

**STATE OF MAINE  
PUBLIC UTILITIES COMMISSION**

CENTRAL MAINE POWER, MAINE  
NATURAL GAS, AND AVANGRID, INC.  
REQUEST FOR SECTION 708 EXEMPTION  
OR APPROVAL OF REORGANIZATION

Docket No. 2024-00117

**INTERVENOR NATURAL  
RESOURCES COUNCIL OF  
MAINE'S INITIAL BRIEF  
CONCERNING 35-A M.R.S. § 708**

August 12, 2024

**Introduction**

In this docket, Central Maine Power Company (CMP), Maine Natural Gas Corporation (MNG), and their U.S. parent Avangrid Inc. (Avangrid) seek exemption or approval from reorganization approval requirements under 35-A M.R.S. §708 (section 708) for the acquisition of the remaining 18.4% public shares of Avangrid by its parent Iberdrola Inc., a transaction of \$2.5 billion. After a period of initial discovery, the Public Utilities Commission Staff (Staff) requested that the parties submit briefs on the threshold legal issues of whether the Public Utilities Commission (the Commission) should exempt the Petitioners' reorganization from approval requirements under section 708 and, if not, whether the Commission should apply the no net harm or net benefits legal standard to the proposed reorganization. Intervenor Natural Resources Council of Maine (NRCM) submits that the Petitioners have not established that the transaction is consistent with the interests of ratepayers, and therefore the Commission should not grant the transaction exemption. Furthermore, based on the available evidence at this initial stage of the proceeding, eliminating minority shareholders would likely result in a transfer of

ownership and control, and the Commission should apply the net benefits standard under section 708 as necessary to serve the interests of ratepayers.

### **Factual and Procedural Background**

On May 31, 2024, CMP, MNG, and Avangrid (the Petitioners) filed a petition (the Petition) with the Commission requesting exemption or approval of reorganization pursuant to 35-A M.R.S. §708. The proposed transaction involves Iberdrola acquiring the remaining 18.4% of public voting securities of Avangrid, resulting in Iberdrola becoming the sole 100% owner of Avangrid, a purchase of \$2.5 billion.

Petitioners request that the Commission exempt the Transaction from the approval requirements under section 708, because it “only involves a change in ownership that will not adversely affect the interests of ratepayers and therefore does not warrant Commission review.”<sup>1</sup> The Petition states that “the Transaction will simply revert to Iberdrola’s previously authorized 100% interest that it held following its 2008 acquisition of Energy East Corporation (a predecessor of Avangrid).”<sup>2</sup> Alternatively, the Petitioners request the Commission approve the reorganization because it will not affect CMP and MNG (section VI – A, B, C), but will improve Petitioners’ access to capital (section VI – D), and is consistent with the interests of the Petitioners’ investors (section VI – E). The Petition poses that the transaction “does not trigger the application of the heightened net benefits standard because it will not result in the change of control of a public utility or the parent company of a public utility.”<sup>3</sup>

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<sup>1</sup> Petition of Central Maine Power Company, Maine Natural Gas Corporation, and Avangrid Inc., for Exemption or Approval of a Reorganization Pursuant to 35-A M.R.S. section 709, May 31, 2024 in Docket No. 2024-00117, at 14.

<sup>2</sup> Ibid at 2.

<sup>3</sup> Ibid at 12.

Petitioners have filed their direct case. Parties have concluded an initial period of discovery in the case, including data requests, a technical conference, and oral data requests. Then, in a July 23, 2024, procedural order suspending the previous schedule, the Commission requested parties submit initial briefs by August 12, 2024, on the legal questions of (1) whether the Commission should exempt from Commission 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. § 708 applies to the proposed reorganizations.

Of particular relevance to the briefing on the threshold legal issues are Petitioners’ responses to inquiries related to the questions of: (1) whether the proposed transaction has benefits for ratepayers of MNG and CMP; (2) whether the proposed transaction would cause harm or risks to Maine ratepayers; and (3) whether the proposed transaction will change how the parent company is controlled. These aspects of the factual background are discussed in the Argument below.

#### Statutory Standard Applicable to Reorganizations

Section 708(1)(A) defines a reorganization as “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.”

Section 708(2)(A) directs the Commission, when approving a reorganization, to impose conditions on the reorganization, which in its judgement are necessary to protect the interests of ratepayers. The statute puts the burden of proof on the applicant, such that “[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.” The statute leaves the word “control” undefined in this context and affords the Commission discretion in determining when to apply the higher standard.<sup>4</sup>

With regard to determining if a net benefit exists, the Commission has clarified in previous cases, including most recently reaffirming in its July 24, 2024, order approving the stipulation in *Portland Natural Gas Transmission System Request for Exemption or Approval of Reorganization Pursuant to 35-A M.R.S. § 708*, Docket 2024-00072, that:

The net benefits test contained in Section 708(1-A), (2) involves a weighing of the benefits and costs of the proposed reorganization and, to approve the reorganization, a finding that the benefits are greater than the costs. As the net benefits test requires a fact-specific, independent analysis of the benefits and costs of each proposed transaction, reorganizations require review on a case-by-case basis. The utility carries the burden of proving that the net benefits test has been satisfied...

... Finally, the statute does not specify that “net benefits” must be specifically or precisely quantified in terms of monetary or otherwise measurable items. Rather, the Commission should weigh all the effects of the proposed transaction on the utility’s ratepayers, positive and negative, quantitative, and qualitative. *See [Emera Maine, MEPCO, Chester SVC Partnership, Request for Reorganization Approval, Docket No. 2019-00097, Order Part II at 4 (April 21, 2020)]* at 3-4.<sup>5</sup>

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<sup>4</sup> Affording agency discretion is consistent with legislative intent and was understood and discussed at the time of drafting, as noted by the Commission liaison in work session for the 2019 bill: “Like a lot of things in statute, it would be subject to interpretation when it came to the Commission.” See comments of the PUC legislative liaison before the Joint Committee for Energy, Utilities and Technology, work session for LD 1560, May 1, 2019, at 4:37:25.

<sup>5</sup> *Bangor Natural Gas Company, Application for Approval of Reorganization Sale of GEP Bison Holdings to Ullico Infrastructure Hearthstone Holdco & Request for Limited Exemption for Incidental Creation of Potential Affiliated Interest Pursuant to 35-A M.R.S. 707, 708*, Docket No. 2021-00019, Order Approving Stipulation and Reorganization at 9 (July 28, 2021).

## Statutory Requirement to Consider Greenhouse Gas Emissions

In addition to the analysis that it must conduct under 35-A M.R.S. § 708, the Commission is also required by 35-A M.R.S. § 103-A to ensure system reliability and “facilitate the achievement by the State of the greenhouse gas emissions reduction levels set forth in Title 38, section 576A” when executing its duties.<sup>6</sup>

Most recently in the order approving the stipulation in Portland Natural Gas Transmission System’s section 708 case, the Commission ruled that the eight separate commitments pertaining to the measurement, reporting, and mitigation of greenhouse gas emissions “provide net benefits for ratepayers and, consistent with the statutory mandate of 35-A M.R.S. § 103-A, are a positive step forward in the Commission’s work to facilitate Maine achieving its greenhouse gas reduction levels within the exercise of its regulatory obligations.”<sup>7</sup>

## Record on Climate Commitment

In testimony at the technical conference, witnesses attested to the commitment of Avangrid and Iberdrola to Maine’s statutory climate and clean energy goals.

So I guess the foundation in which that we execute our responsibilities both at the Avangrid, the Iberdrola [*sic*], and flows down to CMP and MNG, is always with a mind of climate action and investment in renewable generation.<sup>8</sup>

... In fact, we have one of the best clean energy projects right here in Maine through NECEC which is a transmission line providing clean renewable generation as a base load factor at an incredibly cost effective price that will help ISO New England's entire region drive down price which would include Maine customers.<sup>9</sup>

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<sup>6</sup> 35-A M.R.S. § 103-A, available at <https://legislature.maine.gov/statutes/35-A/title35-Asec103-A.html>.

