SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

IN re AVANGRID, INC. SHAREHOLDER LITIGATION	Index No. 659327/2024 Appeal No. 2026-00346
DEKALB COUNTY EMPLOYEES' RETIREMENT SYSTEM, et al. *Plaintiffs-Appellants* - against – IGNACIO S. GALÁN, et al, *Defendants - Respondents*	

NOTICE OF PLAINTIFFS-APPELLANTS' MOTION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

PLEASE TAKE NOTICE that, upon the accompanying joint affirmation of John Rizio-Hamilton and Thomas G. James, dated July 29, 2026, the exhibits attached thereto, the record on appeal and the briefs filed therein, and all other prior proceedings in this action and appeal, Plaintiffs-Appellants, by and through their attorneys at Bernstein Litowitz Berger & Grossmann LLP, 1251 Avenue of the Americas, New York, New York, 10020, and Johnson Van Kwawegen LLP, 485 Madison Avenue, 15th Fl. New York, NY, 10022, will move this Court, at a term of the Appellate Division of the Supreme Court, First Department, at 27 Madison Avenue, New York, New York, on August 31, 2026, at 10:00, or as soon thereafter as counsel can be heard, for an order pursuant to CPLR § 5602 and 22 N.Y.C.R.R. § 1250.16, granting leave to appeal to the Court of Appeals from the Decision and Order of this Court, dated June 30, 2026, and for such other relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR § 2214(b) and 22 N.Y.C.R.R. § 1250.4(a)(5), answering affidavits, if any, shall be served on Plaintiff-Appellants at least seven days before the return date, and reply affidavits, if any, shall be served on Defendant-Respondents at least one day before the return date.

Dated: July 29, 2026
New York, New York

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

IN re AVANGRID, INC. SHAREHOLDER LITIGATION	Index No. 659327/2024 Appeal No. 2026-00346
DEKALB COUNTY EMPLOYEES' RETIREMENT SYSTEM, et al. *Plaintiffs-Appellants* - against – IGNACIO S. GALÁN, et al, *Defendants - Respondents*	

JOINT AFFIRMATION OF JOHN RIZIO-HAMILTON AND THOMAS G. JAMES IN SUPPORT OF PLAINTIFFS-APPELLANTS' MOTION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

We, John Rizio-Hamilton and Thomas G. James, attorneys duly admitted to practice in the Courts of the State of New York, affirm this 29th day of July, 2026, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, except as to matters alleged on information and belief and as to those matters we believe it to be true, and we understand that this document will be filed in an action or proceeding in a court of law.

1. John Rizio-Hamilton is a partner of the law firm Bernstein Litowitz Berger & Grossmann LLP, counsel for Plaintiff-Appellant Dekalb County Employees' Retirement System in connection with the above-captioned appeal (the "Appeal").

2. Thomas G. James is a partner of the law firm of Johnson Van Kwawegen LLP, counsel for Plaintiffs-Appellants AQR Capital Management, LLC, AQR Arbitrage, LLC, and Kevin Barnes ("Plaintiffs-Appellants") in connection with the Appeal.

3. We filed the opposition to Defendants' motion to dismiss in the Commercial Division of the Supreme Court and were appellate counsel in this Court. Consequently, we are familiar with the facts and questions of law involved in this Appeal.

4. This affirmation is submitted in support of a motion by Plaintiffs-Appellants for leave to appeal to the Court of Appeals.

5. On June 30, 2026, the Court entered a decision and order affirming the lower court's decision granting Defendant-Appellants' motion to dismiss (the "Decision"). A copy of the Decision, with the Notice of Entry filed June 30, 2026, is attached as Exhibit A.

6. The Appeal was taken from a decision and order on motion of the Commercial Division of the Supreme Court, New York County, dated December 22, 2025. A copy of that decision and order is attached as Exhibit B.

Plaintiffs-Appellants

7. Plaintiffs-Appellants in this action represent a broad cross-section of the American investing public, including public pension funds, sophisticated institutional investors, and individual retail investors. Each believe that they were significantly underpaid for their investment in Avangrid, Inc. ("Avangrid" or the "Company"), a New York corporation, when the Company's controlling shareholder, Iberdrola, S.A. ("Iberdrola"), a Spanish company, took Avangrid private (the "Merger").

8. Plaintiff DeKalb County Employees' Retirement System ("DeKalb County") is a pension plan for public employees in DeKalb County, Georgia, that held 38,000 Avangrid shares, worth $1,358,000 at the inadequate squeeze-out price. Plaintiffs AQR Capital Management, LLC and AQR Arbitrage LLC are managers for an investment fund that held 716,351 Avangrid shares, worth $25,609,548 at the inadequate squeeze-out price. Plaintiff Kevin Barnes is an individual who owned 72,000 Avangrid shares, worth $2,574,000 at the inadequate squeeze-out price.

Several other individuals serve as Additional Plaintiffs. Several former Avangrid shareholders also supported Plaintiffs-Appellants appointment as lead plaintiffs for this action and collectively held more than 285,000 shares, including New England Teamsters Pension Fund (a retirement fund) and ODS Capital LLC (an investment fund).

9. The underpayment to these and Avangrid's other public investors was massive; numerous financial valuation methods demonstrate that they were shortchanged by $10 per share or more (R2123-25 ¶¶178-185.)

Leave to Appeal to Court of Appeals

10. Plaintiffs-Appellants request leave to appeal the Decision to the Court of Appeals. This case presents significant questions of law that are novel and of significant public importance. As the diverse composition of the representative plaintiffs in this action makes clear, the entire American investing public—including individuals and public pension funds—has a strong interest in making sure they are treated fairly by the fiduciaries who control the New York corporations in which they are invested.

11. New York law has consistently recognized that in mergers where "there is a common directorship or majority ownership, the inherent conflict of interest and the potential for self-dealing requires careful scrutiny of the transaction." *Alpert v. 28 Williams St. Corp.*, 63 N.Y.2d 557, 570 (1984). In those circumstances—such as the Merger here—the interested directors and controlling shareholders bear the burden "to prove good faith and the entire fairness of the merger" (*i.e.*, satisfy the entire fairness standard). *Id.* For the lower business judgment review standard to apply, "the corporation's directors [must] establish that certain shareholder-protective conditions are met." *In re Kenneth Cole Prods., Inc.*, 27 N.Y.3d 268, 274 (2016). Under *Kenneth Cole*, business judgment review will apply:

> if and only if: (i) the controller conditions the procession of the transaction on the approval of both a Special Committee and a majority of the minority stockholders; (ii) the Special Committee is independent; (iii) the Special Committee is empowered to freely select its own advisors and to say no definitively; (iv) the Special Committee meets its duty of care in negotiating a fair price; (v) the vote of the minority is informed; and (vi) there is no coercion of the minority"

Id. at 277 (quoting *Kahn v M & F Worldwide Corp.*, 88 A3d 635, 645 (Del 2014) ("*MFW*")) (emphasis in original).

