STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL

PETITION OF WILLIAM TONG ATTORNEY GENERAL FOR THE STATE OF CONNECTICUT, AND CLAIRE E. COLEMAN, CONSUMER COUNSEL, FOR REVIEW OF THE PROPOSED ACQUISITION BY IBERDROLA, S.A. OF THE OUTSTANDING SHARES OF AVANGRID, INC.	:	DOCKET NO. 24-09-__
		SEPTEMBER 16, 2024

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William Tong, Attorney General for the State of Connecticut ("Attorney General"), and Claire E. Coleman, Consumer Counsel, respectfully request that the Public Utilities Regulatory Authority ("PURA" or "Authority") initiate a proceeding to review the proposed acquisition by Iberdrola, S.A. ("Iberdrola") of the remaining 18.4 percent of shares of Avangrid, Inc., ("Avangrid") that Iberdrola does not currently own (the "Transaction"). The PURA should carefully evaluate this proposed Transaction to determine its impact on Connecticut utility customers, rates, operations, service and reliability. The Authority should condition any approval of the Transaction to ensure the public interest standard is met.

I. BACKGROUND

On May 17, 2024, the Board of Directors of Avangrid, acting on the unanimous recommendation of the Unaffiliated Committee of the Board of Directors (the "Unaffiliated Committee"), approved an agreement whereby Iberdrola would acquire the remaining 18.4 percent of the outstanding shares of Avangrid that Iberdrola does not already control. As the Authority is well aware, Avangrid is headquartered in Orange, Connecticut and is the parent

company of the United Illuminating Company ("UI"), the Southern Connecticut Gas Company ("SCG") and the Connecticut Natural Gas Corporation ("CNG"). Avangrid sought approval of the Transaction at the Federal Energy Regulatory Commission ("FERC"), the Securities and Exchange Commission ("SEC"), the Maine Public Utilities Commission ("Maine PUC") and the New York Public Service Commission ("NY PSC").[1] Avangrid has not, however, sought review or approval of the Transaction in Connecticut.

In a recent press release, following approval of the Transaction by the Federal Energy Regulatory Commission, Avangrid's Chief Executive Officer, Pedro Azagra, stated:

> This approval is an important step in the merger process, which will allow Avangrid to not only expand our renewable projects but also invest in our network's business by investing in the infrastructure improvements needed to deliver reliable clean energy to the millions of customers we serve . . .This merger will strengthen our capacity to meet the growing demand for sustainable energy solutions and further our mission to lead the transition to a cleaner energy future in the United States.[2]

The proposed Transaction is subject to review under Connecticut law and could have profound implications for the management of and financial condition of Avangrid's Connecticut operating companies. The Authority should thoroughly review and condition the proposed Transaction to ensure Avangrid's Connecticut customers are protected and will see net benefits if approved.

II. THE PURA HAS THE AUTHORITY AND OBLIGATION TO ENSURE THAT ANY PROPOSED MERGER BENEFITS THE PUBLIC INTEREST

Connecticut law requires Avangrid to seek PURA review and approval of the proposed Transaction, and the PURA's legal authority to review this proposed Transaction is broad. See

[1] Avangrid, Inc., SEC Form 8-K, (Sept. 5, 2024), Item 8.01. Available at: https://d18rn0p25nwr6d.cloudfront.net/CIK-0001634997/7280fe37-8fb0-4177-982f-c85893ff2698.pdf

[2] Press Release, Avangrid, Avangrid Announces Receipt of Federal Energy Regulatory Commission Approval (Sept. 5, 2024), https://www.avangrid.com/w/avangrid-announces-receipt-of-federal-energy-regulatory-commission-approval.

Conn. Gen. Stat. §§ 16-11, 16-19e, 16-22, and 16-47. Pursuant to § 16-47(b), no entity may "exercise or attempt to exercise authority or control over any [public service company] . . . without first making written application to and obtaining the approval of the Public Utilities Regulatory Authority. . . ." Conn. Gen. Stat. § 16-47(b). Pursuant to Conn. Gen. Stat. § 16-47(a), "'control' means the possession of the power to direct or cause the direction of the management and policies of a gas, electric distribution, water, telephone or community antenna television company or a holding company, whether through the ownership of its voting securities, the ability to effect a change in the composition of its board of directors or otherwise. . . ."

Upon such application, the Authority is required to investigate and hold a hearing. Conn. Gen. Stat. § 16-47(d). Moreover, Section 16-47(d) specifically states that in such a hearing the PURA shall:

> take into consideration (1) the financial, technological and managerial suitability and responsibility of the applicant, (2) the ability of the gas, electric and electric distribution . . . company . . . to provide safe, adequate and reliable service to the public through the company's plant, equipment and manner of operation if the application were to be approved . . . .

Finally, "[t]he authority shall only grant its approval of an application filed on or after January 1, 2021, made under subsection (c) of this section, if the holding company effects a change in the composition of the board of directors to include a proportional percentage of Connecticut-based directors equivalent to the percentage that Connecticut service areas represent of the total service areas covered by the holding company." Conn. Gen. Stat. § 16-47(d).

Other statutes confirm that the PURA's authority to review the proposed merger is wide-ranging. Conn. Gen. Stat. §16-19e provides that the Authority "shall examine and regulate the transfer of existing assets and franchises" in accordance with a number of broad principles,

including that there is a public need for the service being provided and that the companies will perform their public responsibilities with economy, efficiency, care for public safety and so as to promote economic development. Similarly, Conn. Gen. Stat. § 16-11 requires that, among other things, the PURA keep fully informed as to public service companies' manner of operation and that:

> [t]he general purposes of this section and sections 16-19, 16-25, 16-43 and 16-47 are to assure to the state of Connecticut its full powers to regulate its public service companies, to increase the powers of the Public Utilities Regulatory Authority and to promote local control of the public service companies of this state, and said sections shall be so construed as to effectuate these purposes.

The proposed transaction is clearly a change of control within the meaning of Conn. Gen. Stat. § 16-47 requiring the Authority's review and approval. As noted above, 'control' means possessing the power to direct the company's policies, "whether through the ownership of its voting securities, the ability to effect a change in the composition of its board of directors or otherwise. . . ." Conn. Gen. Stat. § 16-47(a). "Ownership, where the ownership is a voting stock, is a form of control. Increasing ownership of voting stocks increases control. Complete ownership is complete control." Hempling pre-filed testimony ("PFT"), 19 (attached as Exhibit A).[3] Eliminating all minority shareholders clearly removes any checks that could serve as a break on risk-taking by Iberdrola in its investment decisions. As noted by Hempling in Docket No. 2024-00017,

> [i]t is a transfer of control of the 18.4% voting right that the minority shareholders have the power to exercise when they want to put a brake on Iberdrola's risk-taking. In the status quo, Iberdrola cannot take risks without considering its fiduciary duty to the minority shareholders—many of whom are small investors who originally were investors in the pure-play utilities owned by UIL. After the transaction, Iberdrola can take those

[3] Testimony filed on behalf of "Our Power" in the State of Maine Public Utilities Commission Docket 2024-00117, *Central Maine Power, Maine Natural Gas, and Avangrid, Inc. Request For Section 708 Exemption or Approval of Reorganization* (Docket No. 2024-00017").

> same risks, and more, free of any fiduciary duty—all because the minority shareholders have sold to Iberdrola their control of their voting shares.

Hempling PFT, 8. These decisions could have profound effects on Connecticut's operating companies, including but not limited to access to capital markets at reasonable terms.

The Transaction also meets the second criteria for establishing a change of control under Connecticut law, "the ability to effect a change in the composition of its board of directors." Conn. Gen. Stat. § 16-47(a). As a condition of the creation of Avangrid in 2015, Iberdrola executed a "Shareholder Agreement" with Avangrid's minority shareholders designed to protect the interests of those minority shareholders. Pursuant to Section 5.1 of the agreement, Avangrid was required to appoint four independent directors to the board, with two of those directors from the former Connecticut UIL entities. Attached as Exhibit B. These independent directors were empowered to ensure all transactions among the Iberdrola entities were arm's length. This important provision was intended to protect the Connecticut operating companies and their customers from unilateral unchecked Iberdrola decisions that could adversely affect the utilities, their access to capital, and their customers. With the disappearance of the minority shareholders, these important protections evaporate.

In addition to the particular standards set forth in Conn. Gen. Stat. § 16-47(d), Connecticut law clearly provides that the PURA must apply a public interest standard and that the burden of proving that the proposed merger is in the public interest rests squarely upon the Applicants. Conn. Gen. Stat. § 16-22 states that:

> [a]t any hearing involving a rate or the transfer of ownership of assets or a franchise of a public service company, the burden of proving that said rate under consideration is just and reasonable or that said transfer of assets or franchise is in the public interest shall be on the public service company.

See Final Decision, Docket No. 15-07-38, *Joint Application of Iberdrola, S.A., Iberdrola USA, Inc., Iberdrola USA Networks, Inc., Green Merger Sub, Inc., and UIL Holdings Corporation For Approval of a Change in Control*, 6. See also Final Decision, Docket No. 00-01-11, *Joint Application of Consolidated Edison, Inc. and Northeast Utilities for Approval of a Change of Control*, 2, ("[c]onsideration of the public interest and balancing the interests of shareholders and ratepayers led to many of the conditions on the approval of this Merger that the Department found essential.").

III. IMPACT ON CONNECTICUT

The proposed Transaction could have a profound impact on the State of Connecticut and the people of the State. As noted above, the Shareholder Agreement from 2015 provided important protections for Connecticut, the Connecticut operating companies and their customers. Absent a PURA review and conditions, these protections go away post Transaction. Hempling has identified other potential concerns that require PURA review. First, eliminating the minority shareholders reduces the discipline on Iberdrola's risk-taking. Hempling PFT, 48. Iberdrola will be unconstrained by minority shareholders who might have otherwise limited or blocked risky ventures or investments. Id. The Authority should review and condition any approval of this transaction to ensure that Avangrid is required to maintain a strong independent membership in the Avangrid board of directors to continue protecting Connecticut's interests, as required by Conn. Gen. Stat. § 16-47(d).

Second, upon acquisition of the remaining public shares of Avangrid, the company will no longer have to make any public filings with the Securities and Exchange Commission, such as the annual Form 10-K.

> The report describes the company's various business divisions and subsidiaries, as well as the markets from which it buys inputs and into which it sells outputs. The report also

> describes the company's research and development activities, its competitive pressures and other risks (both current and future), and its regulatory relationships. It includes a discussion by management, which allows readers to assess how well management understands and responds to all the facts that affect the company's health. It includes the standard financial statements—balance sheet, income statement, and cash flow statement—all reviewed by auditors (who certify the financial statements) and footnoted to explain any unusual features, such as deviations from customary accounting treatment. It has additional sections that describe any legal proceedings affecting the company. The company's chief executive officer and chief financial officer have to swear to the financial statements' accuracy.

Hempling PFT, 41. In addition to Form 10-K, Avangrid will not file Form 10-Q (the quarterly version of Form 10-K) or Form 8-K (change in financial condition, a new stock issuance, a major lawsuit, a bankruptcy of the company or one of its affiliates, a major acquisition or disposition of companies or assets, the entry or exit of executives or board members, and any impairments of assets). Id., 42. These financial disclosures are useful to regulators and the public in understanding the profile of the company. Without this information, the Authority will have no way to understand how or if Avangrid's actions are changing the risks and costs that affect Connecticut's operating companies.

In addition, Iberdrola will be paying the minority shareholders $2.5 billion for the outstanding shares. Hempling PFT, 77. This includes an acquisition premium of an estimated $260 to $335 million. Id. Iberdrola and Avangrid have made no attempt to show how customers might benefit in any way from this Transaction. "Conventional regulatory principles require that shareholders and customers share gains in proportion to each group's contribution to those gains. Here, the transaction's negotiators are transferring all that value to the minority shareholders, leaving nothing for the customers. That feature of this transaction is a detriment." Hempling PFT, 77-78.

This is not an exhaustive list of the potential concerns raised by this Transaction. Such a list requires a robust PURA review of the Transaction and its potential harms to the Connecticut

operating companies and their customers. The Authority should initiate a proceeding to review the proposed Transaction and require any conditions it deems necessary to protect the public interest.

WHEREFORE, for the foregoing reasons, the Attorney General and the Consumer Counsel respectfully request that the PURA review the proposed Transaction to ensure it provides benefits to Connecticut customers.

Respectfully Submitted,

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