

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

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IN RE AVANGRID, INC. SHAREHOLDER LITIGATION,	INDEX NO.	<u>659327/2024</u>
Plaintiff,		05/19/2025,
- V -		05/19/2025,
XXX,	MOTION DATE	<u>05/19/2025</u>
Defendant.		010 011 012
	MOTION SEQ. NO.	<u>013</u>

DECISION + ORDER ON
MOTION

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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 independent¹ 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 *MFV* 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

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).
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To obtain business judgment rule protection, a controller-conflicted transaction must also be approved by a special committee⁴ 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 (see *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.


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<u>12/22/2025</u>		<u>ANDREW BORROK, J.S.C.</u>	
DATE			
CHECK ONE:	☒ CASE DISPOSED	☐ NON-FINAL DISPOSITION	
	☒ GRANTED ☐ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE