant arguments raised by the Office of Public Advocate ("OPA"), Our Power, and the Natural Resources Council of Maine ("NRCM") (collectively the "Intervenors") in their initial briefs on the legal issues the Maine Public Utilities Commission ("Commission") has set for briefing. All three Intervenors argue that the Transaction has the potential to harm CMP's and MNG's customers because it will convert Avangrid to a private company with no continuing obligation to make the filings required of public companies by the United States Securities and Exchange Commission ("SEC"), thereby making an exemption of the Transaction from the approval requirements under 35-A M.R.S. § 708 ("Section 708") inappropriate. They also argue that Iberdrola's buyout of Avangrid's minority shareholders constitutes a change of control, making the "net benefits" standard in Section 708 apply to the Transaction. Our Power and NRCM in turn argue that the Transaction will provide no benefits to customers and therefore does not satisfy the Section 708 approval requirements, and NRCM argues that the Transaction does not satisfy the Commission's greenhouse gas emission related obligations under 35-A M.R.S. § 103-A ("Section 103-A"). Petitioners dispute each of these arguments and demonstrate below that they are contrary to the applicable statutes, are legally and factually

incorrect, and ignore entirely the many conditions that the Commission has previously imposed governing Iberdrola's indirect 100% ownership of CMP and MNG, which conditions continue to be binding and remain in effect.

With its brief, Our Power also submitted the lengthy testimony of Scott Hempling, without leave from the Hearing Examiners and notwithstanding that the procedural schedule providing for intervenor testimony was suspended by the July 23, 2024, Procedural Order. This testimony includes many arguments, opinions, assertions, and allegations, only a handful of which are relevant to the legal issues the Commission has set for briefing in the July 23, 2024, Procedural Order. In his testimony, Mr. Hempling rejected the Commission's precedent on reorganizations, seeks to relitigate the Commission's 2008 approval of Iberdrola's acquisition of Energy East, injects issues beyond the narrow scope of this proceeding, and interprets Section 708 in a manner that would make it impossible to satisfy in any transaction. Mr. Hempling also disparages the Commission's ability to regulate CMP and MNG and makes various *ad hominem* attacks against Iberdrola, Petitioners, and Petitioners' counsel. Petitioners dispute Mr. Hempling's testimony in all respects but respond in this brief only to those of Mr. Hempling's points that are relevant to the legal issues under current consideration. Petitioners reserve the right and intend to further challenge and rebut Mr. Hempling's other arguments and assertions during later stages of this proceeding, including through discovery, rebuttal testimony, and cross examination at hearing, if, as and when, necessary.

II. REPLY ARGUMENTS

A. The Ending of Avangrid's SEC Reporting Post-Transaction Will Not Restrict Commission Access to Iberdrola's and Petitioners' Books and Records the Commission Needs to Regulate CMP and MNG and Therefore Does Not Provide Grounds to Deny Petitioners' Requested Section 708 Exemption.

In their briefs, the Intervenors provide little analysis of the Commission's precedent on when it is appropriate to exempt a reorganization transaction from the approval requirements in Section 708. None of the Intervenors discuss the Commission's prior order granting a blanket waiver to CMP and MNG for certain reorganizations.[1] The OPA does point to the Commission's Order in Docket No. 2010-00395 denying a Section 708 waiver request of Public Service Company of New Hampshire ("PSNH"), an affiliate of Northeast Utilities ("NU"), for the merger of NU and NSTAR. The NU/NSTAR transaction was quite different to the one at hand. It was a merger of two large energy holding companies, each with operating utility subsidiaries across New England, of which PSNH was just one. As a result of the transaction, NSTAR and its subsidiary companies would become "affiliated interests" of PSNH, as they all would be subsidiaries of NU, as the surviving parent. Also, PSNH's waiver request was based on a prior waiver Order the Commission had granted PSNH in Docket No. 1998-00182 which covered certain limited financial transactions. That waiver Order was premised in large part upon a New Hampshire Public Utilities Commission ("NHPUC") decision approving the transactions. The NHPUC, however, concluded that it did not have jurisdiction to review the NU/NSTAR merger under New Hampshire law. The Commission accordingly concluded that the earlier waiver

[1] *See 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. 2001-00447, Order at 7 (Dec. 20, 2001) ("2001 Restructuring Order").

order did not support a waiver given the scope of the NU/NSTAR merger and the lack of NHPUC review of the transaction.[2]

The Intervenors instead assert that the Commission should not exempt the transaction because the Transaction has the potential to harm customers. In particular, they point to the ending of Avangrid's SEC reporting as a potential harm of the Transaction, because it will allegedly reduce the information about Avangrid available to the Commission and other parties. It is true that upon closing, Avangrid, as a privately held company, will no longer be required to make SEC filings. This, however, does not mean that the Commission will be denied access to information about Avangrid that is relevant to Commission regulation of CMP and MNG or that an exemption is not appropriate.

1. The Existing "Reporting Conditions" in the 2008 Stipulation Ensure Commission and Public Access to the Information Needed to Regulate CMP and MNG.

Avangrid's making SEC filings was never a condition of Iberdrola's ownership of Avangrid, as the ultimate 100% United States-based owner of CMP and MNG. In fact, as a result of the 2008 transaction in which Iberdrola acquired Energy East, CMP and MNG's then-indirect owner and a public company at the time, the surviving entity, Iberdrola USA (now Avangrid), became a private company, with no continuing SEC filing obligations. This, however, did not limit the Commission's access to the books and records of CMP, MNG, or Iberdrola and its affiliates including Avangrid that were relevant to the Commission's regulation of CMP and MNG. The Commission and interested parties' access to this information was ensured through the several "reporting conditions" included in the Stipulation in Docket No.

[2] *See Public Service Company of New Hampshire, Request for Waiver of Approval of Reorganization*, Docket No. 2010-00395, Order at 4-5 (May 11, 2011).