<sup>7</sup> *Portland Natural Gas Transmission System Request for Exemption or Approval of Reorganization Pursuant to 35-A M.R.S. § 708*, Docket 2024-00072, Order Approving Stipulation (July 24, 2024).

<sup>8</sup> July 15, 2024, Technical Conference Transcript at 104: 21.

<sup>9</sup> *Ibid* at 105: 12.

The Commission should not rely on these statements in making its determination due to factual inaccuracies.

Firstly, the New England Clean Energy Connect (NECEC) is a \$1.5 billion, 145-mile, high voltage transmission corridor developed by CMP and Hydro-Quebec to deliver existing hydroelectricity from Canada to Massachusetts to help electric distribution companies in Massachusetts meet their renewable energy requirements. It does not address Maine's climate and clean energy laws.

Nor does it address the natural laws of atmospheric science whereby climate change is caused by the total global stock of atmospheric greenhouse gases (GHGs). No cross-border GHG analysis was done for the NECEC. The only GHG assessment for the NECEC was done by a consultant for Hydro-Quebec.<sup>10</sup> The analysis considered imports on the proposed line to be new, additional, clean energy. In acknowledgement of this fact, the report states, "However, the 3.6 million metric tons of CO<sub>2</sub> reductions estimates are based on how much CO<sub>2</sub> is reduced from internal New England generators."<sup>11</sup> Avangrid's investment in NECEC cannot be taken as evidence of either a commitment to mitigating climate change or to facilitating achievement of Maine's climate goals.

As a transmission and distribution (T&D) utility in a deregulated utility market, a more appropriate indication of the company's commitment to Maine's climate requirements would be interconnection, i.e., the speed and cost at which CMP interconnects new renewable energy generation within Maine's service territory. On interconnection, CMP's record is one of poor

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<sup>10</sup> "Firm did 'independent study' of electric line while working for energy giant that could make billions from it," *Bangor Daily News*, Feb 20, 2020, <https://www.bangordailynews.com/2020/02/20/news/firm-did-independent-study-of-electric-line-while-working-for-energy-giant-that-could-make-billions-from-the-line/>.

<sup>11</sup> London Economics LLC, Independent Analysis of Electricity Market and Macroeconomic Benefits of the New England Clean Energy Connect Project, May 21 2018, p 30, <https://drive.google.com/file/d/1uj1xJJnnQo8rSBdU7tjwyi-e7t1srpH/view?usp%253Dsharing>.

performance, including a public acknowledgement of the company’s failures. Per stipulation in 2021, CMP “ ... acknowledge[d] and accept[ed] responsibility that ... in hindsight [the problems] ... could and should have been identified sooner and CMP’s communications about the scope of the issue to interconnection customers were deficient...”<sup>12</sup>

Recent testimony before the Commission from the Maine Renewable Energy Associate and the Coalition for Community Solar Access speaks to the level and persistence of CMP’s deficiency since that acknowledgement. CMP’s interconnection process has subjected project developers to years of unpredictable, inexplicable, and ongoing cost and delay. Study delays and construction delays, due uniquely to CMP’s process, are incomparable to schedules in other jurisdictions. “The CMP pattern of delay after delay has resulted in unusual external delays unique to CMP’s process.”<sup>13</sup>

CMP stands alone in particularly mishandling its interconnection build out. Utilities in other states have done much better and set expectations similarly to what the Commission has adopted.<sup>14</sup>

Projects that applied for interconnection in Maine in 2019, have yet to clear CMP’s interconnection process more than four years later, while average interconnection times for full approval in neighboring Massachusetts and New York is three years. “Other Massachusetts and New York utilities, including CMP’s own Avangrid utility affiliates in New York, have similar time frames for interconnection processing of under three years.”<sup>15</sup> CMP has even failed to meet the time frames it set for itself pursuant to the 2021 settlement stipulation.<sup>16</sup>

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<sup>12</sup> Settlement Stipulation of MREA, CCSA, CMP *et al.*, Docket No. 2021-00035 (Jan. 10, 2022) at 11 (p 4).

