

February 21, 2020 and March 19, 2020, including an independent report by Price Waterhouse, concluded that the processing of invoices without a previously authorized order for the Project Arrow and Project Black Board services violated Iberdrola, S.A.'s internal regulations in effect at the time the Cenyt invoices were issued and accepted in 2004 through 2006.²⁵⁹ The reports from 2020 found that it was not until 2013 that Iberdrola, S.A.'s internal regulations were amended to broaden the number of cases in which invoices submitted without a previously authorized order were permitted.

The Court stated that the 2020 reports performed by Iberdrola, S.A.'s auditors and Price Waterhouse also concluded that the Cenyt work did not entail any loss of corporate control based upon assurances provided by Mr. Asenjo Martin. The 2020 reports noted that all of the invoices were signed by Mr. Asenjo Martin, who was authorized to procure the services. The reports also noted that, despite the fact that no related documentation had been located to substantiate the provision of the services, Mr. Asenjo Martin stated that the invoices corresponded to services actually rendered and that greater detail was not included due to the confidential nature of the services.

e. Relevance

The criminal investigation in Spain is relevant and of concern in this case. It is a criminal investigation of the highest officials in the Iberdrola, S.A. and Avangrid, Inc. corporate chain, which is seeking to acquire PNM. It is also a criminal investigation of an Iberdrola, S.A. subsidiary in Spain that develops energy projects.

²⁵⁹ Iberdrola's internal audit report and the Price Waterhouse Coopers (PwC) report were included in the Joint Applicants' July 27 filings. They were admitted into evidence initially as Commission Exhibits 7 (Spanish version) and 8 (English translation). The documents filed on July 27, however, omitted several appendices related to the internal audits. A complete version of the internal audit reports was thereafter admitted into the record as Commission Exhibit 11 (including both the Spanish version and the English translation).

There have been no formal criminal charges issued against the officials or the subsidiary at this point and no convictions. But a Spanish court has found that the Public Prosecutor and the police have presented sufficient evidence to warrant the criminal investigation.

The criminal investigation raises questions about one of the legal standards for the approval of a merger -- the qualifications of the company seeking to acquire PNM. Utility requests for approvals are supposed to be accomplished within the confines of the Commission's discovery and hearing processes based upon the Commission's rules of procedure. Hiring of security companies to investigate and harass a utility's opponents might not be illegal in New Mexico, but it does go beyond the norms considered appropriate here. The discussion below regarding the investigative activities of Central Maine Power Company, a U.S. subsidiary of Iberdrola, S.A. and Avangrid, Inc., is concerning in this regard.

The issue of document falsification is even more significant. Much of utility regulation involves the review of documents prepared and maintained by utilities. This is important for enforcement and for the discovery process associated with utility rate cases and requests of resource acquisitions. Allegations of document falsification are therefore especially concerning.

Moreover, apart from whether the actions of Iberdrola, S.A.'s executives and its subsidiary constitute crimes under Spanish law, their actions appear to represent methods of doing business that should raise concerns for the Commission.

The criminal investigation is also important due to the prevalence of Iberdrola, S.A. executives on the Avangrid, Inc. board of directors, which appoints and removes directors and management of Avangrid, Inc.'s utility companies. Six of Avangrid, Inc.'s 14 board members are senior executives in the Iberdrola, S.A. corporate structure.²⁶⁰ Ignacio Galán, Iberdrola,

²⁶⁰ Maine Audit, at 16.

S.A.'s CEO and Chairman, serves as the Board Chair of Avangrid, Inc. Mr. Galán is under investigation in the Spanish court proceedings. The four members of Avangrid, Inc.'s executive committee also include Mr. Galán, plus Iberdrola, S.A.'s Chief Financial Officer, the Avangrid, Inc. CEO and one independent board member.²⁶¹

²⁶¹ Maine Audit, at 16.