2007-00355, which the Commission approved in its February 7, 2008, Order Approving Stipulation.[3] These conditions were later modified in Docket 2012-00093 to apply expressly to Iberdrola Networks (now Avangrid Networks), as the immediate parent of both CMP and MNG.[4]

The 2008 Stipulation conditions specifically provide:

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

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[3] *See Central Maine Power Company, Reorganization/Acquisition of Energy East Corporation and Iberdrola, S.A.*, Docket No. 2007-00355, Stipulation, at ¶¶ 2-9 (Jan. 9, 2008) ("2008 Stipulation")*; Central Maine Power Company, Reorganization/Acquisition of Energy East Corporation and Iberdrola, S.A.*, Docket No. 2007-00355, Order Approving Stipulation (Feb. 7, 2008) ("2008 Reorganization Order").

[4] *See Central Maine Power Company & Maine Natural Gas Corporation, Petition for Approval of Internal Reorganization,* Docket No. 2012-00093, Order at 6-7 (May 4, 2012).

8. 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.

9. 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.[5]

Notably, these conditions provide the Commission access to all books and records of Iberdrola and its affiliates, including Avangrid and Avangrid Networks, related to CMP and MNG. They also require annual public filing of Iberdrola's audited financial statements, as well as the U.S. tax returns for CMP and MNG and all consolidated U.S. tax returns that include CMP and MNG. As reflected in Condition 7 of the 2008 Stipulation, the obligation to file the Iberdrola financial statements is entitled "SEC Reporting," evidencing that the filing of these statements by CMP and MNG's ultimate parent is in lieu of the SEC filings that Energy East historically made, which included filing audited financial statements for Energy East as part of its 10K.

Likewise, Condition 12 of the 2008 Stipulation further requires Iberdrola, Avangrid and CMP to provide the Commission "with copies of all slide presentations to credit rating agencies" relating to Avangrid, "as well as all rating agency reports" relating to Avangrid or any Avangrid subsidiaries, on an on-going basis.

Iberdrola, Avangrid, and CMP have continuously complied with these requirements (and others in the 2008 Stipulation) since 2008, as evidenced by the hundreds of public filings in Docket No. 2007-00355. After the closing of the proposed Transaction, these reporting

[5] 2008 Stipulation at ¶¶ 2-9.

obligations will continue to be binding and remain in effect ensuring the Commission and interested parties have access to this information.

The Intervenors make no mention whatsoever of these reporting commitment conditions (or any of the other conditions in the 2008 Stipulation) in their briefs. This omission is telling, as is Intervenors' failure to identify any instance since 2015 where they or other parties have used Avangrid's SEC filings as a source of information relevant to a Commission proceeding involving CMP or MNG. The existence and continuing vitality of these conditions refute their argument and demonstrate that the Commission and interested parties has had and will continue to have access to the books and records the Commission needs to regulate CMP and MNG after the closing of the proposed transaction, notwithstanding that Avangrid will no longer be required to make SEC filings.

2. The Existing Conditions in the 2008 Stipulation, which Supported Iberdrola's 100% Indirect Ownership of CMP and MNG, Demonstrate Why an Exemption is Appropriate for the Transaction.

Contrary to Mr. Hempling's claims on pages 71-76 of his testimony, the existence and continuing vitality of the conditions in the 2008 Stipulation also provide the Commission solid grounds to conclude that the criteria set forth in Section 708(2)(A) will remain satisfied after the proposed Transaction and that an exemption is therefore appropriate in this case. Through its approval of the 2008 Stipulation, the Commission found that Iberdrola's 100% indirect ownership of CMP and MNG is appropriate under Section 708, based on the conditions in the 2008 Stipulation and the benefits they provide customers.[6] These conditions will continue to apply to Iberdrola and Petitioners after the closing of the proposed Transaction. As summarized

[6] *See* 2008 Reorganization Order at 4-6 where the Commission found that the conditions in the 2008 Stipulation "provide a package of benefits to CMP and MNG's ratepayers which, at a minimum offset the risks associated with the transaction" and that the "financial reporting, financial separation and translation requirements" "ensure that CMP and MNG's financial operations are transparent to the Commission."

below, these conditions address and satisfy each of the Section 708(2)(A) criteria, which define the factors that the Commission must use to protect customer interests when reviewing a utility reorganization under the statute.

Criteria 1: That the Commission has reasonable access to books, records, documents and other information relating to the utility or any of its affiliates, except that the Public Utilities Commission may not have access to trade secrets unless it is essential to the protection of the interests of ratepayers or investors. The Commission shall afford trade secrets and other information such protection from public disclosure as is provided in the Maine Rules of Civil Procedure;

> This criterion is satisfied by the continuing reporting commitment conditions in the 2008 Stipulation discussed above. *See* 2008 Stipulation, Conditions 2 through 9.

Criteria 2: That the Commission has all reasonable powers to detect, identify, review and approve or disapprove all transactions between affiliated interests;

> This criterion is satisfied by Conditions 28 through 37 of the 2008 Stipulation which, among other obligations: (i) confirms CMP and MNG commitment to obtain Commission approval for all affiliate transactions (Condition 28); (ii) affirms the Commission's jurisdiction over Iberdrola and any of its affiliates to the extent their activities relate or impact the operations, costs or revenues of CMP or MNG (Condition 29); (iii) mandates the continued use of appropriate cost allocation methodologies (Condition 30); (iv) mandates separate accounting records for CMP and MNG (Condition 32); and (v) restricts CMP and MNG from sharing cash management systems, transferring assets, lending funds, or providing credit support to Iberdrola or any unregulated affiliates (Conditions 33, 34, 35 & 36) or entering contracts or business relationships with Iberdrola or any affiliated interest that would reduce CMP's credit standing (Condition 37).