<sup>13</sup> Testimony before the Maine Public Utilities Commission from Maine Renewable Energy Associate and the Coalition for Community Solar Access, Docket No, 2023-00236 (November 3, 2023) at 4:22.

<sup>14</sup> *Ibid* at 9:21.

<sup>15</sup> *Ibid* at 11:5.

<sup>16</sup> *Ibid* at 8:4.

Avangrid's 2023 Corporate Sustainability Report, which Petitioners filed in response to data request NRCM 001-002, describes on page 32 the use of flexible interconnection through Active Network Management deployment in New York. Active Network Management (ANM) is a technology platform that has been proven to speed interconnection, getting more intermittent clean energy on the grid, more quickly and at lower cost to both developers and ratepayers. Avangrid has extensive experience with ANM: Scotland Power in the UK put ANM in place over a decade ago in 2012 and New York State Electric & Gas (NYSEG) and Rochester Gas and Electric (RG&E) were required by New York regulators through the REV proceeding to start implementation in 2016. Yet Avangrid has not deployed this solution in Maine's service territory, despite its persistent and unparalleled problems interconnecting new renewable generation here. CMP withdrew an initial proposal for an ANM pilot from its 2022 rate case.

#### History of Concern over CMP's Ownership and Control

Corporate and foreign ownership of public utilities has been a longstanding concern for people in Maine. CMP has ranked last in JD Power's surveys of business and residential customers across national electric utilities since 2018.<sup>17</sup> Reliability in Maine across numerous metrics is among the lowest in the nation.<sup>18</sup> Against a backdrop of poor service quality, the issue of ownership and control of investor-owned utilities (IOUs) has become a major public concern in Maine. Public concern has led to legislative and ballot referendum efforts to revoke CMP's

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<sup>17</sup> 2018, 2019, 2020, 2021, 2022, and 2023. In 2021, JD Power did not publish the business customer rankings for the East Region for lack of data. See: <https://www.jdpower.com/business/press-releases/2023-electric-utility-residential-customer-satisfaction-study>; <https://www.bangordailynews.com/2020/11/18/business/cmp-ranks-last-in-customer-satisfaction-survey-for-3rd-year-in-a-row/>; <https://www.pressherald.com/2021/12/15/central-maine-power-ranked-dead-last-in-nation-for-customer-satisfaction/>; <https://mainebeacon.com/cmp-ranked-last-once-again-in-j-d-power-business-customer-satisfaction-survey/>

<sup>18</sup> SAIDI, SAIFI, CAIDI, across with and without major event days, annual and 5 year averages permutations, see: Citizen Utility Board, Utility Performance Report, 2023, Figures 4, 5, 8, 11, 17, available at [https://drive.google.com/file/d/1aNPXl1nvr1ZPyxo70cWNKFi\\_-TsOpmQF/view](https://drive.google.com/file/d/1aNPXl1nvr1ZPyxo70cWNKFi_-TsOpmQF/view)



monopoly franchise, which drew bipartisan support to pass both chambers of the legislature in 2021 and inspired a multi-million political campaign by CMP and its parent affiliates from 2021 to 2023.

Concerns over the ownership and control of CMP also led the Commission to undertake a detailed audit of the management structure and services of CMP's parent and affiliates. In its final report released in 2021, the Liberty Consulting Group found a persistent and overarching focus from Spanish leadership on financial results from "headcount and vegetation management as sources of cost cutting", which came at the expense of an emphasis on improved operations, core to the utility business.<sup>19</sup> The audit concluded that the management structure at Avangrid and Iberdrola "did have negative implications for Maine customers."<sup>20</sup> This is the context in which Petitioners have asked the Commission to waive its approval authorities.

## **Argument**

### **I. The benefits that Petitioners assert will not flow to Maine utility ratepayers.**

In data request OPA-001-011, the Office of Public Advocate (OPA) inquired as follows: "Please explain in detail whether and how any benefits of the transaction will be passed on to CMP or MNG's ratepayers." Petitioners responded:

As described on pages 15 and 16 of the Petition, the proposed transaction is expected to improve Avangrid's access to capital needed for investments. When Iberdrola owns 100% of the outstanding Avangrid Shares, Iberdrola will bear responsibility for 100% of the equity investment in Avangrid and its subsidiaries and Avangrid will not be exposed to the market's volatility during the period of planned increase in capital investment. This improved access to capital will help ensure that CMP and MNG have the equity capital they need to complete capital investments in their systems for the benefit of their

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<sup>19</sup> Liberty Consulting Group on behalf of the Maine Public Utilities Commission, Central Maine Power's Management Structure and Affiliate Services, final report, 2021, executive summary, p ES-4.

<sup>20</sup> Ibid at 2.

customers.

In addition, as explained in Petitioners' response to OPA-001-021, after the transaction is consummated, Avangrid will no longer incur certain costs related to being a publicly traded company. This cost reduction will be passed on to CMP and MNG through a reduced allocation of affiliate service charges from Avangrid. However, whether customers will realize these savings through a reduction in rates will depend on the amount of affiliate service charges the Commission authorizes for recovery in future rate cases. Given that CMP's and MNG's affiliate service charges currently exceed the cap on the amount of affiliate service charges, a reduction in affiliate service charges resulting from the proposed transaction may not result in a reduction in rates.

The Petitioners' response indicates that they assert two categories of benefits for CMP and MNG customers: 1) improved access to capital and 2) savings from avoided compliance costs when Avangrid is no longer subject to federal financial disclosure requirements.

Per the first category, witnesses at the technical conference provided corporate bond ratings, indicating that the ratings from Standard and Poor's (S&P) are the same for Iberdrola and Avangrid, while Moody's ranks Iberdrola one "sub-notch" higher than Avangrid. "[F]or S&P, we're at triple B plus for both Iberdrola and Avangrid. For Moody's Iberdrola's BAA1 and Avangrid is BAA2, one notch below."<sup>21</sup> According to witnesses at the technical conference, there is "no direct linkage" between the ratings of parent and subsidiary. But Moody's does have one methodology that it could decide to use, by which "there can be an ability to link that, should the parent company support be strong enough to do that." An election to use this particular methodology would be "subject to Moody's determination and process panel."<sup>22</sup>

The Petitioners also describe how this sub-notch advantage from one rating company would not provide benefit to CMP or MNG. At A2, CMP has a higher credit rating than either Avangrid or Iberdrola and borrows independently on its own basis.<sup>23</sup> Any potential "parent

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<sup>21</sup> July 15, 2024, Technical Conference Transcript at 46-47:20-4.

<sup>22</sup> Ibid at 55: 24.

<sup>23</sup> Ibid at 83: 22-24.

linkage support” effect, as described by witnesses at the technical conference, would be even more indirect for CMP than it would for Avangrid under theoretical future scenarios and in the event that Moody’s opts to use one particular rating methodology.<sup>24</sup> There would only be a potential and conditional “qualitative” effect on CMP’s equity costs. “Not necessarily that [CMP’s equity costs] will be better because it does depend on macroeconomic factors and the like.”<sup>25</sup>

In data request OPA-001-010, the OPA asked, “Have the petitioners or Iberdrola performed any analysis regarding the impact of the merger on CMP or MNG's cost of capital?”

Petitioners responded,

“There has not been a specific analysis performed on the impact of the merger on CMP or MNG's cost of capital. Petitioners do not expect a change in CMP and MNG's cost of capital as a result of the merger...”

Therefore, the Petitioners’ testimony indicates that the proposed transaction would not be expected to boost the credit rating of CMP or that of Avangrid, and any alleged “improved access to capital” would not result in benefits for ratepayers of CMP or MNG.