12. The questions for which Plaintiffs-Appellants seek leave to appeal to the Court of Appeals are as follows:

a. Did the Supreme Court err in holding that Defendants satisfied the first *Kenneth Cole* condition when Avangrid's controlling shareholder, Iberdrola, improperly impacted the shareholder vote by refusing the request of the Committee negotiating the Merger for public shareholders to exclude from the vote another large shareholder with the same interests as Iberdrola?

b. Did the Supreme Court err in holding that Defendants satisfied the sixth *Kenneth Cole* condition where Iberdrola coerced the shareholder vote by publicly disclosing that the shareholder vote was structured so that a supermajority vote of unaffiliated public shareholders would be required to block the Marger?

c. Did the Supreme Court err in holding that Defendants satisfied the second *Kenneth Cole* condition, finding that the Committee tasked with negotiating on behalf of public shareholders was entirely independent from Iberdrola, when: (i) the financial incentives of the majority of the Committee and its financial advisor were aligned with the interests of Iberdrola, not

unaffiliated public shareholders and (ii) the Unaffiliated Committee was required to consider Iberdrola's interests in the Merger?

13. These questions are of great importance to investors in New York corporations. Judicial review of conflicted controlling shareholder transactions like the Merger directly affects the value of pensions, retirements, and other investor-beneficiaries, including countless New Yorkers. Public companies with controlling shareholders decline in value if the market perceives that the controller may use its "private benefits of control" to extract value from public investors, like Iberdrola's opportunistic take-private Merger here. *See, e.g.*, *In re Appraisal of Regal Ent. Grp.*, 2021 WL 1916364, at *26 (Del. Ch. May 28, 2021) ("in an efficient market, participants will perceive the *possibility* that the controller will act in its own interests and discount the minority shares accordingly") (emphasis in original); Ronald J. Gilson & Jeffrey N. Gordon, *Controlling Controlling Shareholders*, 152 U. PA. L. REV. 785, 787 (2003) ("In a public corporation, the trading price of shares in a corporation with a controlling shareholder reflects the value of a non-controlling share. The price of a non-controlling share will have been discounted by the capitalized value of the controlling shareholder's private benefits.").

14. Thus, effective judicial review of interested transactions like the Merger "offer[s] significant benefits" to controlled corporations and their stockholders" and serves as "a foundational component for vibrant securities markets." *In re Ezcorp Inc. Consulting Agreement Derivative Litig.*, 2016 WL 301245, at *21 (Del. Ch. Jan. 25, 2016) (collecting academic research).

15. Robust protections for minority shareholders in the context of controller take-private transactions not only benefit investors, but also New York-chartered companies and capital markets more broadly. Empirical evidence in analogous contexts shows that limiting the application of *Kenneth Cole*'s "shareholder protective" conditions has a detrimental impact on the

value of New York companies with controlling shareholders. *See* Kenneth Khoo & Roberto Tallarita, *The Price of Delaware Corporate Law Reform* (June 24, 2025), *available at* https://ssrn.com/abstract=5318203 (examining Delaware corporate law changes limiting judicial oversight of conflicted controller transactions and finding that those changes "reduced the shareholder value of Delaware firms overall, with the largest losses borne by companies where controller conflicts are most salient"). This harms investors, controlled companies—which will become less attractive investment opportunities—*and* capital market more broadly. In short, robust enforcement of *Kenneth Cole*'s protections supports retirement and other savings and also encourages capital formation and incorporations in New York.

16. The Court of Appeals has long recognized what the empirical research bears out: that in mergers where "there is a common directorship or majority ownership, the inherent conflict of interest and the potential for self-dealing requires careful scrutiny of the transaction." *Alpert*, 63 N.Y.2d at 570. In *Kenneth Cole*, the Court of Appeals attempted to find a "middle ground" between judicial review of all conflicted transactions and the business judgment rule, *i.e.*, "general principle that [New York] courts should strive to avoid interfering with the internal management of business corporations." 27 N.Y.3d at 274. There, the Court of Appeals held that a complaint challenging a controller going-private transaction, like the Merger, "is sufficient to state a cause of action for breach of fiduciary duty—and the plaintiff may proceed to discovery" "if the evidence demonstrates that *any* of [six] protections were not in place[.]" *Id.* at 278-79 (emphasis added). The *Kenneth Cole* standard thereby limits judicial review of conflicted transactions while still enabling minority shareholders "to obtain judicial review of transactions involving interested parties, and to proceed to trial where there is adequate proof that those interests *may* have affected the transaction[.]" *Id.* at 278 (emphasis added).

17. Since *Kenneth Cole*, the Court of Appeals has not yet addressed the composition of the shareholders in the disinterested shareholder vote that is necessary to "replicate[] an arm's length transaction and support[] the integrity of the process." *See id.* at 277. Nor has the Court of Appeals yet addressed whether a shareholder with significant business, social, and economic ties to the controller as well as a larger investment in the controller than the controlled company can properly be included in a vote of disinterested minority shareholders for purposes of satisfying *Kenneth Cole*'s first and sixth conditions.

18. The Delaware authority adopted in *Kenneth Cole* rests on the premise that courts can defer to the approval of transactions by "*disinterested*" shareholders. 27 N.Y.3d at 277 (citing *MFW*, 88 A.3d at 645) (emphasis added). That makes sense, because disinterested minority shareholders presumably will only approve a transaction that is in their own economic best interests. Indeed, other Delaware cases involving analogous minority shareholder votes have reasoned that the shareholder vote must be "disinterested," meaning factors other than the economic merits of the transaction must not be at play in the vote to approve the transaction. *In re Pattern Energy Grp. Inc. S'holders Litig.*, 2021 WL 1812674, at *64 (Del. Ch. May 6, 2021); *see also In re Pure Res., Inc., S'holders Litig.*, 808 A.2d 421, 446-47 (Del. Ch. 2002) (majority-of-the-minority vote may be rendered coercive if the "minority" includes shareholders whose "voting incentives...are not perfectly aligned with their economic interest in their stock[.]"); *see generally*, Opening Brief at 26-28; Reply Brief at 12-13. Whether an interested shareholder can participate in a vote of minority shareholders designed to "support[] the integrity of the process" and "create structures that best protect minority shareholders" in a conflicted merger (*Kenneth Cole*, 27 N.Y.3d at 277) is a matter of first impression.

19. In sum, given the importance of *Kenneth Cole*'s protections to the savings and investments of investors, including New Yorkers, the Court of Appeals should decide whether the participation of interested shareholders at the insistence of a controlling shareholder corrupts the intent of *Kenneth Cole* and warrants judicial review of the entire fairness of the merger price. This is a question of first impression in New York, and the absence of appellate guidance has left lower courts and practitioners without a clear framework for evaluating the independence of the shareholder vote in controller transactions. The Court of Appeals' resolution of this question will establish an important precedent governing controlled-company mergers for years to come.