Criteria 3: That the utility's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure, is not impaired;

> This criterion is satisfied by Conditions 10 through 23 of the 2008 Stipulation, which set forth conditions requiring, among other obligations, that: (i) Iberdrola, Avangrid, and CMP each maintain credit ratings from at least two generally accepted rating agencies (Condition 10); (ii) CMP and MNG provide timely notification to the Commission of any "Credit Event" with respect to the credit ratings of Iberdrola, Avangrid, and CMP (Condition 11); (iii) CMP's and MNG's customers shall be held harmless for any increase in CMP's cost of debt caused by Iberdrola's financial status (Condition 13); (iv) CMP and MNG maintain their respective dividend policies with due regard for their financial performance and needs, irrespective of the financial performance and needs of Iberdrola (Condition

14); (v) CMP and MNG maintain at all times common equity at levels equal to or greater than 40% of total adjusted capital (Condition 18); (vi) CMP's financing should be issued at the utility level and used exclusively for utility operations (Condition 20); (vii) CMP and MNG participate in credit facilities and money pools separate from Iberdrola and its unregulated affiliates (Conditions 21 and 22); and (viii) CMP and MNG be protected from inclusion in any bankruptcy proceeding of Iberdrola or any affiliate by specific structural and governance provisions.

Criteria 4: That the ability of the utility to provide safe, reasonable and adequate service is not impaired;

This criterion is satisfied by Conditions 40 through 42 of the 2008 Stipulation. These conditions require CMP and MNG to maintain and provide reports on several service quality-related information, such as O&M procedures and safety response. Since 2008, the service standards and reporting obligations of CMP and MNG in the 2008 Stipulation have been enhanced through Chapters 320 and 420 of the Commission's rules and subsequent Commission orders as discussed on pages 17 and 18 of Petitioner's initial brief and as summarized in ODR-001-002, Attachment 1.

Criteria 5: That the utility continues to be subject to applicable laws, principles and rules governing the regulation of public utilities;

This criterion is satisfied by Conditions 2, 28, 29, 38, 45, 58 and 60 of the 2008 Stipulation, which set forth conditions related to the Commission's authority to regulate CMP and MNG.

Criteria 6: That the utility's credit is not impaired or adversely affected;

This criterion is satisfied by Conditions 10 through 23 of the 2008 Stipulation summarized under Criteria 3 above.

Criteria 7: That reasonable limitations be imposed upon the total level of investment in nonutility business, except that the commission may not approve or disapprove of the nature of the nonutility business;

This criterion is satisfied by Conditions 19, 20, 33, 35, and 36 of the 2008 Stipulation, which set forth specific conditions related to liquidity, financing, cash management, and funding.

Criteria 8: That the Commission has reasonable remedial power including, but not limited to, the power, after notice to the utility and all affiliated entities of the issues to be determined and the opportunity for an adjudicatory proceeding, to order divestiture of or by the utility in the event that divestiture is necessary to protect the interest of the utility, ratepayers or investors. A divestiture order must provide a reasonable period within which the divestiture must be completed; and

> This criterion is satisfied by Conditions 42, 58 and 60 of the 2008 Stipulation regarding the Commission's jurisdiction in general and specifically over divestiture.

Criteria 9: That neither ratepayers nor investors are adversely affected by the reorganization, and if the reorganization would result in the transfer of ownership and control of a public utility or the parent company of a public utility, that the reorganization provides net benefits to the utility's ratepayers.

> In its approval of the 2008 Stipulation, the Commission determined that the Stipulation satisfies the provisions of 35-A M.R.S. § 708 and "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.[7]

Accordingly, all of the criteria set forth in Section 708(2)(A) were satisfied through the 2008 Stipulation and will remain satisfied after the proposed Transaction. An exemption is therefore appropriate in this case.

3. The Executive Compensation Data Included in Avangrid's SEC Filings is Not Necessary for and is of No Significance to the Commission's Determination of the Affiliate Service Charges that CMP and MNG May Recover in Rates.

Our Power and NRCM specifically point to the elimination of Avangrid's reporting on executive compensation in its annual proxy statement as undermining the Commission's ability to set CMP's and MNG's rates and public transparency more generally. This argument is wrong on many levels.

[7] 2008 Reorganization Order at 6.

As a starting point, under the applicable SEC rules, Avangrid today is required only to disclose compensation information for its Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO") and the three other most highly compensated executives.[8] These five individuals represent only a small subset of the Avangrid employees that provide services that may be charged to CMP and MNG under the applicable cost allocation methodologies. Moreover, in reporting the annual compensation for these executives for SEC purposes, the executives' compensation from various incentive compensation plans is not reported consistent with how such compensation may be charged to CMP and MNG as an expense under the applicable accounting rules. Incentive compensation plan compensation is disclosed in the SEC filings (i) at the time of the award, rather than when the award is earned, and (ii) in the full amount of the award granted along with the fair value per award, as opposed to actual payout amount for the award, which is determined based on the executive's achievement of the applicable performance metrics over time. As such, the SEC reports on executive compensation are of no significance to the Commission's determination of the amount of affiliate service charges that may be recovered through CMP and MNG rates.

Instead, in CMP and MNG general rate cases, the utilities provide detailed information concerning all affiliate charges incurred during the test year and proposed for recovery in rates, including those related to the allocated share of the compensation of Avangrid employees (including Avangrid executives) that provide services to CMP and MNG, and this information is subject to discovery through data requests and technical conferences. It is this detailed information that the Commission considers in determining the utilities' rates. The Commission will continue to have access to this information under the existing conditions in the 2008

[8] 17 C.F.R. § 229.402(a)(3).

Stipulation for "Books and Records" (Condition 2), "Affiliate Transaction Approval," (Condition 28), "Affiliate Transaction Jurisdiction" (Condition 29), and "Cost Allocations" (Condition 30).