Regarding the second category of benefits asserted by Petitioners, the cost savings incurred from avoiding compliance with federal disclosure requirements are real and quantifiable. In response to ODR-001-003, Petitioners provided their increasing filing costs, which summed to \$997,999.93 in 2023. These savings would be incurred by Avangrid. They would not flow to ratepayers in Maine because of the cap on affiliate service fees imposed by the Commission consistent with recommendations from the independent audit by Liberty Consulting

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<sup>24</sup> Ibid at 84-86.

<sup>25</sup> Ibid at 59: 25.

in 2021.<sup>26</sup> From ODR-001-004 Attachment 1: “Assuming there were no cap in place, the proportional amount that would be allocated to CMP and MNG and subject to cost recovery from customers for the year 2023 would be” in total \$62,137 for CMP customers and \$1,194 for MNG customers. This is how much the transaction can be expected to reduce the variance between affiliate costs incurred and the cap. But, with the cap on affiliated services in place, according to Petitioners’ testimony, these minimal savings would provide no benefit for Maine ratepayers.

Therefore, while the Petitioners have claimed otherwise, the proposed transaction offers no benefits to Maine ratepayers. Neither improved access to capital nor cost savings due to avoided reporting obligations can be expected to provide benefit to Maine ratepayers based on the available record.

**II. The proposed transaction poses potential harm to Maine utility ratepayers, and therefore fails to meet the lower no net harm standard.**

In the preliminary Proxy Statement, the Petitioners list avoiding regulatory oversight as one of four chief reasons it is seeking to take the company private.<sup>27</sup> Data request OPA-001-007 asks Petitioners to: Please identify all [U.S. Securities and Exchange Commission (SEC)] filing and registration requirements applicable to Avangrid following the proposed transaction.

Petitioners responded:

Following the closing the Proposed Transaction [*sic*], Avangrid Shares will be delisted from the NYSE and deregistered under the Exchange Act. As a result, Avangrid will no longer be subject to the reporting, disclosure control and other obligations set forth in the Securities Act and the Exchange Act, the rules promulgated thereunder, and the NYSE rules. Copies of Avangrid's filings with the SEC related to the Proposed Transaction are

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<sup>26</sup> Liberty Consulting Group on behalf of the Maine Public Utilities Commission, Central Maine Power’s Management Structure and Affiliate Services, final report, 2021, executive summary, p ES-8.

<sup>27</sup> EXM-001-003, Attachment 1-Part 1 Preliminary Proxy Statement, p 91.

available in the Investor Relations portion of Avangrid's website [www.avangrid.com](http://www.avangrid.com) or through the SEC's website at [www.sec.gov](http://www.sec.gov).

As a publicly traded firm, Avangrid is currently subject to federal compliance with the Exchange Act and the Sarbanes Oxley Act, including publicly filed reports such as shareholder proxy statements and SEC Forms 10-K, 8-K, and 10-Q, at minimum. Pursuant to testimony provided in the technical conference, these filings require disclosure of detailed financial information, management information, details of risks facing the company, as well as executive compensation. These reports are independently audited and consistent with U.S. generally accepted accounting principles.<sup>28</sup> SEC documents are public and searchable via an online federal database.

Once the company is taken private under 100% Iberdrola ownership, CMP and MNG's corporate parent will no longer disclose this information. The reorganization will reduce transparency, obfuscate information that is currently available to the public and regulators, and make it harder to know how the interests of Maine ratepayers may or may not get taken into account by a vast \$80 billion foreign corporate parent. This loss of transparency and accountability clearly poses potential harm to Maine ratepayers, contrary to Petitioners' claims that the proposed transaction will have no impact. As such, based on the available record, the proposed transaction would not satisfy the lower no net harm standard.

The Petitioners make contradictory claims that the reorganization will both have no effect on and also benefit CMP and MNG ratepayers. Based on the evidence in the record, it would appear neither claim is accurate. There may be additional adverse effects yet to be uncovered in testimony, and the Commission should allow the case to proceed in order to carefully consider

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<sup>28</sup> July 15, 2024, Technical Conference Transcript at 76-78: 23-11.

the implications for Maine customers of the proposed changes to Avangrid’s corporate structure. For instance, in seeking to cut staff and consultants to save \$997,999.93 in annual compliance costs, the proposed transaction may be motivated by an overemphasis by Iberdrola on cost-cutting measures at the expense of a focus on improving core utility operations. This was a chief concern raised by Liberty Consulting in its 2021 audit, part of a pattern which it identified as “[having] negative implications for Maine customers.”<sup>29</sup> To effectively ensure that the interests of Maine ratepayers are protected, the Commission must first understand fully how those interests will be impacted.

### **III. Petitioners have not met the burden of proof.**

The statute puts the burden of proof on the applicant, such that “[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.”<sup>30</sup>

As described by the Proxy Statement, the Petitioners have determined the share purchase price and details of the reorganization in order to guarantee the interests of investors. The interests of Maine ratepayers, on the other hand, have not been taken into account. The alleged benefits to Maine ratepayers have not held up to scrutiny, and there is a clear potential for adverse effects, such as the loss of transparency and accountability. Therefore, the applicant has not demonstrated that the reorganization serves the interests of Maine ratepayers, as required by even the lower no net harm standard, and the reorganization may not be approved.

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<sup>29</sup> Liberty Consulting Group on behalf of the Maine Public Utilities Commission, Central Maine Power’s Management Structure and Affiliate Services, final report, 2021, p ES-2.

<sup>30</sup> 35-A M.R.S. §708 (2)(A) at <https://legislature.maine.gov/statutes/35-A/title35-Asec708.html>

**IV. Eliminating minority shareholders would likely result in a change of corporate control and therefore the higher net benefits standard applies.**

On the issue of control, in response to data request OPA-001-013, Petitioners provided the 2015 Shareholder Agreement. The Agreement established a “corporate governance” body, called variably the Special Committee and the Unaffiliated Committee of the Avangrid Board of Directors. The Unaffiliated Committee is “comprised solely of independent and disinterested directors,” created for the purpose of protecting and representing the interests of shareholders.<sup>31</sup> As described in the Shareholder Agreement, this includes protection from “any ‘squeeze-out’ transaction of the Public Shareholders without prior approval.”<sup>32</sup> As described in the Preliminary Proxy Statement, the 2015 Shareholder Agreement:

“sets forth certain governance arrangements, including the establishment of the Unaffiliated Committee responsible for reviewing and approving all transactions entered into between the Company, on the one hand, and Iberdrola or its affiliates, on the other hand, and requiring any such transaction is entered into on an arms’ length basis.”<sup>33</sup>

In oral testimony at the technical conference, witnesses also described how shareholders review, discuss, and undertake an advisory vote on executive compensation for highly compensated employees of Avangrid.<sup>34</sup>

Petitioners’ testimony indicates 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

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<sup>31</sup> OPA-001-013, response text.

<sup>32</sup> OPA-001-013, Attachment 1-Shareholder Agreement, p 24.

<sup>33</sup> EXM-001-003, Attachment 1-Part 1 Preliminary Proxy Statement, p 43.

<sup>34</sup> July 15, 2024, Technical Conference Transcript at 13:7-13.

authority. This fact is reinforced by the Proxy Statement, which states in explaining Iberdrola’s purpose and reason for consolidating control: “As a privately held company, the Company will have greater operational flexibility.”<sup>35</sup> Eliminating minority shareholders would change who owns the parent company and how it is controlled and governed, thus resulting in a transfer of ownership and control and requiring the Commission to apply the net benefits standard.

**V. The proposed transaction fails to support the achievement of the state’s climate and clean energy requirements.**

Maine’s climate and clean energy requirements pursuant to 38 M.R.S. § 576-A and 577 are foundational to the future of the state’s energy sector and economy overall.<sup>36</sup> Yet Petitioners gave them no consideration<sup>37</sup> and undertook no analysis<sup>38</sup> to evaluate the impact of the transaction on these statutory requirements. Furthermore, in testimony witnesses misrepresented the relevance of Avangrid’s investments with respect to Maine’s climate and clean energy laws.<sup>39</sup>

Approving the transaction as proposed would not provide a “positive step forward in the Commission’s work to facilitate Maine achieving its greenhouse gas reduction levels within the exercise of its regulatory obligations.”<sup>40</sup> To the contrary, it would result in a step backward by condoning the company’s persistently poor track record, particularly as it relates to interconnecting new, clean energy generation within Maine’s service territory. Interconnection is

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<sup>35</sup> EXM-001-003 Attachment 1 Part 1 Preliminary Proxy Statement, p 92.

<sup>36</sup> <https://legislature.maine.gov/statutes/38/title38sec576-A.html>

<sup>37</sup> NRCM-001-003, response text.

<sup>38</sup> NRCM-001-002, response text.

<sup>39</sup> July 15, 2024, Technical Conference Transcript at 104-105.

<sup>40</sup> *Portland Natural Gas Transmission System Request for Exemption or Approval of Reorganization Pursuant to 35-A M.R.S. § 708*, Docket 2024-00072, Order Approving Stipulation (July 24, 2024).



the most direct way for the Commission, within the bounds of its jurisdiction, to regulate the performance of our T&D utilities to facilitate the achievement of Maine’s climate and clean energy goals. Maine cannot meet its climate goals with a dysfunctional utility process for bringing new, additional, renewable energy to Maine consumers. As proposed, the transaction does not satisfy the Commission’s climate requirements under 35-A M.R.S. § 103-A to “facilitate the achievement by the State of the greenhouse gas emissions reduction levels set forth in Title 38, section 576A” when executing its duties.<sup>41</sup>

This case presents an important opportunity for the Commission to take an additional positive step forward, to continue to define its responsibilities under section 103-A as the agency evolves to meet the challenges of regulating a climate-constrained power sector and sounds a clear drumbeat of precedent for future Commission rulings.

## **VI. The Commission should deny the Petitioners’ request for exemption.**

Based on the incomplete record, the Commission may not “simply revert” to an approval from 16 years ago, as the Petitioners are requesting. Not only has the legislature amended section 708 five times since 2008, including the substantive amendment through emergency preamble in 2019 that established the higher net benefits standard,<sup>42</sup> but it has also 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. Reverting to a 2008 approval would require that the Commission ignore both the legal and contemporary, factual context of the Petitioners’ request.

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<sup>41</sup> <https://legislature.maine.gov/statutes/35-A/title35-Asec103-A.html>.

<sup>42</sup> LD 1560, P.L. 2019 ch. 353.

**VII. The Commission should allow the proceeding to continue and base its decision regarding what conditions would satisfy the net benefits test on a complete record.**

According to the Commission’s 2020 decision in the Emera section 708 case cited earlier, “... the net benefits test requires a fact-specific, independent analysis of the benefits and costs of each proposed transaction.”<sup>43</sup> The current available record in this case is not sufficient for a full, factual, and informed analysis of the potential impacts on ratepayers. Further examination of the impacts of the proposed transaction on the public interest would be required to “weigh all the effects of the proposed transaction on the utility’s ratepayers, positive and negative, quantitative, and qualitative.”<sup>44</sup> To ascertain whether either the higher or lower standard has been met, the Commission should base its final decision on a complete record at the conclusion of the proceeding.

**Conclusion**

For all these reasons, NRCM submits that the Commission may not grant the Petitioners’ request for exemption and should apply the net benefits standard in exercising its authority under section 708.

Respectfully submitted,



Rebecca Schultz, Senior Advocate  
Natural Resources Council of Maine  
3 Wade Street  
Augusta, ME 04330  
Tel: (207) 430-0175  
Email: [rschultz@nrcm.org](mailto:rschultz@nrcm.org)

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<sup>43</sup> *Emera Maine, MEPCO, Chester SVC Partnership, Request for Reorganization Approval, Docket No. 2019-00097, Order Part II at 4 (April 21, 2020)*, at 3-4.

<sup>44</sup> *Ibid.*