20. Plaintiffs-Appellants know of no example in New York or elsewhere where a court found that defendants complied with *Kenneth Cole* conditions where a special committee's mandate required that it consider a controlling shareholder's interests while negotiating *against* the controller in connection with merger negotiations. Nor would that make sense. A special committee cannot serve two masters. Iberdrola's interests in paying the lowest possible price to acquire Avangrid in the Merger were fundamentally opposed to those of Avangrid's unaffiliated minority shareholders whom the Unaffiliated Committee was supposed to represent under *Kenneth Cole*.

21. Plaintiff-Appellants have made no prior application in this or any court for the relief sought in this proceeding.

Dated: July 29, 2026
New York, New York

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EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

In re AVANGRID, INC. SHAREHOLDER LITIGATION	Appeal No. 2026-00346 Index No. 659327/2024 Hon. Andrew Borrok Commercial Division Part 53

NOTICE OF ENTRY

PLEASE TAKE NOTICE that annexed hereto is a true and correct copy of the Order of the Supreme Court, Appellate Division, First Department, dated June 30, 2026, and entered by the Clerk of Court on the same date under Docket No. 2026-00346 (NYSCEF Doc. No. 20).

Dated: New York, New York
June 30, 2026

By: */s/ Andrew Ditchfield*
Andrew Ditchfield

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Supreme Court of the State of New York
Appellate Division, First Judicial Department

Scarpulla, J.P., González, Rodriguez, Higgitt, Hagler, JJ.

7002 In the Matter of AVANGRID, INC., SHAREHOLDER LITIGATION.

Index No. 659327/24
Case No. 2026-00346

DEKALB COUNTY EMPLOYEES' RETIREMENT SYSTEM, et al.,
Plaintiffs-Appellants,

-against-

IGNACIO S. GALÁN et al.,
Defendants-Respondents.

Johnson Van Kwawegen LLP, New York (Thomas G. James and Eric J. Riedel of counsel), for appellants.

Davis Polk & Wardwell LLP, New York (Andrew Ditchfield of counsel), for respondents.

Order, Supreme Court, New York County (Andrew Borrok, J.), entered December 22, 2025, which granted defendants' motions to dismiss the complaint pursuant to CPLR 3211(a)(7), unanimously affirmed, with costs.

Plaintiffs, former minority shareholders of nonparty Avangrid, Inc., alleged that defendants — Avangrid's directors, its CEO, and Iberdrola, S.A., Avangrid's parent holding company — breached their fiduciary duties during Iberdrola's buyout of the remaining outstanding shares of Avangrid. Plaintiffs further alleged that defendant Moelis & Company LLC, the financial advisor retained for the transaction, aided and abetted the breach of fiduciary duty. According to plaintiffs, the motion court should have applied the entire fairness standard of review to the transaction because

defendants did not adhere to the procedural safeguards stated in *Kahn v M & F Worldwide Corp.* (88 A3d 635, 645 [Del 2014]) (*MFW*), and as adopted by the Court of Appeals in *Matter of Kenneth Cole Prods., Inc., Shareholder Litig.* (27 NY3d 268, 277 [2016]). "[I]n controller buyouts, the business judgment standard of review will be applied if and only if: (i) the controller conditions the procession of the transaction on the approval of both a Special Committee and a majority of the minority stockholders; (ii) the Special Committee is independent; (iii) the Special Committee is empowered to freely select its own advisors and to say no definitively; (iv) the Special Committee meets its duty of care in negotiating a fair price; (v) the vote of the minority is informed; and (vi) there is no coercion of the minority" (*Kenneth Cole*, 27 NY3d at 277, quoting *MFW*, 88 A3d at 645]). Supreme Court properly granted defendants' motion to dismiss because the complaint did not sufficiently allege that defendants failed to satisfy these requirements and thus, the business judgment rule analysis applied. Under the business judgment rule, the Unaffiliated Committee's determinations were entitled to deference and dismissal of the complaint was warranted.

With respect to the first and sixth conditions, the transaction was conditioned on the approval of the Unaffiliated Committee and a majority of the minority shareholders, and the minority vote was not coerced. Contrary to plaintiffs' argument, defendants could include nonparty Qatar Investment Authority, which held 8.7% of the common stock of Iberdrola and 3.7% of Avangrid as a "minority" shareholder of Avangrid without coercing the minority (*see Matter of Baltic Trading Stockholders Litig.*, 160 AD3d 599, 602 [1st Dept 2018]).

With respect to the second condition, independence of the Unaffiliated Committee, "the question is whether a director is beholden to the controlling party or so

under that party's influence that the director's discretion would be compromised" (*Kenneth Cole,* 27 NY3d at 279). The issue of the Unaffiliated Committee's supposedly deficient mandate, which required the Committee to consider Iberdrola's interests, does not concern independence but rather goes to the committee's power to say no, the fourth condition under *MFW*. At oral argument before the court, plaintiffs' counsel admitted, "we've not alleged that the committee did not have the ability to say no."

Similarly, the issue of whether "the committee had an incentive to accept an inadequate price without meaningful negotiations" (*Kenneth Cole,* 27 NY3d at 280) does not concern independence but rather also concerns the fourth *MFW* requirement that "the [Unaffiliated] Committee meets its duty of care in negotiating a fair price" (*id.* at 277 [internal quotation marks omitted]). During oral argument before the motion court, plaintiffs' counsel also conceded, "we have not alleged the committee failed to satisfy its duty of care."

As to director independence, the second *MFW* condition, the fact that defendants Patricia Jacobs and Robert Duffy, members of the Unaffiliated Committee, remained on Avangrid's board after Iberdrola purchased the remaining shares of Avangrid did not strip them of independence (*see Baltic,* 160 AD3d at 600).

The allegation that Jacobs, a retiree, was not independent because her fees for sitting on Avangrid's board and Unaffiliated Committee formed the bulk of her income is unavailing (*see Simons v Brookfield Asset Mgt. Inc.,* 2022 Del Ch LEXIS 15, *34, 2022 WL 223464, *15 [Jan. 21, 2022, C.A. No. 2020-0841-KSJM]). Otherwise, courts would have to find "that all retired board members lack independence" (*Chester County Employees' Retirement Fund v New Residential Inv. Corp.,* 2017 Del Ch LEXIS 767, *22, 2017 WL 4461131, *9 [Oct. 6, 2017, C.A. No. 11058-VCMR]).

Plaintiffs allege that the director fees that Duffy received formed a smaller percentage of his income than Jacobs'. The fact that Duffy publicly praised defendant Ignacio Galán, the chairman of the boards of Avangrid and Iberdrola, and described him as a friend is insufficient to call his independence into question (*see Matter of Cadus Corp. Stockholder Litig.,* 2020 NY Slip Op 30547[U], *3-4 [Sup Ct, NY County], *affd* 189 AD3d 437 [1st Dept 2020], *lv denied* 37 NY3d 906 [2021]).

Plaintiffs' allegation that defendant John Balducci, the third member of the Unaffiliated Committee, had a personal relationship with Galán that called his independence into question is also insufficient (*see Kenneth Cole,* 27 NY3d at 279; *Cadus,* 189 AD3d at 437-438; *Baltic,* 160 AD3d at 600).

Finally, the fact that the Unaffiliated Committee, aided by a law firm, contacted eight financial firms and interviewed three before choosing defendant Moelis shows that it was "empowered to freely select its own advisors," in satisfaction of the third *MFW* condition (*Kenneth Cole,* 27 NY3d at 277, quoting *MFW,* 88 A3d at 645; *see In re Match Group, Inc. Derivative Litig.,* 2022 Del Ch LEXIS 212, *44, 2022 WL 3970159, *22 [Sept. 1, 2022, C.A. No. 2020-0505-MTZ], *revd on other grounds* 315 A3d 446 [Del 2024]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: June 30, 2026

Susanna Molina Rojas
Clerk of the Court

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

----------X

IN RE AVANGRID, INC. SHAREHOLDER LITIGATION,

Plaintiff,

- v -

XXX,

Defendant.

INDEX NO. 659327/2024

MOTION DATE 05/19/2025, 05/19/2025, 05/19/2025, 05/19/2025

MOTION SEQ. NO. 010 011 012 013

DECISION + ORDER ON MOTION

----------X

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 010) 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 198, 199, 211, 227
were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 011) 177, 178, 179, 180, 200, 202, 215, 229, 230, 231
were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 012) 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 196, 197, 212, 213, 232, 233, 234, 235, 236, 237
were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 013) 194, 195, 214, 228
were read on this motion to/for DISMISSAL.

Upon the foregoing documents and the additional supplemental briefing requested by the Court, the motions (Mtn. Seq. Nos. 010-013) to dismiss are GRANTED.

This is a lawsuit involving the going-private merger (the **Merger**) of Avangrid, Inc. (**Avangrid**), a utility company operating in the energy generation and distribution space, and its parent holding company, Iberdrola, S.A. (**Iberdrola**) (NYSCEF Doc. No. 169 at 8).

In 2015, pursuant to a series of transactions, Iberdrola increased its ownership of issued and outstanding common stock in Avangrid to approximately 81.6% (NYSCEF Doc. No. 180 ¶¶ 47-51). At that time, Avangrid and Iberdrola entered into a shareholder agreement (the **Shareholder Agreement**), dated December 16, 2015, which set forth certain governance arrangements and contains certain minority protections including that Iberdrola would not effectuate a going-private transaction without (i) approval by a majority of the members of an unaffiliated committee made up of independent[1] directors of the Board (the **Unaffiliated Committee**) and (ii) approval by a majority of the voting power held by shareholders other than Iberdrola and any Parent Controlled Affiliates (*i.e.*, a majority of the minority vote) (NYSCEF Doc. No. 169 at 177-178).

On May 17, 2024, approximately eight and a half years later, and following an extensive process as detailed in Avangrid's 2024 proxy statement (the **Proxy**; NYSCEF Doc. No. 169), dated August 20, 2024, which complied with the *MFW* procedural safeguards (hereinafter defined), the Unaffiliated Committee and the Board approved the adoption of an Agreement and Plan of Merger, by and among Iberdrola, Arizona Merger Sub, Inc., and Avangrid, involving the going-private transaction of Avangrid and Iberdrola (NYSCEF Doc. No. 180 ¶ 167). Subsequently, on September 26, 2024, the holders of a majority of all outstanding shares of Avangrid common

[1] According to the Proxy, a director is considered "independent" pursuant to the Shareholder Agreement "if they are (i) independent under the rules of NYSE with respect to Avangrid, and (ii) would be independent under the rules of NYSE with respect to Iberdrola if they were a director of Iberdrola The Unaffiliated Committee is responsible for, among other things, reviewing and authorizing transactions between Avangrid and/or one of its subsidiaries, on the one hand, and Iberdrola and/or its affiliates, on the other hand" (NYSCEF Doc. No. 169 at 177). In addition, the Proxy also indicates that John Baldacci may be deemed to be an independent director for this purpose.

stock other than Iberdrola, its subsidiaries, and their controlled affiliates voted in favor of the Merger (*id.* ¶ 168; NYSCEF Doc. No. 171 at 3).

According to the Consolidated Class Action Complaint (the **CAC**; NYSCEF Doc. No. 180), the problem is however, that Iberdrola acted opportunistically by receiving information before the other shareholders (*id.* ¶¶ 64-66), that the Unaffiliated Committee that considered the Merger was not independent (*id.* ¶¶ 31-35, 75-103), that the Unaffiliated Committee's financial advisor, Moelis & Company (**Moelis**) had economic incentives to push for a Merger (*i.e.,* as opposed to a merger at a higher price) (*id.* ¶¶ 36, 105-112), that certain of the legal advisors had conflicts (*id.* ¶¶ 46, 113-115), and that ultimately, Iberdrola acquired the remaining minority shareholders' interests in Avangrid at an unfairly low price (*id.* ¶ 1). The Plaintiffs thus argue that the procedural safeguards adopted by the Court of Appeals in the case captioned *In re Kenneth Cole Productions, Inc.*, 27 NY3d 268, 274-280 [2016]) were not adhered to such that the transaction should be scrutinized by the Court pursuant to the entire fairness standard and the motions to dismiss should be denied.[2]

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[2] *Kenneth Cole* was a shareholder class action challenging a going-private merger in which the Court of Appeals adopted the standard of review announced by the Delaware Supreme Court in *Kahn v M & F Worldwide Corp.*, 88 A3d 635 (Del 2014) [***MFW***]. The Court of Appeals explained that while interested-controller transactions are generally subject to an entire fairness standard of review, they may nonetheless receive business judgment rule protection if six procedural safeguards are established (the ***MFW procedural safeguards***):

> The standard was summarized as follows: "in controller buyouts, the business judgment standard of review will be applied *if and only if:* (i) the controller conditions the procession of the transaction on the approval of both a Special Committee and a majority of the minority stockholders; (ii) the Special Committee is independent; (iii) the Special Committee is empowered to freely select its own advisors and to say no definitively; (iv) the Special Committee meets its duty of care in negotiating a fair price; (v) the vote of the minority is informed; and (vi) there is no coercion of the minority" (*id.* at 645).
>
> We now adopt that standard of review for courts reviewing challenges to going-private mergers.

(*Kenneth Cole*, 27 NY3d at 277-278).

More specifically, according to the CAC, Iberdrola dominated Avangrid's Board (NYSCEF Doc. No. 180 ¶¶ 20-30). Ignacio S. Galán, who has been the Chairman of Avangrid's Board since 2014, served as Iberdrola's Board Chairman and Chief Executive Officer from 2006 to October 2022 and now serves as the Executive Chairman of Iberdrola's Board (*id.* ¶ 20). Daniel Alcain López, who has been a member of Avangrid's Board since 2020 and remains a Board member of the post-Merger Avangrid, began working for Iberdrola in 2001 and served as the Director of Group Risk Management of Iberdrola from 2018 to 2020 and Director of Group Administration and Control since 2020 (*id.* ¶ 22). Pedro Azagra Blázquez, who has been the Chief Executive Officer of Avangrid since May 2022, served as the Chief Development Officer of Iberdrola from 2008 to May 2022 (*id.* ¶ 23). Agustín Delgado Martín, who was an Avangrid Board member from 2022 until the Merger closed, served as the Director of Innovation and Sustainability at Iberdrola since 2010 and as Director of Innovation from 2006 to 2010 (*id.* ¶ 24). John Lahey, who was an Avangrid Board member from 2015 until the Merger closed, was appointed to Avangrid's Board after Iberdrola acquired UIL Holdings Corporation, for which Lahey was a director at the time of the acquisition (*id.* ¶ 25). Santiago Martínez Garrido, who has been an Avangrid Board member since 2015 and remains a Board member of the post-Merger Avangrid, has served as the Head of Legal Services for Iberdrola since 2016, as General Secretary of Iberdrola since July 2021, and as Secretary of the Iberdrola Board of Directors from January 2023 (*id.* ¶ 26). José Sáinz Armada, who has been an Avangrid Board member since 2016 and remains a Board member of the post-Merger Avangrid, served as Iberdrola's Chief Financial, Control and Development Officer since 2022, its Chief Financial and Resource Officer from 2015 until 2022, and Chief Financial Officer from 2004 to 2015 (*id.* ¶ 27). Alan Solomont, who

was an Avangrid Board member from 2014 until the Merger closed, has been the Chairman of the Board of Directors of the Spain-U.S. Chamber of Commerce since 2014, which has strong relations with both Iberdrola (one of its major funders) and Avangrid (*id.* ¶ 28). María Fátima Báñez García, who was an Avangrid Board member from 2022 until the Merger closed, was a member of the board of directors and audit committee of Iberdrola México, S.A. de C.V., an Iberdrola subsidiary, from September 2020 until June 2022 (*id.* ¶ 29). Camille Joseph Varlack, who was an Avangrid Board member from 2022 until the Merger closed, served as Deputy Mayor for the Administration for New York City Mayor Eric Adams (who held meetings with the Qatar Investment Authority [**QIA**], a major Iberdrola shareholder and long-time business partner, while in Qatar for the World Cup in 2022) (*id.* ¶ 30).

In fact, the CAC alleges that Avangrid's public filings acknowledge that Iberdrola controlled both the composition of the Board and "any action requiring the approval of [Avangrid's] shareholders" (*id.* ¶ 55). The Plaintiffs allege that, given Iberdrola's control, it was critical that the Unaffiliated Committee function independently and that the minority shareholders receive fully informed material disclosure in connection with their voting rights (*id.* ¶ 5). As discussed below, however, this is in fact what happened.

The Plaintiffs allege that Iberdrola timed the Merger to exploit a valuation gap between Avangrid's then-current stock price and its long-term growth prospects (*id.* ¶¶ 116-143). According to the CAC, Moelis informed the Unaffiliated Committee that the U.S. renewable energy market presented meaningful long-term growth opportunities (*id.* ¶ 59). Avangrid allegedly shared a similarly positive outlook during its February 2024 earnings call, stating that

Avangrid was well-positioned for "predictable organic long-term growth," reporting approximately $9 billion in approved investments and new utility rates in New York and Maine, but Avangrid's stock price remained on a steady decline (*id.* ¶¶ 58-60). Avangrid was scheduled to present updated long-term growth plans and forecasts at an investor conference in March 2024, and, according to the CAC, Iberdrola had access to these updated materials before they were publicly disclosed (*id.* ¶¶ 64-66). The day before the investor conference, on March 5, 2024, Mr. Galán allegedly informed Mr. Blázquez that Iberdrola would submit a take-private proposal at $34.25 per share (*id.* ¶¶ 67-68). Iberdrola further stated that it would only pursue the proposed transaction and did not intend to sell its existing ownership interest to any third party, and that it required QIA to be permitted to participate in the vote (*id.* ¶¶ 69-71). The Plaintiffs also allege that Avangrid's Iberdrola-controlled Board provided the Unaffiliated Committee with a deficient mandate for negotiating the Merger by directing it to consider the interests of all Avangrid shareholders, including Iberdrola (*id.* ¶ 70).

On November 27, 2024, the Plaintiffs sued (NYSCEF Doc. No. 1) alleging that the Defendants failed to satisfy many of the *MFW* procedural safeguards such that the transaction should be subject to the entire fairness standard of review and not receive business judgment deference (*see Flood v Synutra Intl., Inc.*, 195 A3d 754, 763-764 [Del 2018]).

As discussed below, however, they are simply not correct. Because the business judgment rule analysis applies and the Plaintiffs do not properly allege fraud or bad faith, the Unaffiliated Committee's determinations are entitled to deference and dismissal is therefore required (*see Kenneth Cole*, 27 NY3d at 274-275).

Pursuant to CPLR § 3211(a)(7), the court must afford the pleadings a liberal construction and accept the facts alleged in the complaint as true, according the plaintiff the benefit of every favorable inference (*Leon v Martinez*, 84 NY2d 83, 87–88 [1994]). The court's inquiry on a motion to dismiss is whether the facts alleged fit within any cognizable legal theory (*id.*). Bare legal conclusions are not accorded favorable inferences, however, and need not be accepted as true (*Biondi v Beekman Hill House Apt. Corp.*, 257 AD2d 76, 81 [1st Dept 1999]).

CPLR § 3016(b) imposes a heightened pleading standard for fraud and requires that "the circumstances constituting the wrong … be stated in detail" (*Edison Stone Corp. v 42nd St. Dev. Corp.*, 145 AD2d 249, 257 [1st Dept 1989]).

As discussed above, in *Kenneth Cole*, the Court of Appeals explained that although interested controller going-private mergers are generally subject to the entire fairness standard of review, they may nonetheless receive business judgment rule protection if six procedural safeguards are established (*Kenneth Cole*, 27 NY3d at 277-278). Because the CAC fails to adequately allege that any of the six procedural safeguards were not present, the CAC is dismissed.

I. The transaction was conditioned from inception on the approval of a special committee and a majority of the minority shareholders (*i.e.*, the first *MFW* procedural safeguard is satisfied)

To obtain business judgment rule protection, a controller-conflicted transaction, such as the one alleged here, must be conditioned from inception (*i.e., ab initio*) on both special committee

approval and an uncoerced, informed majority of the minority vote (*id.* at 277; *Flood v Synutra Intl., Inc.*, 195 A3d 754, 763-764 [Del 2018]; *Olenik v Lodzinski*, 208 A3d 704, 707 [Del 2019]).

The CAC alleges that this procedural safeguard was not met because QIA was included within the definition of minority investors (NYSCEF Doc. No. 180 ¶¶ 70, 120, 140, 145-149, 169, 185). According to the CAC, QIA is in fact Iberdrola's largest shareholder, holding approximately 8.7% of Iberdrola's common stock, while holding only 3.7% of Avangrid's common stock (*id.* ¶¶ 40, 43, 108). Thus, according to the CAC, the transaction is not conditioned from inception upon the approval of a majority of the minority shareholders to the extent that QIA was included in the majority of the minority calculation because QIA stood to benefit more from the Merger as it was more aligned with Iberdrola's interests than the interests of Avangrid's other shareholders (*id.* ¶ 108). According to the CAC, QIA ultimately voted its 14,396,887 Avangrid shares in favor of the Merger, thus tainting the majority of the minority vote (*id.* ¶¶ 168-169, 169 n).

Avangrid's Form 8-K (the **Form 8-K**; NYSCEF Doc. No. 171), dated September 26, 2024, and the Proxy, however, reveal something different. According to those documents, (i) as to the vote of the holders of a majority of all outstanding shares of Avangrid common stock (*aka*, "Vote 1"), there were 355,824,448 votes for the Merger, 4,032,162 votes against, 14,640,342 abstained votes, and 4,910,324 broker non-votes, (ii) as to the vote of the holders of a majority of all outstanding shares of Avangrid common stock held by Avangrid's shareholders other than Iberdrola, its subsidiaries, and their controlled affiliates (*aka*, "Vote 2"), there were 40,165,091 votes for the Merger, 4,032,162 votes against, 14,640,342 abstained votes, and 4,910,324 broker non-votes, and (iii) as to the vote of the holders of a majority of all outstanding shares of

Avangrid common stock other than Iberdrola, Merger Sub, their affiliates, any members of the Board of Avangrid who are employed by Iberdrola or its affiliates, any officer of Avangrid and any family members, affiliates, or associates of the foregoing (*aka,* "Vote 3"), there were 39,995,667 votes for the Merger, 4,032,162 votes against, 14,640,342 abstained votes, and 4,910,324 broker non-votes (NYSCEF Doc. No. 171 at 3).[3] Thus, it can not be said that the majority of the minority vote was not obtained. In fact, the CAC concedes that even if QIA was not included in the majority of the minority vote, the Merger still would have passed, albeit by a razor thin margin (NYSCEF Doc. No. 180 ¶ 169). Additionally, and before the vote occurred, QIA acted in accordance with its interest in Avangrid and with the minority shareholder Plaintiffs' interests, and not in accordance with its interest in Iberdrola, initially objecting to the initial share price offer because QIA was of the view that the price was too low (NYSCEF Doc. No. 169 at 50). Moelis opined that the Merger was fair to the unaffiliated shareholders (*id.* at 11) and in accordance with the Shareholder Agreement which provided that any going-private transaction required approval of the Unaffiliated Committee and approval of the majority of the minority shareholders. In fact, the CAC concedes that Moelis found the Merger price to be within a reasonable range, although at the low end (NYSCEF Doc. No. 180 ¶ 180). Thus, the CAC does not plead a reasonably conceivable set of facts that the first *MFW* procedural safeguard was not satisfied.

II. The Unaffiliated Committee was independent (*i.e.*, the second *MFW* procedural safeguard is satisfied)

[3] The Plaintiffs do not dispute the results of these votes (NYSCEF Doc. No. 180 ¶ 168).

To obtain business judgment rule protection, a controller-conflicted transaction must also be approved by a special committee[4] that is free from the controller's influence and whose members are not "sufficiently loyal to, beholden to, or otherwise influenced by an interested party," such that their personal, financial, or professional ties could compromise their judgment (*In re Cadus Corp. S'holders Litig.*, 189 AD3d 437, 437 [1st Dept 2020]; *In re Comverse Tech. Inc.*, 56 AD3d 49, 55 [2008]). A director is considered "interested" in a transaction when (i) the director has a personal financial interest in the transaction, or (ii) the director's independence is compromised by the control or influence of an interested party (*Comverse Tech*, 56 AD3d at 55).

The Unaffiliated Committee consisted of three directors: (i) former Lt. Governor of the State of New York, former Mayor of Rochester, and former CEO and President of the Greater Rochester Chamber of Commerce, Robert Duffy, (ii) former Governor of Maine, John Baldacci, and (iii) Patricia Jacobs (NYSCEF Doc. No. 180 ¶¶ 31, 34-35). Pursuant to the Shareholder Agreement, the Board maintains the Unaffiliated Committee to review and approve related-party transactions (*id.* ¶ 52).

According to the CAC, Mr. Duffy, the Chairman of the Unaffiliated Committee, has been an Avangrid Board member since 2019 and remained a Board member post-merger. In his prior political jobs, he worked with Rochester Gas and Electric (**RG&E**), Avangrid's subsidiary, and publicly stated that he is a friend of Iberdrola Chairman Galán (*id.* ¶ 34). He owns no stock in

[4] *MFW* requires that the entire committee be independent (*In re Match Grp., Inc. Deriv. Litig.,* 2022 WL 3970159, *17 [Del 2024]; *In re Handy & Harman Ltd. S'holder Litig.,* 2018 WL 2163593, *3 [Sup Ct, NY County May 10, 2018]).

Avangrid such that his personal financial interests were not tied to acting in favor of Avangrid's interests. This, according to the CAC, demonstrates that he was not independent.

The problem, however, with this assertion is that a politician's work in an official capacity, prior puffery remarks without more, and a lack of stock ownership "taken as a whole" do not plausibly establish a reasonably conceivable set of facts to conclude that a committee member's judgment, such as Mr. Duffy's, was compromised (*see M+J Savitt, Inc. v Savitt*, 2009 WL 691278, *6 [SD NY Mar 17, 2009] [applying New York law]; *accord F5 Cap. v Pappas*, 856 F3d 61, 83 [2d Cir. 2017] ["[T]he court must 'consider all the particularized facts pled by the plaintiffs about the relationships between the director and the interested party in their totality and not in isolation from each other'"], quoting *Del. Cnty. Emps. Ret. Fund v Sanchez*, 124 A3d 1017, 1019 [Del 2015] [applying Delaware law]). [5]

The CAC also alleges that Mr. Baldacci, who joined the Avangrid Board in 2014 and served as its Vice Chairman until the Merger closed, was not independent (NYSCEF Doc. No. 180 ¶¶ 31-33, 79-88). According to the CAC, Mr. Baldacci is also alleged to have long-standing political connections to Iberdrola from his tenure as Governor of Maine when he, among other things, visited Iberdrola's offices to meet with its executives, including Mr. Blázquez, and intervened in negotiations between the Maine Public Utilities Commission and Mr. Galán, to approve a $1.4 billion project for Iberdrola to improve the state's power grid (*id.*). According to the CAC, his role in previously carrying out these official duties compromised his independence on the Unaffiliated Committee at the time of the Merger (*id.* ¶¶ 81-82, 87-88). But, and as discussed

[5] The CAC does not allege that Mr. Duffy owned any stock in Avangrid (NYSCEF Doc. No. 180 ¶ 34).

above, carrying out a politician's official duties does not adequately allege a lack of independence.