Moreover, if Our Power's and NRCM's concern relates to the availability and transparency of compensation information for the senior management team of CMP and MNG's ultimate owner, that information is already publicly available. Iberdrola publicly disseminates on its website annual reports of the compensation of its officers, directors and senior management team. Petitioners provided links to these reports for 2023 in its response to OURP-001-025.[9]

B. The Buyout of Avangrid's Minority Shareholders does not Constitute a Change of Control under Section 708 Requiring the Application of the Net Benefits Standard.

Regarding the question of whether the Transaction will result in a "change of control" triggering the application of the "net benefits" standard as opposed to the "no net harm" standard, the Intervenors each argue that the buyout of the minority shareholders changes Iberdrola's control over Avangrid to some degree— *I.e.*, that becoming the 100% owner of Avangrid, as opposed to the supermajority owner, would provide Iberdrola a greater degree of control than it currently enjoys. In making these arguments, the Intervenors ignore the plain text of Section 708. Only by reading Section 708 in its entirety can the meaning of "change of control" in Section 708(2) be determined.

[9] *See e.g.*, *Iberdrola Annual Report on Renumeration of Directors and Officers*, 68–79 (2023), available at: https://www.iberdrola.com/documents/20125/3643974/gsm24-annual-director-remuneration-report-2023.pdf (compensation of Iberdrola's executive chairman and chief executive officer for the year ended December 31, 2023).; *Iberdrola Annual Corporate Governance Report*, 38 (2023), available at: https://www.iberdrola.com/documents/20125/3643974/gsm24-annual-corporate-governance-report-2023.pdf (compensation of members of senior management who are not also executive directors for year 2023).

Section 708(2)(A) requires Commission approval only for a "reorganization" as that term is defined in the statute. Under Section 708(1)(A), the term "reorganization"

> means any creation, organization, extension, consolidation, merger, transfer of ownership or control, liquidation, dissolution or termination, direct or indirect, in whole or in part, **of an affiliated interest** as defined in section 707 accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer of voting securities or property.[10]

Under Section 707, an "affiliated interest" of a public utility means:

> a) Any person who owns directly, indirectly or through a chain of successive ownership 10% or more of the voting securities of a public utility;
> (b) Any person, 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in division (a);
> (c) Any person, 10% or more of whose voting securities are owned, directly or indirectly, by a public utility;
> (d) Any person, or group of persons acting in concert, that the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a public utility, if the person or group of persons beneficially owns more than 3% of the public utility's voting securities; or
> (e) Any public utility of which any person defined in divisions (a) to (d) is an affiliated interest.[11]

Read together, these provisions make clear that the Commission's authority under Section 708 is limited to transactions involving "an affiliated interest"—that is, an ownership interest of 10% or more of the voting securities of the utility or of an affiliated interest of the utility held by one person. For a transaction to constitute a "reorganization," it must create (*i.e.*, "creation" or "organization"), transfer (*i.e.*, "consolidation," "merger" or "transfer"), terminate (*i.e.*, "liquidation," "dissolution" or "termination"), or extend (in the sense of increase) (*i.e.*, "extension") an affiliated interest.

The first three categories of reorganizations (*i.e.*, those that create, transfer, or terminate an affiliated interest) necessarily involve a "change of control," as the ownership or status of the

[10] 35-A M.R.S. § 708(1)(A) (emphasis added).

[11] 35-A M.R.S. § 707(1)(A)(1).

affiliated interest is fundamentally altered by the transaction: A new affiliated interest is created – thereby injecting a new ownership interest of at least 10% into the ownership structure of the public utility; an existing affiliated interest is transferred – thereby injecting a new owner of an ownership of interest of at least 10% into the ownership structure of the public utility; or an existing affiliated interest is terminated – thereby removing an ownership interest of at least 10% from the ownership structure of the public utility.

The proposed Transaction does not fit in any of these categories, which cause a change of control by their structure. As explained in detail in Petitioners' initial brief, the proposed Transaction does not involve the creation, transfer or termination of any affiliated interest in Avangrid. Rather, it involves Iberdrola, an affiliated interest in CMP and MNG since the closing of the 2008 transaction when it acquired 100% of Energy East and indirectly CMP and MNG, buying the remaining 18.4% of voting securities of Avangrid that it does not currently own. None of the minority shareholders that will sell their shares to Iberdrola in the Transaction own 10% or more of Avangrid, such that they constitute an affiliated interest to CMP and MNG.

Instead, the Transaction fits in the fourth category of restructurings (*i.e.*, those that "extend" (in the sense of increase) an existing affiliated interest.) Not every extension of an affiliated interest, however, constitutes of a change of control under Section 708. The easiest example is a transaction whereby an existing affiliated interest increases its ownership interest by less than 10%. Under Section 708, this extension does not even constitute a reorganization.

The Commission's 2001 Restructuring Order in which it granted CMP and MNG a blanket exemption for certain reorganizations confirms this conclusion.[12] In that order, the

[12] *See* 2001 Restructuring Order at 7.

Commission narrowed its potential future consideration of transactions involving CMP and MNG's parent companies only to "restructurings,"[13] which the order defined as the:

> consolidation, merger, liquidation, *transfer of ownership or control*, dissolution or termination, direct or indirect, *in whole or in part of Energy East or other direct or indirect parent entity of an Applicant accomplished by* the issue, sale, *acquisition,* lease, exchange, distribution or transfer *of 10% or more of the voting securities of Energy East or other direct or indirect parent entity of an Applicant* by one person or two or more persons acting in concert.[14]

To determine whether the "net benefits" test would apply, however, the Commission must further inquire whether such a "restructuring" results in a "change of control" pursuant to Section 708.

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."[15] Determining whether a reorganization that extends an existing affiliated interest constitutes a change of control accordingly requires consideration of whether the increased ownership share modifies the affiliated interest's power or authority to govern the management and policies of the company.

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[13] Our Power and Mr. Hempling argue that the separate indirect ownership interests that Qatar Investment Authority ("QIA") holds in Iberdrola (8.71%) and Avangrid (3.7%) mean that QIA indirectly owns 10.8% of CMP and MNG and therefore is an affiliated interest of the utilities. In turn they criticize Avangrid, Iberdrola and their counsel for failing to obtain Commission approval for QIA's purchase of the Avangrid shares in 2021. *See* Our Power Brief at 8 & Hempling Testimony at 65-67. Our Power's and Mr. Hempling's argument is wrong because it ignores the 2001 Restructuring Order, which applies to Iberdrola and Avangrid pursuant to Condition 38 of the 2008 Stipulation. The 2001 Restructuring Order specifically limits the Commission's consideration of reorganizations of CMP and MNG's parent entities to "restructurings," which involve one person (or two or more acting in concert) buying, acquiring, leasing, exchanging, distributing, transferring 10% or more off the voting securities of Iberdrola or other direct or indirect parent entity. QIA owns no shares in CMP or MNG, and it has never owned 10% or more of the voting securities of Iberdrola or Avangrid. As such, no restructuring has occurred requiring Commission approval under the 2001 Restructuring Order. In any case, the proposed Transaction will result in the cancellation of QIA's shares in Avangrid, leaving it as a shareholder in Iberdrola only.

[14] 2001 Restructuring Order at 5 (emphasis added).

[15] Black's Law Dictionary (12th ed. 2024).

Some increases in the affiliated interest's ownership share clearly result in a change in control. On its face, Section 708 defines a 25% interest as a "controlling interest."[16] Thus, a reorganization transaction that extends an affiliated interest's ownership share from less than 25% to 25% or more of the entity constitutes a change of control. Likewise, a reorganization transaction that extends an affiliated interest's ownership share from less than 50% to more than 50% of the entity would constitute a change of control because at this ownership level, the affiliated interest has the power to elect the directors of the entity and in turn decides all issues regarding the management and direction of the entity that require a majority vote of the shareholders. A reorganization transaction that extends an affiliated interest's ownership share from less than to more than a supermajority level would also constitute a change in control because the affiliated interest would have power to decide all issues requiring a supermajority vote of the shareholders.[17]

None of these situations is present in this case. Iberdrola owns 81.6% of the outstanding shares of Avangrid. As such, it already has a controlling interest in Avangrid. Its supermajority ownership percentage also ensures Iberdrola the power and authority to elect Avangrid's directors and to decide all issues requiring a majority vote and supermajority vote of the shareholders, as Our Power concedes.[18]

The question thus is whether the "extension" of Iberdrola's affiliated interest from 81.6% to 100% increases its authority over Avangrid in any meaningful way to thereby constitute a change of control. The answer to this question is no. As Our Power has acknowledged,

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[16] 35-A M.R.S. § 707(1)(C).

[17] The OPA suggest that it is Petitioners' position that the increase of an affiliated interest's ownership interest from 25% to 100% would not constitute a change of control. That is not Petitioners' position. Importantly, that is also not this case.

[18] Our Power Brief at 14.

Iberdrola's current ownership provides it the power and authority to elect the Board of Directors. Under the Avangrid's bylaws, the "business and affairs of the Corporation will be managed under the direction of the Board" and the "Board may delegate all or some of the authorities delegable by law of these Bylaws to the officers, agents and employees of the Corporation."[19] Thus, today with its 81.6% ownership interest Iberdrola controls Avangrid. It has the power and authority to govern Avangrid directly through the Board and indirectly through the officers, agents and employees of the company. It will continue to control Avangrid to the same extent after the Transaction.

Intervenor's only response to this conclusion is to assert that Avangrid's minority shareholders have some degree of control over the company because they somehow provide a "check" on Iberdrola's control over Avangrid and its subsidiaries including CMP and MNG.[20] Per the Intervenors, the transaction will give Iberdrola "absolute" control, something it allegedly does not have today, and therefore the transaction will result in a change of control. Intervenors, however, fail to identify with any specificity how the existence of the minority shareholders diminishes (or "checks") Iberdrola's control over Avangrid.[21] The Intervenors do not identify what power or authority the minority shareholders have with respect to the governance or management of Avangrid. They do not identify any decision or action that Avangrid can make with respect to CMP or MNG that requires the approval of the minority shareholders. Nor do

[19] *See* Avangrid, Inc. Amended and Restated By-Laws, Article 2, copy provided as OURP-001-001 Attachment 2.

[20] Our Power Brief at 10*;* OPA Brief at 6-7.

[21] Our Power vaguely states that it "is only 100% ownership that is real control, absolute control, where the holder can do what it wishes with the owned corporation, *including terminate its existence*, without having to account to anyone." Our Power Brief at 14. (emphasis added). Our Power provides no citation for this assertion, and it is not correct with respect to Iberdrola's ability to terminate the existence of Avangrid. Any action to terminate Avangrid as an entity would require Commission approval, because such action would involve the transfer, liquidation, dissolution or termination of an affiliated interest under Section 708. Such a termination would also implicate the Commission's authority to order the divestiture of CMP and MNG under 35-A M.R.S. § 1513 and Condition 58 of the 2008 Stipulation.

Intervenors explain how the outcome of any decision of Avangrid's Board or its officers, agents or employees would be different because of the existence of the minority shareholders.