To the extent that the CAC also alleges that Mr. Baldacci's connections to Iberdrola continued after being Governor of Maine (*id.* ¶ 32), these too are insufficient. More specifically, the CAC alleges that he was employed by the law firm Pierce Atwood, which firm received millions in fees from Avangrid since it was retained by Avangrid in 2017 (*id.*). The CAC also alleges that Pierce Atwood represented Iberdrola in April 2024 by analyzing for Avangrid whether regulatory approvals would be required by the Merger (*id.* ¶ 86).

However, and significantly, the CAC concedes that Mr. Baldacci left the firm in 2021 (three years before any such work occurred) and does not allege that he ever represented Iberdrola at Pierce Atwood or derived compensation from the firm's work for Iberdrola (*id.* ¶¶ 83-86; *cf. Macomb County Retiree Health Care Fund v MSC Indus. Direct Co., et al.*, 2025 NY Slip Op 51839[U], *5 [Sup Ct, NY County 2025] [Special Committee member Philip Peller served on MSC's board for 25 years, after being a partner at Arthur Andersen where he worked as MSC's auditor for years and relied on MSC as a key loyal client]). Additionally, the CAC concedes that Mr. Baldacci was not part of the Unaffiliated Committee from 2016 to 2020, as they considered him to be conflicted (NYSCEF Doc. No. 180 ¶ 79). Lastly, the CAC, alleges that Mr. Baldacci held only 350 Avangrid shares such that his personal financial interests were not sufficiently tied to acting in favor of Avangrid's interests (*id.* ¶ 33). But this too is insufficient. Lastly, and as discussed above, the Court notes that the Proxy discloses that the Shareholder Agreement, entered approximately nine years before the transaction took place, provided that Mr. Baldacci

was to be considered independent for the purpose of the Unaffiliated Committee and its consideration of a going-private transaction with Iberdrola. Thus, and taking the allegations together as a whole, the CAC does not allege a reasonably conceivable set of facts that establish that Mr. Baldacci's judgment was compromised (*see M+J Savitt, Inc.*, 2009 WL 691278, *6 [applying New York law]; *accord F5 Cap.*, 856 F3d at 83 ["[T]he court must 'consider all the particularized facts pled by the plaintiffs about the relationships between the director and the interested party in their totality and not in isolation from each other'"], quoting *Del. Cnty. Emps. Ret. Fund*, 124 A3d at 1019 [applying Delaware law]).

Finally, as to Ms. Jacobs, the CAC alleges that she has been an Avangrid Board member since 2019 and remains a Board member of the post-Merger Avangrid (NYSCEF Doc. No. 180 ¶ 35). Ms. Jacobs conducted business with an Avangrid subsidiary when she was President of AT&T New England, she sat on the Greater Boston Chamber of Commerce with Bob Kump, the former CEO of Avangrid Renewables, serves on the board of the New England Council of which Avangrid is a member, and attended a White House event hosting Iberdrola Chairman Galán (*id.*). Ms. Jacobs did not own any stock in Avangrid such that her personal financial interests would be tied to acting in favor of Avangrid's interests (*id.*). These thin allegations too "taken as a whole" do not plausibly establish Ms. Jacobs' judgment was compromised (*see M+J Savitt, Inc.*, 2009 WL 691278, *6 [applying New York law]; *accord F5 Cap.*, 856 F3d at 83 ["[T]he court must 'consider all the particularized facts pled by the plaintiffs about the relationships between the director and the interested party in their totality and not in isolation from each other'"], quoting *Del. Cnty. Emps. Ret. Fund*, 124 A3d at 1019 [applying Delaware law]).

Finally, the Court notes that although the CAC alleges that the indemnification agreements provided by the Avangrid Board lessened the Unaffiliated Committee's incentives to act independently (NYSCEF Doc. No. 180 ¶ 129), this argument too fails because indemnification is commonplace and simply not a ground for questioning independence (*see In re Merrill Lynch & Co., Inc., Sec., Derivative & ERISA Litig.*, 773 F Supp 2d 330, 342 [SD NY 2011]; *see also Globis Partners, L.P. v Plumtree Software, Inc.*, 2007 WL 4292024, *8 [Del Ch Nov 30, 2007] ["There is no basis for inferring the receipt of indemnification benefits" is "likely to taint the Individual Defendants' judgment."]). As such, the CAC does not plead a reasonably conceivable set of facts that the second *MFW* procedural safeguard was not satisfied.

III. The Unaffiliated Committee was free to select its own advisors and to say no definitively (*i.e.*, the third *MFW* procedural safeguard is satisfied)

To obtain business judgment rule protection, a special committee must also have genuine authority to select its own advisors and reject the controller's proposal (*MFW*, 88 A3d at 645; *Kahn v Lynch*, 638 A2d 1110, 1121 [Del 1994]; *In re Loral Space & Commc'ns Inc.*, 2008 WL 4293781, *23 [Del Ch Sept 19, 2008]). A special committee that merely accedes to a controller's terms or fails to exercise genuine negotiating leverage does not satisfy this requirement (*Kahn*, 638 A2d at 1121; *Ams. Mining Corp. v Theriault*, 51 A3d 1213, 1244-1249 [Del 2012]). A special committee's independence and effectiveness often depend on its ability to obtain unbiased advice from its own freely chosen legal and financial advisors (*Loral Space*, 2008 WL 4293781, *23).

The CAC alleges the Unaffiliated Committee did not freely select Moelis as its financial advisor or Paul Weiss as its legal advisor. According to the CAC, Iberdrola recommended Moelis to the

Unaffiliated Committee to act as its financial advisor because Moelis had a long-standing relationship with QIA (NYSCEF Doc. No. 180 ¶ 36). The mere suggestion of a potential advisor by a shareholder simply is insufficient to allege a reasonably conceivable set of facts that the process was not adequate. More must be alleged. And, as the Proxy discusses, the Unaffiliated Committee engaged in a healthy due diligence process. They contacted eight potential financial advisors, interviewed four, and only engaged Moelis after considering each firm's independence, qualifications, experience, and potential conflicts (NYSCEF Doc. No. 169 at 46). In fact, nothing about this process is adequately alleged to suggest that Moelis was not freely chosen as the best advisor for the task at hand.

According to the CAC, Iberdrola recommended Paul Weiss to the Unaffiliated Committee to act as its legal advisor (NYSCEF Doc. No. 180 ¶ 46). The CAC alleged that Paul Weiss was conflicted because it had previously served as legal counsel for Qatar which owns and controls QIA (*id.*). As discussed above, QIA's shares were excluded from the majority of the minority which voted in favor of the Merger. Paul Weiss is a world-renowned law firm that has its own conflict procedures. Nothing is alleged to have been flawed in its process. The Proxy discloses that the Unaffiliated Committee interviewed multiple law firms and only engaged Paul Weiss after considering each firm's independence, expertise, qualifications, experience, and potential conflicts (NYSCEF Doc. No. 169 at 45). The CAC alleges that Paul Weiss was incentivized to curry favor with Iberdrola in the hope of winning future engagements (NYSCEF Doc. No. 180 ¶ 115). The CAC does not, however, adequately identify anything that Paul Weiss is alleged to have done or not done that it should have or would have done differently absent its alleged prior

representations. As such, the CAC does not allege a reasonably conceivable set of facts to establish that Paul Weiss was not appropriately selected or that Paul Weiss was conflicted.