Moreover, the plain text of Section 708 and the Commission's long-standing interpretation of the statute's requirements do not support Intervenor's argument. Section 708 is not concerned with some vague or undefined difference in the control of an entity due to the existence of minority shareholders, who do not themselves hold an affiliated interest in the company. Section 708 neither makes any express mention of minority shareholder interests, which do not constitute an affiliated interest, nor directs the Commission to consider the "control" of such minority shareholders in deciding whether the reorganization will result in a change of control. Rather, as discussed above, Section 708 on its face does not even apply to transactions where less than 10% of the voting securities of the entity are transferred to a third party. Under Intervenors' logic, the sale of 9.9% of the voting shares (or even just one share) of a wholly owned parent of a utility to a third party would constitute a change of control of the parent and the utility, because the owner of the parent would no longer have absolute control of parent, but instead would be subject to the "control" of the new minority shareholder. Conversely, if a supermajority owner of the utility owning more than 90% of the voting securities of the parent buys out the minority shareholder(s), that transaction too would constitute a change of control under Intervenor's logic because the owner's ownership interest would change from supermajority to absolute. However, under the plain text of Section 708 and the 2001 Restructuring Order as applied to Petitioners, neither of these transactions would constitute a reorganization (or restructuring) requiring Commission approval in the first place, as neither would involve an "affiliated interest." If a transaction does not even qualify as a reorganization

under Section 708(1)(A), it cannot be found to result in a change of control under Section 708(2)(A).

The second hypothetical above further demonstrates why the Commission should grant an exemption for the current transaction. If the outstanding minority shares of Avangrid totaled 9.9%, rather than 18.4%, the proposed Transaction would not constitute a "restructuring" under the 2001 Restructuring Order. Therefore, the Transaction would be exempt from the Section 708 approval requirements, and this proceeding would not have been filed. Petitioners are before the Commission in this docket only because the Transaction involves Iberdrola's acquisition of 18.4% of Avangrid's shares, which does constitute a restructuring under the 2001 Restructuring Order. However, in reality, Iberdrola's control over Avangrid in either circumstance would be the same, as would be the vague and undefined "control" of the minority shareholder(s) as a "check" on Iberdrola. In neither case, however, is Commission review of the Transaction necessary because the Commission has already approved Iberdrola's 100% indirect ownership of CMP and MNG through the 2008 Reorganization Order, which approved the 2008 Stipulation.

In addition, treating the elimination of the minority shareholder "control" as a change of control would also effectively mean that every reorganization is subject to the net benefits standard, under Section 708 even though the plain text of the statute after the 2019 Amendment and the legislative history of that amendment clearly reflect that some reorganizations will be subject to the traditional no net harm standard only. If a change of control occurs where an entity that was once approved to own indirectly 100% of a Maine utility and now seeks to restore its ownership share from 81.6% back to 100% through the acquisition of the shares held by the

minority shareholders, none of whom holds an affiliated interest in the utility, it is difficult to imagine what reorganization transaction would not involve a change of control.[22]

Finally, even to the extent the existence of independent minority shareholders of a public company does provide some sort of "check" on the management of the company, as Intervenors claim, then that "check" over Iberdrola already exists and will continue to exist post-closing. Iberdrola itself is a publicly traded company, albeit in the stock exchanges of Spain, and has over 6.4 billion shares outstanding and owned by thousands of individual and institutional shareholders.[23]

C. The Transaction will Improve Avangrid's Access to Capital and Reduce its Compliance Costs for the Benefit of Customers.

Our Power and NRCM both dispute whether the Transaction will benefit customers through Avangrid's improved access to capital and reduced compliance costs. At the outset, it should be noted that this argument is not relevant to either of the limited questions presented here—*i.e.*, whether an exemption should be granted and if not, the appropriate standard of review for the Commission to apply in determining whether to approve the Transaction. Regardless, Intervenors' arguments are wrong for the reasons discussed at length on pages 10-11 of Petitioners' initial brief and below.

As Petitioners' witnesses explained during the July 15, 2024, technical conference,[24] Iberdrola's ability today to make equity investments in Avangrid is limited by its proportionate

[22] Under the rules of statutory construction, the Commission is construe Section 708 to give all words meaning and not to make surplusage. *See Cobb v. Bd. of Counseling Prof'ls Licensure*, 2006 ME 48, ¶ 11, 896 A.2d 271 ("All words in a statute are to be given meaning, and none are to be treated as surplusage if they can be reasonably construed.").

[23] *See* Iberdrola Shareholder Bulletin First half, 2024 available at https://www.iberdrola.com/documents/20125/4158434/shareholders-bulletin-2024H1.pdf.

[24] 7/15/2024 Tech. Conf. Tr. at 73:4-76:20; *see also* OPA-001-005.

ownership of the outstanding shares of the company. This means that whenever Avangrid seeks to raise equity capital, Iberdrola can only contribute approximately 81.6% of the needed capital and the rest must come from other investors. In today's macro-economic conditions, with higher interest rates and stock market volatility, it is more challenging and more costly to raise this capital from other investors. As reflected in the stock prices for energy companies like Avangrid, investors are not favoring investments in utilities, but instead are looking for investments yielding higher earnings per share and with less exposure to interest rate risks and inflation. This is putting downward pressure on energy company stock prices, as investors seek larger discounts in stock issuances and therefore higher potential returns in purchasing shares. The resulting lower stock prices in turn mean that energy companies like Avangrid must issue more shares to raise the needed capital. This in turn can be dilutive to existing investors and increase the cost of raising additional equity.[25] All of this means, that it is more difficult in today's economic climate for companies like Avangrid to raise needed equity capital at favorable terms.

By restoring Iberdrola as the sole owner of Avangrid, the Transaction will improve Avangrid's access to this capital relative to the market today. Iberdrola's acquisition of the remaining shares will permit it to invest directly all of the additional equity capital Avangrid may need, and Avangrid will no longer be exposed to the market's volatility as it raises needed capital.[26] Iberdrola will decide to make the equity investments by reference to its investment criteria, and Avangrid will not need to satisfy the expectations of other investors, who may well require higher rates of return given today's interest rates and market volatility. This is crucial

[25] OPA-001-009; 7/15/24 Tech. Conf. Tr. at 55:20-57:1; 58:9-60:7, 73:4-77:2.

[26] OPA-001-011.

because CMP and MNG require increasing amounts of capital to meet rapidly evolving system demands and climate driven public policies, such as beneficial electrification and the proliferation of distributed generation and storage resources. Contrary to Mr. Hempling's assertions to the contrary, CMP and MNG's owner (Avangrid) is the source of this equity capital.[27]

In addition, as described in Petitioners' responses to OPA-001-011 and OPA-001-021, Avangrid will realize reduced costs related to SEC filings and compliance obligations for the New York Stock Exchange ("NYSE") and the Public Company Oversight Board ("PCAOB"), as a result of no longer being a public company after the Transaction closes. A portion of these savings will be allocated to CMP and MNG through the allocation of affiliate shared services costs that Avangrid (through Avangrid Service Company) annually makes in accordance with the applicable cost allocation methodologies. NRCM correctly notes, and as Petitioners explained in their response to OPA-001-011, CMP and MNG customers may not realize these savings because of the existing cap on amount of affiliate service charges that CMP and MNG are permitted to recover in rates. The existence and application of the cap, however, does not mean that the savings are not real, or that they should not be considered a benefit of the Transaction. The cap, which was last adjusted in 2013, is providing CMP and MNG customers a significant benefit by limiting the amount of Avangrid's charges to the utilities for services provided to assist them in serving their customers. In fact, as summarized in ODR-001-005, Attachment 1, the total amount of affiliate service charges that were not allocated to CMP and MNG over just the last five calendar years is over $88 million.

[27] Direct Testimony of Scott Hempling On Behalf of Our Power (Aug. 12, 2024) [hereinafter "Hempling Test."] at 1-2.

Whether the cap should be eliminated, or at least adjusted, is a subject for a different proceeding. In this proceeding, the existence and application of the cap should not be held against Petitioners when considering the reduction of compliance costs resulting from the Transaction. This is particularly true where Our Power seemingly is collaterally attacking and wants the Commission to undo its prior approvals authorizing Iberdrola's ownership of CMP and MNG, such that the utilities may return to the pre-2000 paradigm of being stand-alone publicly traded companies, owned by individual shareholders.[28] That has not been proposed and cannot be imposed. In that alternative universe, CMP's and MNG's customers would be responsible for all costs associated with all of the services that Avangrid currently provides the utilities, and all synergies, efficiencies, experience and buying power of being part of a larger energy company would be lost.

D. Section 103-A Does Not Impose an Additional Burden on Petitioners that Must be Met for the Commission to Grant an Exemption for, or Otherwise Approve, the Transaction Under Section 708.

NRCM argues in its brief that the proposed Transaction fails to support Maine's climate and clean energy requirements and, therefore, does not satisfy the Commission's obligations under Section 103-A.[29] In making this argument, NRCM seemingly exalts Section 103-A as mandating an additional statutory burden that Petitioners must meet on top of the requirements in Section 708 to receive an exemption or approval of the Transaction. In supporting this argument, NRCM spends three pages of its brief disputing the climate benefits of the New England Clean Energy Connect ("NECEC") transmission project and criticizing CMP's record

[28] *See, e.g.*, Hempling Test. at 14-15 & 76.

[29] NRCM Brief at 16-17.

on interconnection issues and the implementation of Active Network Management ("ANM") technology for the apparent purpose of injecting those issues into this proceeding.[30]

Section 103-A obligates the Commission to "facilitate the achievement" of the State's statutory greenhouse gas reduction levels, as it executes "its duties, powers and regulatory functions" under Title 35-A. The Commission should not read this obligation to impose an additional statutory burden on applicants under Section 708, or other provisions in Title 35-A, as NRCM seeks. NRCM's suggested approach to Section 103-A risks expanding every Commission proceeding to include issues that would otherwise not be relevant to the relief being requested under the applicable provisions in Title 35-A, like Section 708 here, in order to demonstrate some "greenhouse gas emissions reduction" benefit. NRCM's injection of CMP's record on interconnection issues and the implementation of ANM into this docket demonstrates this concern. Petitioners in this proceeding are not required to defend CMP's conduct on issues unrelated to whether Iberdrola's proposed acquisition of the remaining 18.4% of outstanding shares of Avangrid merits an exemption, or otherwise meets the applicable standard of review, under Section 708, in order to satisfy Section 103-A.

Likewise, Petitioners are not required to establish that the reorganization at issue provides a "greenhouse gas emissions reduction" benefit in addition to demonstrating that the transaction satisfies the "no net harm" or "net benefits" standard. Nor are Petitioners required to demonstrate a greenhouse gas emissions benefit to comply with Section 103-A, even where the

[30] *Id.* at 5-8. In challenging the NECEC, NRCM, notwithstanding having been an active party in the relevant case, fails to reference the Commission's May 3, 2019 Order Granting Certificate of Public Convenience and Necessity and Approving Stipulation in Docket No. 2017-00232 in which the Commission found that the NECEC project "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, which . . . is equivalent to removing approximately 700,000 passenger vehicles from the road."

reorganization will otherwise have no effect (positive or negative) on the State's achievement of its greenhouse gas emission reduction levels.

As discussed at length in the May 31, 2024, Petition and Petitioners' initial brief, the proposed Transaction involves the increase in the ownership share of its ultimate owner from 81.6% to 100% and will have no effect on the operations of and service provided by CMP and MNG. As such, the Transaction will have no effect on and will not impede the State's achievement of its greenhouse gas reduction levels.[31] One can think of many transactions within the Commission's jurisdiction over the financial regulation of utilities that would similarly have no effect (positive or negative) on the State's achievement of its greenhouse gas reduction levels, such as the approval of affiliate transactions, or the approval of accounting orders, etc.

Petitioners respectfully recommend that the Commission instead read Section 103-A to implicate a threshold consideration of whether the relief requested in a particular proceeding has a potential negative impact the State's achievement of its greenhouse gas emissions reduction levels. This should be a case-by-case determination. For those cases like this one where the requested relief will have no potential negative impact, (*i.e.*, the transaction is neutral on the question or provides a potential positive impact) a finding by the Commission to that effect supported by evidence in the record should be sufficient to satisfy Section 103-A.[32]

[31] NRCM-001-001.

[32] In other cases, where the requested relief has a potential to negatively impact on the State's achievement of its greenhouse gas emissions reduction levels like the recent *Northern Utilities, Inc.* case, Docket No. 2023-00254, further consideration of the impact would be necessary to ensure that the ultimate relief granted facilitates the State's achievement of its greenhouse gas emissions reduction levels.

E. Petitioners Dispute the Arguments, Opinions, Assertions, and Allegations in the Testimony of Our Power's Witness, Mr. Hempling, And Only Address in this Reply Brief Those That are Relevant to the Legal Issues Set for Briefing.

As noted above, along with its brief, Our Power without leave from the Hearing Examiners filed the Direct Testimony of Scott Hempling. This testimony is 100 pages in length and appears to be Mr. Hempling's complete testimony on the merits. This testimony far exceeds the scope of the Commission's July 23, 2024, Procedural Order, which suspended the original procedural schedule, including the date for intervenor testimony. The testimony presents numerous arguments, opinions, assertions, and allegations, many of which are unrelated to the legal issues the Commission has set for briefing.

Petitioners dispute all of the arguments, opinions, assertions, and allegations Mr. Hempling presents in his testimony. In the sections above, Petitioners have responded to certain points that touch upon the legal issues under consideration now. Petitioners' silence on the rest of Mr. Hempling's testimony in this reply brief should not be understood as acquiescence or agreement with any of arguments, opinions, assertions, and allegations he makes. Petitioners will respond to the other points in Mr. Hempling's testimony, if, as and when, necessary, at the appropriate time later in this proceeding, including through discovery, rebuttal testimony and during hearing.

That said, Petitioners feel compelled to highlight some the more egregious aspects of Mr. Hempling's testimony as Our Power has inappropriately injected it into the record as the Commission decides the narrow legal issues set for briefing. Specifically, in his testimony:

- Mr. Hempling rejects Commission precedent on reorganizations generally and advocates for the Commission to reconsider its 2008 approval of Iberdrola's acquisition of Energy East, notwithstanding the Hearing Examiner's clear admonition in the July 11, 2024 Procedural Order (Conference of Counsel – Discovery) that the "scope of this case does not involve reconsideration of the Commission's 2008

approval of the reorganization in which Iberdrola first acquired its ownership interest" in CMP and MNG.[33]

- Contrary to the rules of statutory construction,[34] Mr. Hempling presents an interpretation of Section 708 that is unreasonable and would lead to absurd results, such that no applicant could ever make the necessary showing to obtain Commission approval of a reorganization.[35]

- Mr. Hempling raises issues outside of the narrow scope of this proceeding,[36] notwithstanding the Commission's admonition in its Order granting intervenor funding to Our Power that "[t]he scope of this proceeding is quite narrow, and all parties are expected to submit evidence and argument consistent with that scope.[37]

- Mr. Hempling questions, if not disparages, the Commission's ability to regulate CMP and MNG.[38]

- Mr. Hempling criticizes Petitioners for objecting to Our Power data requests, notwithstanding that during the July 17, 2024, Conference of Counsel the Hearing Examiner sustained Petitioners objections.[39]

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[33] *See* Hempling Test. at 58-59, 63-64, 67-71 & 95.

[34] *State v. Niles*, 585 A.2d 181, 182 (Me. 1990) (When interpreting a statute a court or agency should avoid "results that are absurd, inconsistent, unreasonable or illogical, if the language of the statute is fairly susceptible to such construction.").

[35] Hempling Test. at 8-9, 21-24 (interpreting "ensure" in Section 708(1-A) to require "certainty of result" "throughout the entire period in which the post-transaction corporate structure exists").

[36] *See, e.g.*, Hempling Test. at 65-67. In its brief, Our Power likewise seeks to inject issues beyond the narrow scope of this proceeding, including CMP's implementation of its new metering and billing systems and the QIA investments in Iberdrola and Avangrid addressed in footnote 13 above. *See, e.g.*, Our Power Brief at 5-8.

[37] Order (Intervenor Funding) (July 26, 2024) at 3 ("Notwithstanding this determination, the Commission cautions Our Power that this Order does not broaden the scope of the proceeding. The scope of this proceeding is quite narrow, and all parties are expected to submit evidence and argument consistent with that scope."); *see also* Procedural Order (Intervention) (June 25, 2024) at 1 ("The Hearing Examiner cautioned, however, that parties should adhere quite closely to the issues in this case and should 'not stray into areas that are unduly speculative or burdensome' to the parties and the process." (citation omitted)).

[38] Hempling Test. at 10, 15, 36-37, 42, 45, 53.

[39] Hempling Test. at 54, 57.

- Mr. Hempling makes various *ad hominem* attacks against Iberdrola, Petitioners, and Petitioners' counsel, not typically seen in testimony submitted to the Commission.[40]

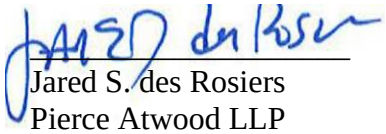
III. CONCLUSION

For the reasons set forth in Petitioners' initial brief and in this reply brief, Petitioners respectfully request that the Commission:

1) Exempt the Transaction from the Section 708 approval requirements; or

2) If not exempted, apply the no net harm standard to the Transaction.

Respectfully submitted,



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[40] Hempling Test. at 56-59, 63-64, 67-68 & 95.