For completeness, the CAC also fails to allege that the Unaffiliated Committee was not free to say no definitively. Indeed, the Unaffiliated Committee did say no to the initial pricing. Thus, the CAC simply does not plead a reasonably conceivable set of facts that the third *MFW* procedural safeguard was not satisfied.

IV. The Proxy confirms that the minority interest holders were informed (*i.e.*, the fifth *MFW* procedural safeguard is satisfied)

To obtain business judgment rule protection, a vote of the minority shareholders must be fully informed, and the court must assess whether material information was not disclosed (s*ee MFW*, 88 A3d at 645; *City of Sarasota Firefighters' Pension Fund v Inovalon Holdings, Inc.*, 319 A3d 271, 288 [Del 2024]; *Morrison v Berry*, 191 A3d 268, 282 [Del 2018]; *In re Baltic Trading S'holders Litig.*, 160 AD3d 599, 601 [1st Dept 2008]). A plaintiff need only allege facts supporting a rational inference that material facts were not disclosed or that the disclosures were materially misleading (*Morrison*, 191 A3d at 282; *Baltic Trading*, 160 A3d at 282). Information is material if there is a substantial likelihood that a reasonable shareholder would view it as important when deciding how to vote (*Smart Loc. Unions & Councils Pension Fund v BridgeBio Pharma, Inc.*, 2022 WL 17986515, *15 [Del Ch Dec 29, 2022]).

The CAC alleges that the Proxy failed to disclose (i) the fact that Moelis's valuation analysis was based on projections that were made available to Iberdrola before being given to the Unaffiliated Committee, (ii) the fact that Avangrid's revised financial forecast (the **Revised Forecast**) was

based on inflated capital expenditure assumptions that depressed Avangrid's projected cash flows and valuation, (iii) that Iberdrola insisted that QIA be included in the majority of the minority vote tally after agreeing on the price (NYSCEF Doc. No. 180 ¶ 177), (iv) the conflicts of the Unaffiliated Committee and Paul Weiss, (v) that Mr. Duffy and Ms. Jacobs would retain their Avangrid Board positions following the Merger, and (vi) the timing of Moelis disclosing its conflicts of interest and the scope of those conflicts. However, the record firmly establishes that they were otherwise disclosed in the Proxy or in other SEC filings as part of the total mix of information available to the minority shareholders and the Plaintiffs otherwise fail to allege how these alleged omissions are in fact material.

Although the CAC alleges that the Revised Forecast was not provided to the Unaffiliated Committee until a date after March 28, 2024, the CAC fails to allege how this was material; in fact, the CAC concedes that Iberdrola publicly disclosed projections incorporating Avangrid's information on March 21, 2024 (*id.* ¶ 122-123, 125). As to the allegations that the Revised Forecast was based on inflated capital expenditure assumptions that depressed Avangrid's projected cash flows and valuation, the Proxy itself disclosed the projections at issue (NYSCEF Doc. No. 169 at 51). Avangrid's publicly filed SEC documents disclosed the Revised Forecast and capital expenditure assumptions as well (NYSCEF Doc. No. 175 at 17-18). In addition, the Proxy sets forth a detailed description and chronology of negotiations concerning Iberdrola's position on QIA's inclusion in the vote calculation (NYSCEF Doc. No. 169 at 52-63). As to Paul Weiss, Paul Weiss previously represented Qatar in 2019 – *i.e.*, some five years before the Merger. They are not alleged to have represented either Iberdrola or QIA directly. At bottom, the CAC merely indicates that like most law firms, Paul Weiss unremarkably hoped for future

business from Iberdrola (NYSCEF Doc. No. 180 ¶ 115). As discussed above, this is insufficient. As to Mr. Duffy and Ms. Jacobs, the CAC also fails to adequately allege that decisions had in fact been made that Mr. Duffy and Ms. Jacobs would retain Board seats post-Merger or why that would in fact be material. Lastly, the CAC also fails to adequately allege a material omission concerning Moelis's alleged conflicts; the Proxy itself expressly disclosed Moelis's relationships and compensation, including updated relationship disclosures provided to the Unaffiliated Committee (NYSCEF Doc. No. 169 at 47, 60, 82). Thus, the CAC does not plead a reasonably conceivable set of facts that the fifth *MFW* procedural safeguard was not satisfied.

V. The minority vote was not coerced (*i.e.*, the sixth *MFW* procedural safeguard is satisfied)

To obtain business judgment rule protection, a controller-conflicted transaction must be conditioned from the outset on an uncoerced majority of the minority vote, forcing both the controller and special committee to bargain under the same pressures (*Kenneth Cole*, 27 NY3d at 279; *Synutra*, 195 A3d 754, 763). "'The question on coercion is whether you can vote down a deal and keep the status quo'" (*Baltic Trading*, 160 AD3d at 602, quoting *Swomley v Schlecht*, 2014 WL 4470947 [Del Ch Aug 27, 2014]).

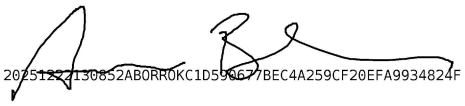
The CAC alleges the majority of the minority vote was tainted and coerced by Iberdrola's insistence to include QIA and other shareholders holding more Iberdrola stock than Avangrid stock, as they benefited from Iberdrola paying a lower price for Avangrid (NYSCEF Doc. No. 180 ¶ 176). In other words, at bottom, the CAC alleges that the minority shareholders were coerced because QIA had indicated that it was to be included in the minority for the purpose of the majority of the minority calculation. But this is the very argument that the Appellate

Division rejected in *In re Baltic Trading S'holders Litig.*, 160 AD3d 599, 602 (1st Dept 2018) (dismissing the complaint and rejecting the argument that the minority shareholders were coerced because the minority included "large Baltic shareholders that were also among the largest Genco shareholders [(the controller)], and one of those shareholders had agreed to vote for the merger"). In fact, and as discussed above, the CAC undermines the argument of coercion because QIA was of the view that the initial offer was "materially inadequate" (NYSCEF Doc. No. 180 ¶ 120). As such, the CAC does not plead a reasonably conceivable set of facts that the sixth *MFW* procedural safeguard was not satisfied.

Thus, the CAC fails to allege "a reasonably conceivable set of facts" showing that any of the six *MFW* procedural safeguards were not satisfied (*see Kenneth Cole*, 27 NY3d at 278, citing *MFW,* 88 A3d at 645). The CAC also fails to adequately allege fraud or bad faith. As such, the Defendants' business decisions are entitled to deference, and dismissal of the CAC is required (*see Kenneth Cole*, 27 NY3d at 274-275).

The Court has considered the parties' remaining arguments and finds them unavailing.

Accordingly, it is hereby ORDERED that the Defendants' motions (Mtn. Seq. No. 010-013) to dismiss are GRANTED.



12/22/2025
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE